

2004

CHAPTER 51

An Act to amend *The Tobacco Control Act* and to make related amendments to other Acts

(Assented to June 17, 2004)

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

Short title

1 This Act may be cited as *The Tobacco Control Amendment Act, 2004*.

S.S. 2001, c.T-14.1 amended

2 *The Tobacco Control Act* is amended in the manner set forth in this Act.

Section 2 amended

3(1) Clause 2(b) is repealed and the following substituted:

“(b) ‘**enclosed public place**’ means all or any part of a building or other enclosed place or conveyance to which the public has access as of right or by express or implied invitation and includes:

- (i) an outdoor bus shelter;
- (ii) a public building or facility, or any part of a public building or facility, that is rented out for private events;
- (iii) a vehicle that:
 - (A) is used or made available for public transit or as a commercial vehicle; and
 - (B) is used to transport members of the public;

but only during any period that the vehicle is made available for hire, including any break period;

- (iv) a building, enclosed place or facility owned or leased by a private club that restricts admission to members and guests; and
- (v) any prescribed building, place, facility or vehicle or class of prescribed buildings, places, facilities or vehicles”.

(2) The following clause is added after clause 2(c):

“(c.1) ‘**immediate family member**’, with respect to an individual, means that individual’s:

- (i) spouse;
- (ii) child or step-child;
- (iii) grandchild;
- (iv) sister or brother;

- (v) niece or nephew;
- (vi) parent or grandparent; or
- (vii) guardian;

and includes a spouse of the individual's child, step-child, sister or brother and another individual with respect to whom the individual is a guardian”.

(3) The following clause is added after clause 2(f):

“(f.1) **‘proprietor’:**

- (i) with respect to a place or premises, means a person who controls, governs or directs the activities carried on within the place or premises, and includes a person who is actually in charge of the place or premises at any particular time; and
- (ii) with respect to a vehicle, means the registered owner of the vehicle or the operator in charge of the vehicle at any particular time”.

Section 5 amended

4 Section 5 is amended:

- (a) by renumbering it as subsection 5(1); and**
- (b) by adding the following subsections after subsection (1):**

“(2) No person shall sell cigarillos unless the cigarillos are in a package that contains no fewer than five cigarillos.

“(3) No person shall sell tobacco or tobacco-related products other than cigarettes or cigarillos except in a package containing the prescribed quantities or prescribed number of units”.

Section 7 amended

5 The following subsection is added after subsection 7(2):

“(3) Without relieving a retailer from the duty to display signs as required by this section, if the regulations prescribe the manner in which and the locations in which those signs are to be displayed, no retailer shall fail to display the signs in the prescribed manner and in the prescribed locations”.

Section 8 amended

6 Section 8 is amended:

- (a) by striking out “or” after clause (f); and**
- (b) by adding the following after clause (f):**

“(f.1) a building, or the portion of a building, owned or occupied by:

- (i) the Government of Saskatchewan, any department as defined in *The Government Organization Act* or any Crown corporation as defined in *The Crown Corporations Act, 1993*; or

- (ii) a municipality;

“(f.2) a video arcade;

“(f.3) an amusement park;

“(f.4) a theatre”.

Section 10 repealed

7 Section 10 is repealed.

Section 11 amended

8(1) Subsection 11(2) is amended:**(a) by repealing clause (e) and substituting the following:**

“(e) subject to subsection (3), a facility designated as a special-care home pursuant to *The Regional Health Services Act*”; **and**

(b) by repealing clause (n) and substituting the following:

“(n) a vehicle that:

- (i) is used or made available for public transit or as a commercial vehicle; and
- (ii) is used to transport members of the public;

but only during any period that the vehicle is made available for hire, including any break period”.

(2) Subsection 11(3) is amended:**(a) by repealing clause (a) and substituting the following:**

“(a) a separate enclosed ventilated place that:

(i) is within:

- (A) a facility designated as a special-care home pursuant to *The Regional Health Services Act*; or
- (B) a personal care home as defined in *The Personal Care Homes Act* that offers care and accommodation to more than 10 persons; and

(ii) meets the prescribed requirements”; **and**

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

“(c.1) the common areas in an apartment building or a condominium”.

New section 11

9(1) Section 11 is repealed and the following substituted:**“Smoking in enclosed public place prohibited**

11(1) In this section, ‘**child care facility**’ means a facility as defined in *The Child Care Act*.

(2) Subject to subsection (3), no person shall smoke or hold lighted tobacco in an enclosed public place.

- (3) Subsection (2) does not apply to:
- (a) a separate enclosed ventilated place that:
 - (i) is within:
 - (A) a special-care home as defined in *The Housing and Special-care Homes Act*; or
 - (B) a personal care home as defined in *The Personal Care Homes Act* that offers care and accommodation to more than 10 persons; and
 - (ii) meets the prescribed requirements;
 - (b) a child care facility that is a group family child care home or a licensed family child care home during the times that no child care services are being provided in the facility;
 - (c) an enclosed public place while it is being used with the consent of the proprietor, for traditional Aboriginal spiritual or cultural practices or ceremonies, if the use of tobacco or tobacco-related products is an integral part of the traditional Aboriginal spiritual or cultural practices or ceremonies being carried out in the enclosed public place;
 - (d) the common areas in an apartment building or a condominium;
 - (e) a prescribed place, premises or vehicle”.

