

1993 BILL 258

First Session, 23rd Legislature, 42 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 258

TOBACCO CONTROL ACT

MR. LUND

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 258
Mr. Lund

BILL 258

1993

TOBACCO CONTROL ACT

(Assented to , 1993)

WHEREAS tobacco use has resulted in disease, disability and death of epidemic proportions;

WHEREAS children must be offered protection from tobacco to prevent the spread of the epidemic to future generations;

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

Interpretation

1 In this Act,

- (a) "inspector" means a person designated as a tobacco inspector under this act;
- (b) "Minister" means the Minister designated by the Lieutenant Governor in Council;
- (c) "peace officer" has the meaning given to it in *The Criminal Code (Canada)*;
- (d) "retailer" means a person engaged in any business that includes the sale of a tobacco product at retail, and includes all agents and employees;
- (e) "tobacco paraphernalia" means cigarette papers, cigarette tubes, cigarette makers, cigarette holders and pipes;

(f) "tobacco product" means any product manufactured wholly or partly from tobacco and intended for use by smoking, inhalation or mastication, and includes nasal and oral snuff.

**Marketing
Provisions**

2(1) No person may manufacture, distribute, keep for sale, offer for sale or sell a tobacco product unless the tobacco product and the method of packaging and the package in which it is contained conform to the regulations.

(2) No person may manufacture, distribute, keep for sale, offer for sale or sell any cigarettes unless those cigarettes are enclosed in a package containing not fewer than 20 cigarettes.

(3) No person may sell or offer for sale a tobacco product at a discounted, special or reduced price, including discounts on account of volume, irrespective of the source of the discount.

(4) No person may offer, give or accept consideration in return for a public display, including at retail or at wholesale, of a tobacco product or products at retail.

(5) No person shall display or offer for sale a tobacco product except as permitted by regulations.

Sale

3(1) No person may directly or indirectly sell, distribute or furnish tobacco products or tobacco paraphernalia to a person under the age of eighteen years.

(2) No person may purchase tobacco on behalf of, or for the purpose of resale to, a person under the age of eighteen years.

(3) No person may grant a person under the age of eighteen years authority to obtain tobacco products or tobacco paraphernalia except a peace officer or inspector for the purpose of monitoring compliance with this Act.

Defence

(4) It is no defence to a prosecution for an offence under subsection (1) for the person to show that the person under the age of eighteen years appeared to be above that age.

Proof of Age

(5) Every person selling tobacco products or paraphernalia must require a person appearing to him to be under the age of eighteen years to provide satisfactory proof of age as prescribed

in the regulations, or else refuse the sale of tobacco products or paraphernalia.

(6) If it appears that any proof of age provided under subsection (5) has been altered in any way, the person who demanded the proof of age shall not accept it as satisfactory and shall not complete the sale.

Licensing
Requirements

4(1) No person shall sell or agree to sell tobacco in Alberta for retail consumption without a subsisting retailer's licence issued under the authority of this Act.

(2) An applicant is entitled to be issued a licence to sell tobacco except if

(a) the past or present conduct of the applicant affords reasonable grounds for belief that the applicant will not carry on business in accordance with the law and with integrity and honesty,

(b) the applicant is carrying on activities that are, or will be if the applicant is licensed, in contravention of this Act or the regulations.

(2) Every retailer shall be require to post any signage and information prescribed in the regulations, at the place of retail business.

(3) Every retailer shall inform all employees of the provisions of this Act.

(4) It is a condition of every tobacco retailer's licence issued pursuant to this Act that the holder of the licence, his agents and employees shall comply with the provisions of this Act and the regulations, and all applicable Federal and Provincial laws respecting but not limited to the sale of, or dealing in, tobacco products.

(5) Suspension of the tobacco retailer's licence shall be effective immediately when he or his agents or employees are charged with a violation if this Act and the regulations or any other applicable Federal or Provincial law respecting but not limited to the sale of, or dealing in, tobacco products.

(6) A licence issued under this section is not transferable.

(7) All new licence applications are subject to a 60-day approval period.

**Powers of the
Minister**

5(1) The Minister may by order

- (a) refuse to issue or renew, or may revoke or suspend any licence;
- (b) prohibit any person or class of persons from acquiring licences;
- (c) attach or remove conditions or terms to any tobacco licence;
- (d) restrict the total number of licences issued;
- (e) prohibit a person or any class of persons from distributing, keeping for sale, offering for sale or selling tobacco products whereof the person is not so licensed; and

(2) Where the Minister proposes

- (a) to refuse to issue or renew a licence;
- (b) to suspend or revoke a licence;
- (c) to attach conditions or terms to a licence,

the Minister shall serve notice of the proposal together with written reasons on the applicant or holder of the licence.

(3) Where the Minister proposes to suspend or revoke a licence, the Minister may by order temporarily suspend the licence and other order shall take effect immediately, notwithstanding that subsection (2) has not been complied with.

**Appointment and
Powers of
Inspectors**

6(1) The Minister may designate as a tobacco product inspector any person who, in the opinion of the Minister, is qualified to be so designated.

