

1993 BILL 239

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First Session, 23rd Legislature, 42 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 239**

## **NON-SMOKERS HEALTH ACT**

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MR. SAPERS

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First Reading .....

Second Reading .....

Committee of the Whole .....

Third Reading .....

Royal Assent .....

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*Bill 239*  
*Mr. Sapers*

## **BILL 239**

1993

### **NON-SMOKERS HEALTH ACT**

*(Assented to , 1993)*

HER MAJESTY, by and with the advice and consent of the  
Legislative Assembly of Alberta, enacts as follows:

**Definitions**

**1(1)** In this Act,

(a) "designated smoking area" means an area other than an enclosed room, that is designated for smoking under subsection 2(2);

(b) "designated smoking room" means an enclosed room that is designated for smoking under subsection 3(2);

(c) "employee" means a person who is employed by an employer;

(d) "employer" means a person who retains one or more individuals to do work for a wage, salary, commission or other remuneration at a place of work under the person's control and includes:

(i) the Crown;

(ii) the Legislative Assembly.

(e) "enclosed public place" includes

(i) an enclosed place or building to which the public

has or is permitted to have access,

(ii) an enclosed place of public resort, and

(iii) a conveyance in a public place,

but does not include a restaurant, lounge, bar, tavern or tobacco shop which has posted at its entrance prominent signs warning of the risks to health presented by smoking;

(f) "inspector" means a person designated as such pursuant to section 8;

(g) "Minister" means the Minister of Labour;

(h) "smoke" means to smoke, hold or otherwise have control over an ignited tobacco product;

(i) "tobacco product" means any product manufactured from tobacco and intended for use by smoking;

(j) "work space" means any indoor or other enclosed space in which employees perform the duties of their employment, and includes any adjacent corridor, lobby, stairwell, elevator, cafeteria, washroom or other common area frequented by such employees during the course of their employment or a train referred to in subsection (2).

(2) This Act applies to a work space on a passenger train or a motor vehicle.

Duty of employer

2(1) Every employer, and any person acting on behalf of an employer, shall ensure that persons refrain from smoking in any work space under the control of the employer.

(2) An employer may, to the extent permitted by the regulations, designate for smoking

(a) enclosed rooms under the control of the employer other than rooms normally occupied by non-smokers, and

(b) areas under the control of the employer on a motor vehicle or in a bus station other than areas normally occupied by non-smokers.

(3) Notwithstanding subsection (1), an employer may require employees, by reason of the nature of their duties, to perform a part of those duties in a room or area designated for smoking under subsection (2).

(4) Where an employer has designated a room for smoking under subsection (2) in a building or portion of a building the construction of which commenced before January 1, 1993, the employer shall, to the extent reasonably practicable, ensure that the room conforms to any requirements of the regulations respecting independent ventilation of designated smoking rooms.

(5) No employer shall designate a room for smoking under subsection (2) in a building or portion of a building the construction of which commenced after December 31, 1992 if the room fails to conform to any requirements of the regulations respecting independent ventilation of designated smoking rooms.

(6) No employer shall designate a room or area for smoking under subsection (2) in a work place, other than on a motor vehicle that is carrying passengers, until after the employer has consulted with the joint work site health and safety committee appointed under the *Occupational Health and Safety Act* in respect of that work place or, if there is no such committee, with the employees employed there.

### 3 No person shall smoke in an enclosed public place

Smoking  
prohibited

4(1) No person shall smoke in any work place under the control of an employer except in a designated smoking room or designated smoking area.

(2) An employer shall, to the extent and in the manner required by the regulations, inform employees and members of the public of the prohibition imposed by subsection (1) and of the location of designated smoking rooms and designated smoking areas under the control of the employer.

Smoking on trains  
or motor vehicles

5(1) An employee who becomes aware that a passenger is smoking in contravention of section 4 on a train or motor vehicle operated by the employer of the employee shall request the passenger to refrain from smoking.

(2) An employer may not, in respect of a train carrying passengers, designate for smoking under subsection 4(2)

- (a) areas comprising more than two thirds of the seating accommodation of any class;
- (b) areas on more than two thirds of the cars providing a class of seating accommodation; or
- (c) areas comprising more than two thirds of the sleeping car accommodation other than enclosed accommodation.

(3) An employee who becomes aware that a passenger is smoking in contravention of section 5 on a train or bus operated by the employer of the employee shall request the passenger to refrain from smoking.

(4) Where a passenger fails to comply with a request made under subsection (3), the employer shall require the passenger to disembark at the next scheduled stop following the passenger's failure to comply.

**Saving**

6 Nothing in section 3 or 4 affects the operation of any other Act or regulations thereunder or any rule of law in relation to the protection of persons from exposure to tobacco smoke.