(2) Clause 11(3)(a) is repealed and the following substituted:

- “(a) a separate enclosed ventilated place that:
- (i) is within:
 - (A) a facility designated as a special-care home pursuant to *The Regional Health Services Act*; or
 - (B) a personal care home as defined in *The Personal Care Homes Act* that offers care and accommodation to more than 10 persons; and
 - (ii) meets the prescribed requirements”.

New section 11.1

10 The following section is added after section 11:

“Proprietors to prohibit contraventions

11.1(1) For the purposes of complying with section 11, every proprietor of an enclosed public place shall ensure that:

- (a) subject to subsection (2), no ashtrays, matches, lighters or other things designed to facilitate smoking are provided in the enclosed public place; and
- (b) the signs required by section 13 are posted in accordance with that section.

(2) The prohibition in clause (1)(a) respecting ashtrays and lighters does not apply to a vehicle that is an enclosed public place if the vehicle is equipped by the manufacturer with ashtrays and lighters.

(3) If a person is contravening section 11 in an enclosed public place, the proprietor shall:

- (a) request the person to immediately stop smoking or holding lighted tobacco and to immediately extinguish the lighted tobacco;
- (b) inform the person that he or she was committing an offence; and
- (c) refuse to provide that person with a good or service that the proprietor customarily provides in the enclosed public place until that person ceases contravening section 11”.

Section 12 repealed

11 Section 12 is repealed.

Section 14 amended

12(1) Subsection 14(1) is amended by striking out “Subject to subsection (2), every” and substituting “Every”.

(2) Subsection 14(2) is repealed.

Section 15 amended

13 Section 15 is amended by striking out “, 12”.

Section 17 amended

14 Clause 17(2)(j) is amended by adding “, or has been in,” after “who is in”.

New section 23

15 Section 23 is repealed and the following substituted:

“Prohibition order – repeat offences by retailer

23(1) In this section, ‘**successor**’ means, with respect to a retailer who is an individual or that is a corporation that is controlled directly or indirectly by an individual or by an individual and one or more members of that individual’s immediate family:

- (a) a member of the retailer’s immediate family who takes over or assumes control or operation of the retailer’s business; or
- (b) any person or partnership that:
 - (i) is related to, is directly or indirectly controlled by or is not dealing at arm’s length, within the meaning of the *Income Tax Act* (Canada), from the retailer or a member of the retailer’s immediate family; and
 - (ii) takes over or assumes control or operation of the retailer’s business.

(2) If a retailer is convicted of a second or subsequent offence pursuant to subsection 20(1) for a contravention of section 4, the convicting judge shall also make an order:

(a) prohibiting the retailer or any successor to the retailer from keeping or furnishing tobacco or tobacco-related products at the place or premises at which the offence took place or at any place or premises to which the business of the retailer or the retailer's successor is moved:

(i) for a period of seven days from the date of conviction or a date ordered by the judge, if the conviction is a second conviction;

(ii) for a period of six months from the date of conviction or a date ordered by the judge, if the conviction is a third conviction;

(iii) for a period of one year from the date of conviction or a date ordered by the judge, if the conviction is a fourth or subsequent conviction; and

(b) requiring the retailer or any successor to post clearly visible signs that:

(i) meet the requirements of the regulations; and

(ii) state that the retailer or successor is prohibited from keeping or furnishing tobacco or tobacco-related products at the place or premises for the period specified in the order.

(3) For the purposes of subsection (2), a conviction is:

(a) a second conviction if, during the three-year period preceding the date of the conviction, the retailer or successor has been convicted of an offence pursuant to subsection 20(1) for a contravention of section 4;

(b) a third conviction if, during the three-year period preceding the date of the conviction, the retailer or successor has been convicted of two offences pursuant to subsection 20(1) for a contravention of section 4;

(c) a fourth or subsequent conviction if, during the three-year period preceding the date of the conviction, the retailer or successor has been convicted of three or more offences pursuant to subsection 20(1) for a contravention of section 4.

(4) An order made pursuant to clause (2)(a) does not prevent the keeping of small amounts of tobacco or tobacco-related products for the immediate personal use of persons who work in the place or premises”.

Section 25 amended

16(1) Subsection 25(2) is amended by adding “11.1,” after “section”.

(2) Subsection 25(3) is repealed and the following substituted:

“(3) Every person who contravenes a provision of section 18 is guilty of an offence and liable on summary conviction to a fine of not more than:

- (a) in the case of a first offence, \$3,000; and
- (b) in the case of a second or subsequent offence, \$5,000.

“(4) Every person who contravenes a provision of section 19 is guilty of an offence and liable on summary conviction to a fine of not more than \$3,000”.

Section 30 amended

17(1) The following clause is added after clause 30(a):

“(a.1) for the purposes of clause 2(b), prescribing buildings, places, facilities or vehicles or any class of buildings, places, facilities or vehicles as enclosed public places”.

