

Bill No. 104
Smoke-free Places Act

The Commissioner of Yukon, by and with the advice and consent of the Legislative Assembly, enacts as follows:

Interpretation

1 In this Act,

“employee” means a person who performs any work for or supplies any service to an employer, and includes a person whose services are contracted for by an employer, who is receiving instruction or training or serving an apprenticeship, who is self-employed, or is a volunteer;

“employer” means any person who has control over or direction of, or is directly or indirectly responsible for, a person’s activities as an employee, including a contractor, owner, proprietor, manager, or supervisor;

“enclosed public place” means the inside or other enclosed part of a building, vehicle or watercraft or other indoor space to which members of the public have access by express or implied invitation, whether or not a fee is charged for entry, and whether covered by a roof or not, or any other place prescribed by regulation but does not include a private residence;

“group living facility” means a facility in which services are provided for the care of adults or children, including homes for children in the care of the Minister, prisoners, veterans, nursing, palliative, or hospice homes, psychiatric or addictions treatment facilities, women’s transition homes or shelters, halfway houses, shelters for the homeless, or any other place prescribed by regulation;

“health care facility” means a place where a person may receive medical examination, treatment or care, including a hospital, medical clinic, dental clinic, practitioner’s office, or any other place where health care is provided;

“inspector” means an inspector appointed pursuant to this Act;

“manager” means any person who has responsibility for and control over the activities of an enclosed place, and includes the lessee or owner of the place;

“Minister” means the Minister of Health and Social Services or a person designated to act on the Minister’s behalf;

“minor” means a person under the age of nineteen;

“place of employment” means an enclosed place, other than a vehicle, in which employees perform the duties of their employment and includes an adjacent corridor, lobby, stairwell, elevator, escalator, eating area, washroom, restroom or other common area frequented by

employees during the course of their employment but does not include a rental unit of roofed accommodation;

“public vehicle” means a bus, taxi, watercraft, or other vehicle that is used to transport members of the public for a fee;

“restaurant” includes a coffee shop, lunch counter, snack bar, canteen, banquet facility, cafeteria, sandwich stand, food court, catering outlet and service, delicatessen, bakery, food vending outlet, food take-out establishment, grocery store that contains a snack bar or other place where food is served, and any other eating establishment or outdoor eating area that is part of or operated in conjunction with a restaurant;

“school” means a public or private elementary or secondary school, training centre, or postsecondary institution;

“smoke” means to smoke, hold or otherwise have control over ignited tobacco, whether it is in cigarettes, cigarillos, cigars, pipes, or any device;

“tobacco” means a product manufactured from tobacco;

“tobacco-related product” means a cigarette paper, cigarette tube, cigarette filter, cigarette maker or pipe, or any thing used in association with tobacco and prescribed in the regulations.

Application of Act

2 (1) This Act binds the Government of Yukon.

(2) Nothing in this Act affects the rights of aboriginal people respecting traditional aboriginal spiritual or cultural practices or ceremonies, or the use of tobacco by a group prescribed by regulation, for a prescribed purpose.

Supervision of Act

3 The Minister has the general supervision and management of this Act.

Prohibitions

4 (1) No person shall smoke in any enclosed place that is or includes

(a) a building or vehicle of the Government of Yukon, a municipality, a village, town, or any agency thereof and of profit or non-profit organizations, circles, or clubs;

(b) a place to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry;

(c) a Territorial correctional institution, detention centre, lock-up or reformatory or another

penal institution;

(d) a daycare or pre-school or a licensed family child care home in the space where children are being cared for, whether or not they are present;

(e) an elementary or secondary school, training centre, post-secondary institution;

(f) a library, meeting place, classroom, art gallery, museum, or place of worship;

(g) a health-care facility;

(h) a cinema or theatre;

(i) a video arcade or pool hall;

(j) a recreational facility where the primary activity is physical recreation, including, but not limited to, a bowling alley, fitness centre, gymnasium, pool or rink;

(k) a multi-service centre, community centre or hall, arena, tent used for special events or gatherings, fire hall or church hall;

(l) a meeting or conference room or hall, ballroom or conference centre;

(m) a retail shop, boutique, market, store or shopping mall;

(n) a laundromat;

(o) a ferry, ferry terminal, bus, bus station or shelter, taxi, taxi shelter, limousine or public vehicle carrying passengers for a fee;

(p) a vehicle used in the course of employment while carrying two or more persons;

(q) the common area of a commercial building, hotel, motel, bed and breakfast, or multiunit residential building including, but not limited to, corridors, lobbies, stairwells, elevators, escalators, eating areas, washrooms and restrooms;

(r) a restaurant or other eating establishment;

(s) a lounge, bar, beverage room, cabaret, club, beer parlour, or other premises with a license to sell liquor, including a private club;

(t) a place that is being used for bingo;

(u) a group living facility;

except as permitted by Section 5.

