



Province of Alberta

# **TOBACCO AND SMOKING REDUCTION ACT**

Statutes of Alberta, 2005  
Chapter T-3.8

Current as of June 1, 2015

Office Consolidation

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## Note

All persons making use of this consolidation are reminded that it has no legislative sanction, that amendments have been embodied for convenience of reference only. The official Statutes and Regulations should be consulted for all purposes of interpreting and applying the law.

## Amendments Not in Force

This consolidation incorporates only those amendments in force on the current as of date shown on the cover. It does not include the following amendments:

Amended by 2013 c24 s3(c), (d), and (e) amends s1, s4(a) amends s3, s6 amends s5, s7 amends s6, s8(a) amends s7, s19(b), (c), (d)(e.4), (f)(g.2) amends s9(1), s20 amends s10, s22 amends ss3.1(1), 8.1, 8.2 and repeals and substitutes s8.3.

## Regulations

The following is a list of the regulations made under the *Tobacco Reduction Act* that are filed as Alberta Regulations under the Regulations Act

Alta. Reg.	Amendments
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### Tobacco and Smoking Reduction Act

Tobacco and Smoking Reduction.....	240/2007 ..... 4/2008, 24/2008, 169/2013, 201/2014
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# **TOBACCO AND SMOKING REDUCTION ACT**

## **Chapter T-3.8**

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

### Definitions

**1** In this Act,

- (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;
- (a.1) “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*,
  - (iv) a residential facility operated to provide accommodation and maintenance for unemployed or indigent adults only, or
  - (v) a supportive living accommodation licensed under the *Supportive Living Accommodation Licensing Act*;
- (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;
- (d.1) “Minister” means the Minister determined under section 16 of the *Government Organization Act* as the Minister responsible for this Act;
- (e) “minor” means a person who is under 18 years of age;

- (e.01) “peace officer” means a peace officer as defined in the *Provincial Offences Procedure Act*;
- (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;
- (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;
- (h.1) “retailer” means a person engaged in a business that includes the sale of tobacco products;
- (i) “smoke” means to smoke, hold or otherwise have control over a lit tobacco product;
- (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;

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

2005 cS-9.5 s1;2007 c40 s3;2009 cS-23.5 s26;  
2013 c24 s3;2013 cS-19.3 s25

### Exclusions

**2(1)** Nothing in this Act affects the rights of aboriginal people respecting traditional aboriginal spiritual or cultural practices or ceremonies.

**(2)** Subject to section 4, this Act does not apply to a building, structure or vehicle, or a part of a building or structure, that is used as a private residence.

### Smoking prohibited

**3** Subject to section 5, no person shall smoke

- (a) in a public place,
- (b) in a workplace,
- (b.1) in a vehicle in which a minor is present,
- (c) in a public vehicle, or
- (d) within a prescribed distance from a doorway, window or air intake of a public place or workplace.

2005 cS-9.5 s3;2007 c40 s4;2013 c24 s4

### 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
- (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).

2013 c24 s5

#### **Private residence**

**4(1)** Subject to subsection (2), a private residence is a workplace if a home business is operated from the residence and the owner of the business has employees who work in the residence but do not live in the residence.

(2) Only that part of a private residence in which the business is operated is a workplace for the purposes of this Act.

#### **Exceptions**

**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.

(3) and (4) Repealed 2007 c40 s5.

2005 cS-9.5 s5;2007 c40 s5

**Duties of managers**

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

**Signs**

**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.

**(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.

**(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.

2005 cS-9.5 s7;2013 c24 s8

**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.

2007 c40 s6

**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.

2007 c40 s6



**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.

2013 c24 s9

**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.

2007 c40 s6

**Sale of flavoured tobacco products prohibited**

**7.4(1)** In this section, “flavoured tobacco product” means a tobacco product that

- (a) has a characterizing flavour,
- (b) is represented as being flavoured, or
- (c) is designated under the regulations as a flavoured tobacco product.

**(2)** No person shall sell or offer for sale a flavoured tobacco product.

2013 c25 s2

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

2013 c24 s10

### 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

- (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.

**(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.

**(2)** A person who contravenes section 6, 7, 7.1, 7.2, 7.3 or 7.4 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.

**(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.

2005 cS-9.5 s8;2007 c40 s7;2013 c24 s11;  
2013 c24 s11;2013 c25 s2

#### **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.

2007 c40 s7;2013 c24 s12

#### **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.

2013 c24 s13

#### **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.

2007 c40 s7;2013 c24 s14

#### **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.

2013 c24 s15

#### **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.

2007 c40 s7;2013 c24 s16

#### **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
- (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.

2013 c24 s17

#### **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.

2013 c24 s18

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

2007 c40 s7

#### **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.

2007 c40 s7

**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.

2007 c40 s7

**Regulations**

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

- (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
  - (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) 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;
- (d.1) designating a tobacco product as a flavoured tobacco product;
- (d.2) respecting the exemption of a flavoured tobacco product from the prohibition in section 7.4(2);
- (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;
- (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;
  - (f) respecting the form, contents and service of orders made under section 8.4;
  - (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;
  - (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;
  - (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.

2005 cS-9.5 s9;2007 c40 s8;2013 c24 s19;2013 c25 s4

#### **Municipal by-laws**

**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.

#### **Crown bound**

**11** This Act binds the Crown.

#### **Repeal**

**12** *The Protection from Second-hand Smoke in Public Buildings Act* is repealed.

#### **Review**

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

2013 c24 s21

#### **Commencement**

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

(NOTE: Proclaimed in force January 1, 2006.)



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