(2) The following clauses are added after clause 30(c):

“(c.1) for the purposes of section 5, prescribing the quantities or number of units in a package containing tobacco or tobacco-related products;

“(c.2) for the purposes of subsection 7(3), prescribing the manner in which and the locations in which a retailer must post signs supplied by the department”.

(3) Clause 30(f) is repealed.

(4) Clause 30(g) is repealed.

(5) Clause 30(i) is repealed and the following substituted:

“(i) for the purposes of clause 11(3)(e), prescribing places, premises or vehicles to which subsection 11(2) does not apply”.

S.S. 1983, c.N-5.1, new section 108.1

18 Section 108.1 of *The Northern Municipalities Act* is repealed and the following substituted:

“Smoking

108.1(1) In this section, ‘**public place**’ means a place to which the public has access as a right or by express or implied invitation, whether or not a fee is charged for entry and includes, without limiting the generality of the foregoing:

- (a) outdoor patios;
- (b) entry ways;
- (c) outdoor sports facilities and stadiums; and
- (d) common areas of residential buildings.

(2) A council may, by bylaw, prohibit, control or regulate the following activities in any public place or public transit vehicle:

- (a) the lighting of any cigar, cigarette, pipe or other smoking device;
- (b) the carrying or smoking of any lighted cigar, cigarette, pipe or other smoking device.

(3) For the purposes of subsection (2), the power to prohibit, control or regulate includes the power to do all or any of the following:

- (a) to establish categories and subcategories of public places and public transit vehicles;
- (b) to establish different prohibitions, controls or regulatory requirements for different categories and subcategories;
- (c) to exempt any public place, public transit vehicle or category or subcategory of public places or public transit vehicles from all or any part of a bylaw”.

S.S. 1994, c.P-37.1, section 50 amended

19 Subsection 50(3.2) of *The Public Health Act, 1994* is repealed and the following substituted:

“(3.2) Subsection (3) does not apply to a bylaw made by a council of a city for the purpose of prohibiting, controlling or regulating the following activities in any public place or public transit vehicle:

- (a) the lighting of any cigar, cigarette, pipe or other smoking device;
- (b) the carrying or smoking of any lighted cigar, cigarette, pipe or other smoking device”.

S.S. 2002, c.R-8.2 amended

20(1) *The Regional Health Services Act* is amended in the manner set forth in this section.

(2) Clause 97(3)(b) is repealed.

(3) Section 123 is repealed.

S.S. 1989-90, c.R-26.1, new section 215.1

21 Section 215.1 of *The Rural Municipality Act, 1989* is repealed and the following substituted:

“Smoking

215.1(1) In this section, ‘**public place**’ means a place to which the public has access as a right or by express or implied invitation, whether or not a fee is charged for entry and includes, without limiting the generality of the foregoing:

- (a) outdoor patios;
- (b) entry ways;
- (c) outdoor sports facilities and stadiums; and
- (d) common areas of residential buildings.

- (2) A council may, by bylaw, prohibit, control or regulate the following activities in any public place or public transit vehicle:
- (a) the lighting of any cigar, cigarette, pipe or other smoking device;
 - (b) the carrying or smoking of any lighted cigar, cigarette, pipe or other smoking device.
- (3) For the purposes of subsection (2), the power to prohibit, control or regulate includes the power to do all or any of the following:
- (a) to establish categories and subcategories of public places and public transit vehicles;
 - (b) to establish different prohibitions, controls or regulatory requirements for different categories and subcategories;
 - (c) to exempt any public place, public transit vehicle or category or subcategory of public places or public transit vehicles from all or any part of a bylaw”.

S.S. 1983-84, c.U-11, new section 142

22 Section 142 of *The Urban Municipality Act, 1984* is repealed and the following substituted:

“Smoking

142(1) In this section, ‘**public place**’ means a place to which the public has access as a right or by express or implied invitation, whether or not a fee is charged for entry and includes, without limiting the generality of the foregoing:

- (a) outdoor patios;
- (b) entry ways;
- (c) outdoor sports facilities and stadiums; and
- (d) common areas of residential buildings.

- (2) A council may, by bylaw, prohibit, control or regulate the following activities in any public place or public transit vehicle:
- (a) the lighting of any cigar, cigarette, pipe or other smoking device;
 - (b) the carrying or smoking of any lighted cigar, cigarette, pipe or other smoking device.
- (3) For the purposes of subsection (2), the power to prohibit, control or regulate includes the power to do all or any of the following:
- (a) to establish categories and subcategories of public places and public transit vehicles;
 - (b) to establish different prohibitions, controls or regulatory requirements for different categories and subcategories;
 - (c) to exempt any public place, public transit vehicle or category or subcategory of public places or public transit vehicles from all or any part of a bylaw”.

Coming into force

- 23(1)** Subject to subsections (2) and (3), this Act comes into force on assent.
- (2) Subsections 3(1) and (3), section 7, subsection 9(1), sections 11 to 13 and subsections 17(1), (3), (4) and (5) come into force on January 1, 2005.
- (3) Clauses 8(1)(a) and 8(2)(a) and subsection 9(2) come into force on proclamation.