

2013 Bill 33

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First Session, 28th Legislature, 62 Elizabeth II

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THE LEGISLATIVE ASSEMBLY OF ALBERTA

# **BILL 33**

**TOBACCO REDUCTION  
AMENDMENT ACT, 2013**

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THE ASSOCIATE MINISTER OF WELLNESS

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First Reading . . . . .

Second Reading . . . . .

Committee of the Whole . . . . .

Third Reading . . . . .

Royal Assent . . . . .

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## BILL 33

2013

### TOBACCO REDUCTION AMENDMENT ACT, 2013

(Assented to \_\_\_\_\_, 2013)

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

**Amends SA 2005 cT-3.8**

**1 The *Tobacco Reduction Act* is amended by this Act.**

**2 The title is repealed and the following is substituted:**

**TOBACCO AND SMOKING REDUCTION ACT**

**3 Section 1 is amended**

**(a) by adding the following after clause (d):**

(d.1) “Minister” means the Minister determined under section  
16 of the *Government Organization Act* as the Minister  
responsible for this Act;

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

(e.01) “peace officer” means a peace officer as defined in the  
*Provincial Offences Procedure Act*;

**(c) by repealing clause (i) and substituting the following:**

(i) “smoke a tobacco product” means to smoke, hold or  
otherwise have control over a lit or heated tobacco  
product;

## Explanatory Notes

**1** Amends chapter T-3.8 of the Statutes of Alberta, 2005.

**2** Title presently reads:

*TOBACCO REDUCTION ACT*

**3** Adds definitions.

**(d) by adding the following after clause (i):**

- (i.1) “smoke a tobacco-like product” means to smoke, hold or otherwise have control over a lit or heated tobacco-like product;

**(e) by adding the following after clause (j):**

- (j.1) “tobacco-like product” means, subject to the regulations, a product, other than a tobacco product, composed in whole or in part of

- (i) plants or plant products, or any extract of them, or

- (ii) other substances prescribed by regulation;

**4 Section 3 is amended**

**(a) by striking out “smoke” and substituting “smoke a tobacco product or tobacco-like product”;**

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

(b.1) in a vehicle in which a minor is present,

**5 The following is added after section 3:**

**Prohibition re minors**

**3.1(1)** No minor shall smoke a tobacco product

(a) in a place referred to in section 3,

(b) in any outdoor place or area to which members of the public have access as of right or by express or implied invitation, including a highway within the meaning of the *Traffic Safety Act*,

(c) in a school building, on school grounds or in any parking areas used in relation to a school building, or

**4** Section 3 presently reads:

*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** Prohibition re minors.

(d) in a vehicle that is in a public place or in an outdoor place or area referred to in clauses (a) to (c).

(2) No minor shall possess or consume a tobacco product in a place referred to in subsection (1).

**6 Section 5 is amended**

(a) **in subsections (1) and (2) by striking out “smoke” and substituting “smoke a tobacco product or tobacco-like product”;**

(b) **in subsections (1)(b) and (2)(c) by striking out “smoking” and substituting “smoking a tobacco product or tobacco-like product”.**

**7 Section 6 is amended**

(a) **by striking out “smoking” and substituting “smoking a tobacco product or tobacco-like product”;**

(b) **by striking out “smoke” and substituting “smoke a tobacco product or tobacco-like product”.**

**6** Section 5 presently reads:

*5(1) An in-patient or resident of a group living facility may smoke in a separate room in the facility if the room*

- (a) is designated as a smoking room by the manager,*
- (b) has floor-to-ceiling walls, a ceiling and doors that separate it physically from any adjacent area in which smoking is prohibited under this Act,*
- (c) has a separate ventilation system, and*
- (d) conforms to any requirements prescribed by the regulations.*

*(2) A registered guest, and a person invited by the guest, may smoke in a guest room of a hotel if the guest room*

- (a) is designed primarily as sleeping accommodation,*
- (b) is designated as a smoking room by the manager,*
- (c) has floor-to-ceiling walls, a ceiling and doors that separate it physically from any adjacent area in which smoking is prohibited under this Act, and*
- (d) conforms to any requirements prescribed by the regulations.*

**7** Section 6 presently reads:

*6 The manager of a place where smoking is prohibited under this Act must not permit a person to smoke in that place.*

**8 Section 7 is amended**

(a) **by striking out** “smoking” **wherever it occurs and substituting** “smoking a tobacco product or tobacco-like product”;

(b) **by adding the following after subsection (2):**

**(2.1)** The manager of a place where tobacco products are sold or offered for sale must ensure that signs indicating that it is illegal to sell tobacco products to minors are posted and continuously displayed in accordance with the regulations.

