

2007 Bill 45

Third Session, 26th Legislature, 56 Elizabeth II

THE LEGISLATIVE ASSEMBLY OF ALBERTA

BILL 45

**SMOKE-FREE PLACES (TOBACCO REDUCTION)
AMENDMENT ACT, 2007**

THE MINISTER OF HEALTH AND WELLNESS

First Reading

Second Reading

Committee of the Whole

Third Reading

Royal Assent

BILL 45

2007

SMOKE-FREE PLACES (TOBACCO REDUCTION) AMENDMENT ACT, 2007

(Assented to _____, 2007)

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

Amends SA 2005 cS-9.5

1 The *Smoke-free Places Act* is amended by this Act.

2 The title and chapter number of the Act are repealed and the following is substituted:

TOBACCO REDUCTION ACT Chapter T-3.8

3 Section 1 is amended

(a) by renumbering clause (a) as clause (a.1) and by adding the following before clause (a.1):

- (a) “advertise” means to use any commercial communication, through any media or other means, that is intended to have or is likely to have the effect of
 - (i) creating an awareness of or association with a tobacco product, a brand of tobacco product or a manufacturer or seller of a tobacco product, or
 - (ii) promoting the purchase or use of a tobacco product or a brand of tobacco product;

Explanatory Notes

1 Amends chapter S-9.5 of the Statutes of Alberta, 2005.

2 Change to title and chapter number of Act.

3 Section 1 presently reads:

1 In this Act,

(a) “group living facility” means

(i) a facility for the long-term care of veterans,

(ii) a nursing home under the Nursing Homes Act,

(iii) a facility as defined under the Mental Health Act, or

(iv) a residential facility for adults only licensed under the Social Care Facilities Licensing Act;

(b) by adding the following after clause (e):

- (e.1) “pharmacy” means a pharmacy as defined in the *Pharmacy and Drug Act*;
- (e.2) “promote” means to use any commercial act or practice that is intended to encourage or is likely to encourage the purchase or use of a tobacco product or a brand of tobacco product or to create an awareness of or association with a tobacco product, a brand of tobacco product or a manufacturer or seller of a tobacco product;

(c) by adding the following after clause (h):

- (h.1) “retailer” means a person engaged in a business that includes the sale of tobacco products;

(d) by repealing clause (j) and substituting the following:

- (j) “tobacco product” means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves, but does not include any product for use in nicotine replacement therapy;

- (b) *“hotel” includes an inn, a guesthouse and a bed-and-breakfast facility;*
- (c) *“licensed premises” means licensed premises as defined under the Gaming and Liquor Act including an outdoor eating or drinking area that is part of or operated in conjunction with the premises;*
- (d) *“manager” means an employer or other person who, directly or indirectly, controls, directs or is responsible for a place or who controls the activities in the place;*
- (e) *“minor” means a person who is under 18 years of age;*
- (f) *“public place” means all or any part of a building, structure or other enclosed area to which members of the public have access as of right or by express or implied invitation including*
 - (i) *the common areas of a multi-unit residential facility, including patios, pools, other recreation areas and enclosed parking garages,*
 - (ii) *a group living facility,*
 - (iii) *an outdoor bus or taxi shelter,*
 - (iv) *licensed premises,*
 - (v) *a restaurant, and*
 - (vi) *a hotel;*
- (g) *“public vehicle” means a bus, taxi or other vehicle that is used to transport members of the public for a fee;*
- (h) *“restaurant” includes a coffee shop, cafeteria, sandwich stand, food court, any other eating establishment and an outdoor eating area that is part of or operated in conjunction with the restaurant;*
- (i) *“smoke” means to smoke, hold or otherwise have control over a lit tobacco product;*
- (j) *“tobacco product” means a product manufactured from tobacco and intended to be smoked;*
- (k) *“workplace” means all or any part of a building, structure or other enclosed area in which employees perform the duties of their employment, whether or not members of the public have access to the building, structure or area as of right or by express or implied invitation, and includes reception areas, corridors, lobbies, stairwells, elevators, escalators, eating areas, washrooms, lounges, storage areas, laundry rooms, enclosed parking garages and work vehicles;*

4 Section 3 is repealed and the following is substituted:

Smoking prohibited

3 Subject to section 5, no person shall smoke

- (a) in a public place,
- (b) in a workplace,
- (c) in a public vehicle, or
- (d) within a prescribed distance from a doorway, window or air intake of a public place or workplace.