(2) No person shall smoke

(a) within a prescribed distance from a doorway, window or air intake of a place described in subsection 4(1), paragraph (2)(c) below, or subsection 6(1);

(b) in an outdoor eating or drinking area;

(c) in a building, facility or place designated by the regulations.

(3) No person shall smoke or use tobacco on the grounds of a school.

(4) No manager of an enclosed place referred to in subsections (1) to (3) shall permit any person to smoke in that place, on those grounds, or in that area.

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

(6) 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.

Exceptions

5 (1) No person shall smoke in any enclosed place referred to in subsection 4(1) except

(a) if the person is within a building, structure, vehicle, or part of a building or structure that is used as a private residence unless a home health-care worker, probation officer, or social worker requests a person not to smoke in his or her presence while he or she is providing services;

(b) if the person is a registered person or is the guest of a registered person in a hotel, motel, or bed and breakfast room designed primarily as sleeping accommodation and designated as a smoking room by the manager;

(c) if the person is a resident of a nursing home, a resident of a home for aged or disabled persons, or a resident of part of a health-care facility used for the acute or long-term care of veterans.

(2) Persons excepted in paragraph (1)(c) must use only cigarettes and smoke in an area of the enclosed space of the designated residence that is separately enclosed, has floor-to-ceiling walls, a self-closing door, and is separately ventilated, as prescribed by the regulations;

(3) No manager of an enclosed place referred to in subsection (2) shall permit any person to smoke in that place except as provided in paragraph (1)(c);

(4) No person under the age of nineteen years shall enter or be in an enclosed place referred to

in subsection (2);

(5) No manager of an enclosed place referred to in subsection (2) shall permit any person under the age of nineteen years to enter or be in an area in which smoking is permitted;

(6) If a person contravenes this Act in an enclosed public place, the manager, owner, or proprietor shall request the person to immediately stop smoking or holding lighted tobacco and to immediately extinguish the lighted tobacco, shall inform the person that an offence has been committed, and refuse to provide that person with the good or service customarily provided in the enclosed public place until that person ceases contravening the Act;

(7) A manager shall ensure that a person who refuses to comply with this Act does not remain in the enclosed public place, on those grounds, or in that area.

Places of employment

6 (1) No person shall smoke in any place of employment except as permitted by Section 5.

(2) No employer or manager shall permit any person to smoke in any place of employment except as permitted by Section 5.

(3) No employer shall take adverse employment action against an employee because that person provided information in good faith under this Act.

Ashtrays not permitted

7 No employer or manager shall permit any ashtrays or other receptacles used for smoking materials in any place at any time where smoking is prohibited in that place by this Act.

Supplying tobacco to minors prohibited

8 (1) No person shall supply or offer to supply tobacco or a tobacco-related product to a minor.

(2) In a prosecution or proceeding for a contravention of this Act, the accused has a defense if it can be proven on a balance of probabilities that, before supplying or offering to supply tobacco to a minor, the accused attempted to verify that the minor was at least 19 years of age by asking for and being shown documentation prescribed in the regulations for the purpose of verifying age, and reasonably believed that the documentation was authentic and that the person was at least 19 years of age.

Tobacco advertising, promotion and sale

9 (1) No person shall advertise or promote tobacco in any manner prohibited by the regulations.

(2) No person shall deal in, sell, offer for sale or distribute tobacco in a place where such

activity is prohibited by regulation.

Inspectors

10 (1) The Minister may appoint or designate inspectors for the purpose of this Act.

(2) For the purpose of ensuring compliance with this Act and the regulations, an inspector may

(a) enter and inspect any place to which this Act applies, at any reasonable time without warrant or notice, and make such examinations and inquiries and conduct such tests as the inspector considers necessary or advisable, but an inspector is not entitled to use force to enter and inspect a place;

(b) be accompanied and assisted by any person who, in the opinion of the inspector, has special knowledge or expertise;

(c) make enquiries of any person who is or was in a place to which this Act applies;

(d) require the production of drawings, specifications, floor plans, maintenance records or other documents for a place to which this Act applies and may inspect, examine, copy or seize them;

(e) exercise such other powers as are prescribed by the regulations;

(f) exercise such powers as are incidental to the powers set out in paragraphs (2)(a) to (2)(e);

(3) An inspector shall produce, upon request, evidence of his or her appointment.

