

1994 BILL 215

Second Session, 23rd Legislature, 43 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 215

NON-SMOKERS HEALTH ACT

MR. SAPERS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

Bill 215
Mr. Sapers

BILL 215

1994

NON-SMOKERS HEALTH ACT

(Assented to _____, 1994)

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 4(2);

(b) "designated smoking room" means an enclosed room that is designated for smoking under subsection 2(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 24;

(g) "Minister" means the Minister designated by the Lieutenant Governor in Council;

(h) "peace officer" has the meaning given to it in *The Criminal Code (Canada)*;

(i) "retailer" means a person engaged in any business that includes the sale of a tobacco product at retail, and includes all agents and employees;

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

(k) "tobacco paraphernalia" means cigarette papers, cigarette tubes, cigarette makers, cigarette holders and pipes;

(l) "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.

(m) "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 place on a passenger train or a motor vehicle.

PART 1

SMOKING PROHIBITED

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) 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, 1995, 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.

(4) 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, 1994 if the room fails to conform to any requirements of the regulations respecting independent ventilation of designated smoking rooms.

(5) 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

4(1) No person shall smoke in any work place under the

prohibited 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) Where a passenger fails to comply with a request made under subsection (1), the employer shall require the passenger to disembark at the next scheduled stop following the passenger's failure to comply.

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

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 section 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 12 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 10 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.

Inspection of
premises

9(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
punishment

10(1) Every employer who contravenes section 2, 4(2) or 5(3) 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 or 4(1) 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 fails to provide reasonable assistance to an inspector pursuant to section 9(2) is guilty of an offence and is liable on summary conviction to a fine not exceeding \$1000.

Service

11 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

12(1) An inspector or peace officer who has reasonable grounds to believe that an offence has been committed under this Part 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 11, 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)*.

13(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.

PART 2

SALE OF TOBACCO TO MINORS

Marketing
provisions

14(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

15(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

16(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.

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

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

(5) 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.

(6) Suspension of the tobacco retailer's licence shall be effective

immediately when he or his agents or employees are charged with a violation of 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.

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

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

Powers of the
Minister

17(1) The Minister, with respect to licences referred to in section 16, 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, with respect to licences referred to in section 16,

(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.

Regulations

- 18 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 15(5);
 - (e) prescribing ticketing procedures as specified in section 22.

Civil liability

19 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

- 20(1) A person, other than a retailer, who is found guilty of an offence under this Part 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 who is found 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.

21(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 20(2).

(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

22(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 Part 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

23 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.

PART 3

GENERAL

Appointment and powers of inspectors

24(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 any work space or 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 an employer or 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 clause (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.

Coming into Force 26 This Act comes into force six months after the day it receives Royal Assent.

PART 4

TRANSITIONAL

C.H.-3 RSA 1980 27(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.