**9 The following is added after section 7.2:**

**Minimum package size**

**7.21** No person shall sell or offer for sale a tobacco product designated in the regulations in a package containing less than the number of units prescribed by the regulations.

**10 The following is added before section 8:**

**Furnishing tobacco products to a minor**

**7.5(1)** No person shall furnish or offer to furnish a tobacco product to a minor in a place referred to in section 3.1(1).

**(2)** No person shall furnish or offer to furnish a tobacco product in a place referred to in section 3.1(1) to a person who appears to be less than 25 years of age unless he or she has required the person to provide a prescribed form of identification and is satisfied that the person is at least 18 years of age.

**(3)** It is a defence to a charge under subsection (1) that the defendant reasonably believed the person to whom the tobacco product was furnished or offered to be at least 18 years of age because

(a) the person provided a prescribed form of identification showing his or her age, and



**8** Section 7 presently reads:

*7(1) The manager of a place where smoking is prohibited under this Act must ensure that signs indicating that smoking is prohibited are posted and continuously displayed in accordance with the regulations.*

*(2) The manager of a place where smoking is permitted under section 5 must ensure that signs indicating that smoking is permitted are posted and continuously displayed in accordance with the regulations.*

*(3) No person other than a manager or a person acting under the manager's instructions shall remove, alter, deface, conceal or destroy a sign that is posted or displayed under this Act.*

**9** Minimum package size.

**10** Furnishing tobacco products to a minor.

- (b) there was no apparent reason to doubt the authenticity of the identification or that it was issued to the person providing it.

**11 Section 8 is amended**

**(a) by adding the following after subsection (1):**

**(1.1)** A minor who contravenes section 3.1(1) or (2) is guilty of an offence and liable to a fine of not more than \$100.

**(1.2)** A person who contravenes section 7.5 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.

**(b) by adding the following after subsection (2):**

**(3)** A person who contravenes section 7.21 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.

**12 Section 8.1 is repealed and the following is substituted:**

**Description of offence— smoking**

**8.1** In describing an offence respecting the smoking of a tobacco product as prohibited under section 3 or 3.1(1), it is not necessary to specify the kind, brand or name of the tobacco product used in the offence.

**13 The following is added after section 8.1:**

**11** Section 8 presently reads:

*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*

*(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.*

**12** Section 8.1 presently reads:

*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.*

**13** Description of offence - minors.

**Description of offence — possession or consuming**

**8.11** In describing an offence respecting the possession or consuming of a tobacco product by a minor as prohibited under section 3.1(2), it is not necessary to specify the kind, brand or name of the tobacco product used in the offence.

**14 Section 8.2 is repealed and the following is substituted:**

**Testimony of witness**

**8.2** In a prosecution under this Act respecting the smoking of a tobacco product as prohibited under section 3 or 3.1(1), it is not necessary that a witness testify to the precise description, kind, brand or name of the tobacco product smoked.

**15 The following is added after section 8.2:**

**Testimony of witness — offence by minor**

**8.21** In a prosecution under this Act for the possession or consuming of a tobacco product by a minor as prohibited under section 3.1(2), it is not necessary that a witness testify to the precise description, kind, brand or name of the tobacco product possessed or consumed.

**16 Section 8.3 is repealed and the following is substituted:**

**Inference of tobacco product**

**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 possessed, smoked or consumed was a tobacco product from the fact that a witness describes it by a name that is commonly used to describe a tobacco product.

**17 The following is added after section 8.3:**

**Inference in respect of age**

**8.31** Where a peace officer requests a person to produce proof of age and

- (a) the person refuses to produce identification, or

**14** Section 8.2 presently reads:

*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.*

**15** Testimony of witness — offence by minor.

**16** Section 8.3 presently reads:

*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.*

**17** Inference in respect of age.

- (b) the person produces identification and the peace officer believes the identification to be false or altered,

the court trying the case may, in the absence of evidence to the contrary, infer that the person charged is a minor.

**18 The following is added before section 8.4:**

**Certificate or report of analysis**

**8.32(1)** The Minister may designate a person to act as an analyst with respect to any analysis or description of any tobacco product or tobacco-like product for the purposes of or in connection with this Act and the regulations.