Compliance order

11 (1) No person shall obstruct, interfere with or fail to co-operate with an inspector in the execution of the inspector's duties under this Act.

(2) No person shall knowingly make a false or misleading statement to an inspector or produce a false document or thing to an inspector.

(3) No person shall remove, cover up, mutilate, deface or alter any sign required pursuant to this Act or the regulations.

(4) Where an inspector finds that a manager or employer is not complying with a provision of this Act, the inspector may order the manager or employer to comply with the provision and may require the order to be carried out immediately or within such period of time as the inspector specifies.

(5) An order made pursuant to this Act shall indicate generally the nature and, where appropriate, the location of the non-compliance with this Act.

Offences

12 (1) Every person, manager, employer, owner, or lessee who contravenes this Act or the regulations or fails to comply with an order made pursuant to this Act or the regulations is guilty of an offence and liable on summary conviction to a fine as prescribed in the regulations;

(2) If any person contravenes this Act, each manager, lessee, owner, or employer of the place is deemed to have contravened that subsection and is liable for the contravention;

(3) Subsections (1) and (2) apply whether or not the person who smoked tobacco or held lighted tobacco, or any other person, is charged with contravening the Act;

(4) In addition to any penalty levied upon conviction for an offence contrary to this Act, an authority authorized to suspend or cancel any license or permit issued in respect of the premises where the offence was committed may suspend or cancel that license or permit;

(5) No person shall interfere with or harass a person who provides information under this Act;

(6) Any prosecution for an offence under this Act may be commenced within two years after the date the offence is committed and no later.

Non-liability

13 No action or proceeding shall be commenced against the Minister, the Department, an enforcement officer, an employee or agent of the Department or any other person appointed to administer all or any of the provisions of this Act or the regulations for any loss or damage suffered by any person by reason of anything in good faith done, caused, permitted or authorized to be done, attempted to be done or omitted to be done, by any of them pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any duty imposed by the Act or the regulations unless the person was acting in bad faith.

Regulations

14 (1) The Commissioner in Executive Council may make regulations

(a) designating any enclosed space, building, or facility for the purpose of this Act;

(b) prescribing the nature of any enclosure with regard to safety, the health of others, ventilation for the purpose of Section 6, and the number and location of rooms that can be designated for smoking;

- (c) setting air-quality standards for any part of an enclosed place where smoking is not permitted by this Act if smoking is permitted in another part of that place or for any part of an enclosed place where smoking is permitted by this Act;
- (d) determining design criteria for ventilation or for ensuring air quality;
- (e) prescribing the obligations of employers and managers respecting the maintenance of air-quality standards set by the regulations;
- (f) prescribing the records to be kept by employers and managers for the purpose of ensuring compliance with this Act and the regulations;
- (g) requiring the content and the posting of signs for the purpose of this Act
 - (g.i) governing or prohibiting tobacco advertising and promotion;
 - (g.ii) prescribing places where tobacco shall not be dealt in, sold, offered for sale or distributed;
- (h) prescribing the appointment, powers, and duties of inspectors;
- (i) defining any enclosed space where smoking is prohibited;
- (j) defining any other word or expression used but not defined in this Act or further defining any word or expression defined in this Act;
- (k) specifying any product or class of product considered to be tobacco;
- (l) regulating the entry into, and work in, a designated smoking room by employees, including establishing the circumstances, duration, and requirements for such entry or work and the use and cleaning of designated smoking rooms;
- (m) respecting any matter that the Commissioner in Executive Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) No regulation may be made pursuant to paragraph (1)(m) unless the regulation is recommended to the Commissioner in Executive Council by the Minister where the Minister is of the opinion that there are rare and extenuating circumstances justifying the regulation and that the regulation does not compromise the intent and purpose of this Act.

(3) A regulation made pursuant to this Act may be of general application or may apply to such individual or individuals, such class or classes of persons, such class or classes of places or such class or classes of matters or things as the Commissioner in Executive Council determines and there may be different regulations with respect to different individuals, different classes of persons, different classes of places and different classes of matters or things.

Conflict of Act with other authority

15 (1) Nothing in this Act affects any other authority to regulate, restrict or prohibit smoking.

(2) Where there is a conflict between this Act and any other authority, regulating, restricting or prohibiting smoking, the more restrictive authority prevails to the extent of the conflict.

Coming into force

16 This Act comes into force June 1, 2008, or on such earlier date as may be fixed by the Commissioner in Executive Council.