**Regulations**

7(1) The Lieutenant Governor in Council may make regulations

- (a) respecting the size, number, proportionate floor space, location, use, number of occupants and other characteristics of rooms and areas that may be designated for smoking under subsection 2(2);
- (b) respecting the ventilation of designated smoking rooms;
- (c) permitting the designation of the whole or any part of motor vehicles as areas or rooms for smoking, either generally or on specified routes or in specified classes of service;
- (d) respecting the maximum proportion of motor vehicle trips operated for hire or reward in passenger service in respect of which designated smoking areas or rooms may be provided during any specified travel period, either generally or on specified routes or in specified classes of service;
- (e) requiring employers to inform employees and members of the public of the prohibition imposed by section 4 and of the

location of designated smoking areas and designated smoking rooms, and respecting the manner of so informing them; and

(f) prescribing the form of tickets for the purposes of section 13 and fixing the fine payable in proceedings under that section in respect of a first or a subsequent contravention of any provision of this Act, not exceeding the amount fixed by section 11 for such a contravention.

(2) Regulations made pursuant to this section may be made applicable to all employers or to a class of employer and in respect of all work spaces or a class of work space.

Proceedings  
against Crown

8 Notwithstanding any other Act, proceedings in respect of an offence under this Act may be brought against an employer that is an agent of Her Majesty in the employer's own name, or against a person acting on behalf of such an employer, in the same manner as if that employer were a person not an agent of Her Majesty, and a fine imposed against the employer in such proceedings may be paid out of any funds held by the employer.

Designation of  
inspectors

9(1) The Minister may designate any person to be an inspector for the purposes of this Act.

(2) The Minister shall provide an inspector with a certificate of the inspector's authority and, on entering any work space referred to in section 10 the inspector shall, on demand by the person in charge of that place, produce the certificate for examination by that person.

Inspection of  
premises

10(1) For the purpose of verifying compliance with this Act, an inspector may at any reasonable time enter and inspect any work space under the control of an employer.

(2) The person in charge of a work space entered by an inspector pursuant to subsection (1) and every person found in that place shall give the inspector all reasonable assistance to enable an inspector to carry out the inspector's duties and shall furnish the inspector with any information that the inspector has reasonable grounds to believe is required to carry out the inspection.

(3) No person shall wilfully obstruct an inspector in the performance of the inspector's duties under this section.

Offence and

11(1) Every employer who contravenes section 2, 4(2) or 5(3)

punishment

is guilty of an offence and is liable on summary conviction

(a) for a first offence, to a fine not exceeding \$1000; and

(b) for a subsequent offence, to a fine not exceeding \$10 000.

(2) Every person who contravenes section 3, 4(1) or section 5(2) is guilty of an offence and is liable on summary conviction

(a) for a first offence, to a fine not exceeding \$50; and

(b) for a subsequent offence, to a fine not exceeding \$100.

(3) Every person who contravenes section 10 is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1000.

Service

12 Service of a summons or a ticket under this Act on an employer that is not an individual may be effected by delivery of the summons or ticket to the president, secretary or other executive officer of the employer, to the person appearing to have the control or management of any establishment of the employer, or to the employee or agent by whose act or omission the employer is alleged to have committed the offence.

Ticket; conviction

13(1) An inspector or peace officer who has reasonable grounds to believe that an offence has been committed under this Act may serve a ticket in the form prescribed by the regulations, completed and signed by the inspector or peace officer, by causing the ticket to be delivered to the person believed to have committed the offence, if an individual, or to a person referred to in section 2 in any other case.

(2) Either before or after service of a ticket, any information under oath shall be laid before a justice in respect of the offence alleged in the ticket.

(3) A person on whom a ticket is served or, where service is effected in accordance with section 12, a person acting on behalf of the employer so served may, within 15 days after it is served, complete and sign the plea of guilty set out in the ticket and deliver or mail the plea, together with the fine fixed by the regulations and specified in the ticket, to the court specified in the ticket.

(4) Acceptance by the court of a payment made under subsection (3) constitutes a plea of guilty, whether or not the plea is signed or the signature is proved and endorsement of the payment on the ticket constitutes the conviction of the person for the offence.

(5) Service of a ticket may be proved by the oral evidence given under oath of the person who served it or by the affidavit of that person made before a justice or other person authorized to administer oaths or take affidavits.

(6) Where a plea in respect of an alleged offence is not entered in accordance with subsection (3) and service of the ticket alleging the offence is proved before a justice, the justice shall examine the information laid pursuant to subsection (2) and, if it is complete and regular on its face, shall enter a conviction in the accused's absence and impose a fine in the amount prescribed by the regulations and specified in the ticket.

(7) In this section, the expressions "justice" and "peace officer" have the same meaning as in the *Criminal Code (Canada)*.

14(1) No employer shall

- (a) dismiss or threaten to dismiss an employee;
- (b) discipline or suspend an employee;
- (c) impose any penalty upon an employee; or
- (d) intimidate or coerce an employee,

because that employee has reported or proposes to report a contravention or possible contravention of this Act.

(2) An employer who contravenes subsection (1) is guilty of an offence and liable upon summary conviction to a fine not exceeding \$5000.

C.H.3 RSA 1980

15(1) The *Hazardous Chemicals Act* is amended by this section.

(2) Section 1(f) is amended by adding at the end of it:

*and includes the products of combustion of a tobacco product as defined in the Non-Smokers' Health Act.*