(2) The Minister shall furnish every inspector with a certificate

of the inspector's designation as such and , on entering any place described in subsection (3), an inspector shall, on demand, produce the certificate to the person in charge.

(3) For the purpose of enforcing this Act and the regulations, an inspector may

- (a) at any reasonable time, enter and inspect premises where tobacco is sold or offered for sale.
- (b) investigate any complaint of a violation of this Act and examine a vendor or employee of a vendor to determine if a violation occurred;
- (c) arrange for test purchases of tobacco;
- (d) give directions to a vendor;
- (e) issue a ticket summons or information in respect of a violation of this Act;
- (f) record and report convictions under this Act;
- (g) request information or production for inspection of documents or other things that may be relevant to the carrying out of an inspection, and
- (h) remove documents or other things produced as a result of a request under subsection (g) or discovered during the inspection for the purpose of making copies of taking extract.

(4) An inspector removing a document or other thing from premises under subsection (3) shall first provide a receipt for it to the person in charge of the premises and, subject to subsection (5), shall promptly return the document or other thing to the premises after completion of the making of copies or taking of extracts, as the case may be.

(5) An inspector may detain for the purposes of evidence any document or other thing that the inspector discovers while acting under this section and believes, on reasonable and probable grounds, may afford evidence of a violation of or a failure to comply with a provision of this Act or the regulations.

(6) Copies of or extracts from documents or things removed from the premises under this Act and certified by the person making the copies or taking the extracts as being true copies of or extracts from the originals are admissible in evidence to the same extent as, and have the same evidentiary value as, the documents or things of which they are copies or from which they are extracts.

(7) Every person shall give all reasonable assistance to the inspector to enable the inspector to exercise powers given under this Act and shall furnish the inspector with such information, documents and other things as the inspector may reasonably request.

(8) No person shall hinder, obstruct or otherwise interfere with an inspector who is carrying out the inspector's duties and functions under this Act and the regulations.

(9) No person shall knowingly make a false or misleading statement, either orally or in writing, or provide or produce a false document or other thing to an inspector who is carrying out the inspector's duties and functions under this Act and the regulations.

Regulations

7 The Lieutenant Governor in Council may make regulations

- (a) prescribing anything that by this act may be prescribed;
- (b) respecting the issue of retail licences, and licence fees;
- (c) specifying the content, form and manner of presentation of signs that must be displayed with tobacco at the time the tobacco is offered for sale or is sold to a purchaser;
- (d) prescribing satisfactory proof of age as required in section 3(5);
- (e) prescribing ticketing procedures as specified in section 11.

Civil Liability

8 Any person who reports to an inspector or peace officer a violation or suspected violation of this Act is not liable to any civil action in respect of the allegation contained in the report or anything done in good faith in assistance of any investigation by an inspector.

Penalties

9(1) A person other than a retailer guilty of an offence under this Act or the regulations is liable on summary conviction

- (a) for a first offence, to a fine not exceeding \$2,000
- (b) for a second offence to a fine not exceeding \$10,000
- (c) for a third or subsequent offence to a fine not exceeding \$50,000

(2) A retailer guilty of an offence under this Act or the regulations is liable on summary conviction

- (a) for a first offence, to a fine not exceeding \$2,000 and three month licence suspension
- (b) for a second offence, to a fine not exceeding \$10,000 and a six month licence suspension
- (c) for a third or subsequent offence, to a fine not exceeding \$50,000 and a licence revocation.

10(1) The Minister, an inspector, or a police officer may, either before or after the institution of proceedings against a person in respect of an offence under this Act, accept from the person alleged to have been guilty of the violation payment of the fine for that violation.

(2) The person so accepting payment under this section shall deliver a receipt to the offender showing the name of the offender, the amount paid, the date of payment and the offence in respect of which the payment is made.

(3) Where a person pays a fine under subsection (1) that person shall also receive a licence suspension or revocation for the period of time specified under section 9.

(4) The payment of an amount under subsection (1) shall, for the purpose of this Act, have the same effect as if the person paying the amount had been convicted of the violation in respect of which the amount of paid and a certificate or a copy of a receipt signed by a person authorized by the Minister of Justice under subsection (1) for the amount so paid is evidence of the conviction without further proof.

- Summons Ticket** **11(1)** A complaint may be made and summons issued by means of a ticket summons in accordance with this section for a violation of a provision of this Act or the regulations.
- (2) Every summons ticket shall contain
- (a) the complaint;
 - (b) the summons; and
 - (c) those other matters that may be prescribed by the regulations.
- (3) A peace officer or inspector shall indicate the offence charged on the summons ticket.
- (4) Upon completing a summons ticket in respect of an offence under this Act and signing it, the inspector shall deliver the summons ticket to the person charged with the offence, and delivery of the summons ticket in accordance with this subsection shall be considered to be personal service.
- Other Duties** **12** Nothing in this Act affects any other legal duty or obligation of a retailer or other person existing prior to the commencement of this Act.
- Crown Bound** **13** This Act binds the Crown.
- Coming into Force** **14** This Act comes into force six months after the day it receives Royal Assent.