5 Section 5(3) and (4) are repealed.

6 The following is added after section 7:

Tobacco not to be displayed

7.1 No person shall, in any place where tobacco products are sold or offered for sale, display or permit the display of tobacco products in any manner that would permit a consumer to view or handle a tobacco product before purchasing it.

- (l) *“work vehicle” means a vehicle owned or leased by an employer and used by employees during the course of their employment.*

4 Section 3 presently reads:

3 Subject to section 5, no person shall smoke in the following places:

- (a) a public place;*
- (b) a workplace;*
- (c) a public vehicle.*

5 Section 5(3) and (4) presently read:

(3) A person may smoke in a public place or workplace or part of a public place or workplace if the manager of the public place or workplace

- (a) designates the public place or workplace or a part of the public place or workplace as a place where smoking is permitted,*
- (b) ensures that signs are posted and conspicuously displayed indicating that minors are not permitted to enter or be in the place where smoking is permitted, and*
- (c) subject to the regulations, takes reasonable steps to ensure that smoke does not enter any place where smoking is prohibited under this Act.*

(4) The manager of a public place or workplace must not permit minors to enter or be in a public place or workplace or part of a public place or workplace where smoking is permitted under subsection (3).

6 Sections added restricting the display, advertisement, promotion and sale of tobacco products.

Tobacco not to be advertised or promoted

7.2(1) No person shall advertise or promote tobacco products

- (a) in any place where tobacco products are sold or offered for sale, or
- (b) in any manner if the advertisement or promotion is visible from outside a place in which tobacco products are sold or offered for sale.

(2) Despite subsection (1), a place described in subsection (1)(a) may have one or more signs that lists the tobacco products offered for sale and their prices if the signs comply with the requirements prescribed by the regulations.

Sale of tobacco in certain places prohibited

7.3 No person shall sell tobacco products or offer tobacco products for sale in any of the following places:

- (a) a health facility in which one or more health professionals regulated under the *Health Professions Act* or another enactment provide services;
- (b) the campus of a public post-secondary institution under the *Post-secondary Learning Act*;
- (c) a pharmacy;
- (d) a retail store if
 - (i) a pharmacy is located in the retail store, or
 - (ii) customers of the pharmacy can enter the retail store directly or by use of a corridor or area used exclusively to connect the pharmacy with the retail store.

7 Section 8 is repealed and the following is substituted:

Offences

8(1) A person who contravenes section 3 or a provision in the regulations designated by the regulations as a provision the contravention of which is an offence is guilty of an offence and liable

7 Section 8 presently reads:

8(1) A person who contravenes a provision of this Act is guilty of an offence.

(2) In describing an offence respecting smoking by a person in a place where smoking is prohibited under this Act, it is not necessary

- (a) for a first offence, to a fine of not more than \$1000, and
 - (b) for a 2nd or subsequent offence, to a fine of not more than \$5000.
- (2) A person who contravenes section 6, 7, 7.1, 7.2 or 7.3 is guilty of an offence and liable
- (a) for a first offence, to a fine of not more than \$10 000, and
 - (b) for a 2nd or subsequent offence, to a fine of not more than \$100 000.

Description of offence

8.1 In describing an offence respecting smoking in a place where smoking is prohibited under this Act, it is not necessary to specify the kind, brand or name of the tobacco product used in the offence.

Testimony of witness

8.2 In a prosecution under this Act for smoking in a place where smoking is prohibited, it is not necessary that a witness testify to the precise description, kind, brand or name of the tobacco product smoked.