**(2)** In a prosecution under this Act, a certificate or report of analysis furnished by an analyst designated under subsection (1) is admissible in evidence as proof, in the absence of evidence to the contrary, of the facts stated in it and of the authority of the person furnishing the certificate or report without proof of the designation or signature of the analyst.

**(3)** No certificate or report of an analyst may be received in evidence unless the party intending to produce it has given to the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate or report.

**(4)** A person to whom a notice of intention to produce is given under subsection (3) may, with the leave of the court, require the attendance of the analyst for the purpose of cross-examination.

**19 Section 9(1) is amended**

**(a) by repealing clause (a) and substituting the following:**

- (a) for greater certainty, designating for the purposes of this Act,
  - (i) a place or class of place as a public place, workplace, hotel, public vehicle or restaurant, and

**18** Certificate or report of analysis.

**19** Section 9 presently reads:

*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;*

- (ii) an outdoor place or area, or class of outdoor place or area, as an outdoor place or area to which members of the public have access as of right or by express or implied invitation;

**(b) by adding the following after clause (c):**

- (c.1) respecting what constitutes a tobacco-like product for the purpose of section 1(j.1);

**(c) in clause (e)**

- (i) by striking out “and” at the end of subclause (i)(D), by adding “and” at the end of subclause (i)(E) and by adding the following after subclause (i)(E):**

- (F) to seize any tobacco-like product for the purposes of administering and enforcing this Act and the regulations;

- (ii) by repealing subclause (ii);**

**(d) by adding the following after clause (e):**

- (e.1) prescribing the forms of identification for the purpose of section 7.5(2) and (3);
- (e.2) respecting the training by retailers of their employees regarding compliance with this Act;
- (e.3) respecting the reporting by retailers of their activities that are governed by this Act;
- (e.4) respecting the handling and disposition of seized tobacco products and tobacco-like products and displays relating to tobacco products;

**(e) by adding the following after clause (f):**

- (f.1) prescribing numbers of units for the purpose of section 7.21;
- (f.2) designating tobacco products or classes of tobacco products to which section 7.21 applies;



- (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;*
- (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;*

**(f) by repealing clause (g) and substituting the following:**

- (g) respecting the exemption of a person or a class of persons from the application of all or any of the provisions of this Act or the regulations;
- (g.1) respecting the exemption of a place or a class of place from the application of all or any of the provisions of this Act or the regulations;
- (g.2) respecting the exemption of a tobacco product or tobacco-like product from the application of all or any of the provisions of this Act or the regulations;

**20 Section 10 is amended by striking out “smoking” wherever it occurs and substituting “smoking a tobacco product or tobacco-like product”.**

**21 The following is added after section 12:**

**Review**

**12.1** The Minister must commence a review of this Act within 5 years after this section comes into force.

**22 On the coming into force of section 4(a) of this Act,**

- (a) **section 3.1(1) is amended by adding “or tobacco-like product” after “tobacco product”;**
- (b) **sections 8.1 and 8.2 are amended by adding “or tobacco-like product” after “tobacco product” wherever it occurs;**
- (c) **section 8.3 is repealed and the following is substituted:**

**Inference of tobacco or tobacco-like product**

**8.3(1)** In a prosecution under this Act, the court trying the case may, in the absence of evidence to the contrary, infer that

*(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.*

**20** Section 10 presently reads:

*10(1) Nothing in this Act affects a municipality's power to make bylaws to regulate, restrict or prohibit smoking.*

*(2) Where there is a conflict between a provision of this Act and a provision of a municipal bylaw that regulates, restricts or prohibits smoking, the more restrictive provision prevails.*

**21** Review.

**22** Amendments dealing with tobacco-like products.

the product smoked was a tobacco product or tobacco-like product from the fact that a witness describes it by a name that is commonly used to describe a tobacco product or tobacco-like product, as the case may be.

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

**23(1) The *Prevention of Youth Tobacco Use Act, RSA 2000 cP-22*, is repealed.**

**(2) The *Tobacco Reduction (Protection of Children in Vehicles) Amendment Act, 2012, SA 2012 c3*, is repealed.**

**24 This Act comes into force on Proclamation.**

**23** Repeals Prevention of Youth Tobacco Act, RSA 2000 cP-22 and Tobacco Reduction (Protection of Children in Vehicles) Amendment Act, 2012, SA 2012 c3.

**24** Coming into force.





**RECORD OF DEBATE**

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