Evidence

8.3 In a prosecution under this Act, the court trying the case may, in the absence of evidence to the contrary, infer that the product smoked was a tobacco product from the fact that a witness describes it by a name that is commonly used to describe a tobacco product.

Prohibition order

8.4(1) If a retailer is convicted of a 3rd or subsequent offence for a contravention of section 7.1 or 7.2, the Minister may by order in writing prohibit the retailer from selling tobacco products at the place at which the offence took place, or at any place to which the business of the retailer is moved, for the period of time provided for in the order.

(2) A retailer who fails to comply with an order made under subsection (1) is guilty of an offence and liable to a fine of not

to specify the kind, brand or name of the tobacco product used in the offence.

(3) In a prosecution under this Act for smoking in a place where smoking is prohibited, it is not necessary that a witness testify to the precise description, kind, brand or name of the tobacco product smoked.

(4) In a prosecution under this Act, the justice trying the case may, in the absence of evidence to the contrary, infer that the product smoked was a tobacco product from the fact that a witness describes it by a name that is commonly used to describe a tobacco product.

more than \$100 000 for each day during which non-compliance continues.

Directors, etc. of corporations

8.5 Where a corporation commits an offence under this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of that offence and liable to the penalty provided for the offence whether or not the corporation has been prosecuted for or convicted of that offence.

Vicarious liability

8.6 In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for or convicted of the offence, unless the accused establishes that the offence was committed without the accused's knowledge and that the accused exercised all due diligence to prevent its commission.

8 Section 9 is repealed and the following is substituted:

Regulations

9(1) The Lieutenant Governor in Council may make regulations

- (a) for greater certainty, designating a place or class of place as a public place, workplace, hotel, public vehicle or restaurant for the purposes of this Act;
- (b) for the purposes of section 3(d), prescribing a distance from a doorway, window or air intake of a public place or workplace;
- (c) for the purposes of section 5, prescribing requirements for smoking rooms;
- (d) for the purposes of sections 7 and 7.2, respecting the form and contents, the manner of posting, the display and the location of signs;

8 Section 9 presently reads:

9 The Lieutenant Governor in Council may make regulations

- (a) for greater certainty, designating a place or class of place as a public place, workplace, hotel, public vehicle or restaurant for the purposes of this Act;*
- (b) respecting signs under sections 5 and 7;*
- (c) respecting the appointment of inspectors and the powers and duties of inspectors;*
- (d) respecting requirements for the purpose of section 5(3)(c) to ensure that smoke does not enter any place where smoking is prohibited;*
- (e) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Act.*

- (e) respecting the appointment or designation of inspectors and the powers, duties and obligations of inspectors, including, without limitation, regulations
 - (i) authorizing inspectors
 - (A) to make any inspection, investigation or inquiry that the inspector considers necessary,
 - (B) at any reasonable time to enter any place where tobacco products are sold,
 - (C) at any reasonable time to enter any place containing records that relate to the sale of tobacco products, and to inspect those records,
 - (D) to make copies of any records described in paragraph (C), and
 - (E) to seize any tobacco products and displays related to tobacco products for the purposes of administering and enforcing this Act and the regulations and any order made under section 8.4;
 - (ii) respecting the handling and disposition of seized tobacco products and displays related to tobacco products;
- (f) respecting the form, contents and service of orders made under section 8.4;
- (g) exempting a person or a class of persons from all or any of the requirements of this Act;
- (h) designating provisions in the regulations the contravention of which is an offence;
- (i) defining any word or phrase used but not defined in this Act;
- (j) respecting any matter that the Lieutenant Governor in Council considers necessary or advisable to carry out the purposes of this Act.

(2) A regulation made under subsection (1)(b) may be general or specific in its application and may prescribe different distances from a doorway, window or air intake with respect to different classes of public places or workplaces.

9 This Act comes into force on Proclamation.

9 Coming into force.

