

Smoke-Free Ontario Act, 2017

S.O. 2017, CHAPTER 26 SCHEDULE 3

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INTERPRETATION

Definitions

1 (1) In this Act,

“cannabis” has the same meaning as in subsection 2 (1) of the *Cannabis Act* (Canada); (“cannabis”)

“commercial”, with respect to a product or substance regulated under this Act, means something done or prepared for the primary purpose of generating profits from its sale or use, directly or indirectly; (“commercial”)

“electronic cigarette” means a vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, that contains a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled by the user of the device directly through the mouth, whether or not the vapour contains nicotine; (“cigarette électronique”)

“employee” means a person who performs any work for or supplies any services to an employer, or a person who receives any instruction or training in the activity, business, work, trade, occupation or profession of an employer; (“employé”)

“employer” includes an owner, operator, proprietor, manager, superintendent, overseer, receiver or trustee of an activity, business, work, trade, occupation, profession, project or undertaking who has control or direction of, or is directly or indirectly responsible for, the employment of a person in it; (“employeur”)

“enclosed public place” means,

- (a) the inside of any place, building or structure or vehicle or conveyance, or a part of any of them,
 - (i) that is covered by a roof, and
 - (ii) to which the public is ordinarily invited or permitted access, either expressly or by implication, whether or not a fee is charged for entry, or
- (b) a prescribed place; (“lieu public clos”)

“enclosed workplace” means,

- (a) the inside of any place, building or structure or vehicle or conveyance, or a part of any of them,
 - (i) that is covered by a roof,
 - (ii) that employees work in or frequent during the course of their employment whether or not they are acting in the course of their employment at the time, and
 - (iii) that is not primarily a private dwelling, or
- (b) a prescribed place; (“lieu de travail clos”)

“e-substance” means a substance that is manufactured or sold to be used in an electronic cigarette; (“substance servant à vapoter”)

“flavoured tobacco product” includes a tobacco product that is represented as being flavoured, that contains a flavouring agent or that is presented by its packaging, by advertisement or otherwise as being flavoured; (“produit du tabac aromatisé”)

“Minister” means the Minister of Health and Long-Term Care or such other member of the Executive Council as may be assigned the administration of this Act under the *Executive Council Act*; (“ministre”)

“personal health information” has the same meaning as in the *Personal Health Information Protection Act, 2004*; (“renseignements personnels sur la santé”)

“prescribed” means prescribed by the regulations; (“prescrit”)

“promote”, with respect to a product or substance regulated under this Act, means to use any commercial act or practice or to use any commercial communication, through any media or other means, that is intended to or is likely to,

- (a) encourage its purchase or use or the purchase or use of a particular brand, or
- (b) create an awareness of or an association with it, or with a brand or a manufacturer or seller; (“promouvoir”)

“proprietor” means the owner, operator or person in charge; (“propriétaire”)

“record” means any collection of information however recorded, whether in printed form, on film, by electronic means or otherwise and includes any data that is recorded or stored on any medium in or by a computer system or similar device, as well as drawings, specifications or floor plans for an enclosed workplace; (“document”)

“regulations” means the regulations made under this Act; (“règlements”)

“tobacco product” means any product that contains tobacco, and includes the package in which tobacco is sold; (“produit du tabac”)

“tobacco product accessory” means a product that may be used in the consumption of a tobacco product, including a humidor, pipe, cigarette holder, cigar clip, lighter and matches; (“accessoire pour produits du tabac”)

“vapour product” means an electronic cigarette, an e-substance, or any component of an electronic cigarette and includes the package in which the electronic cigarette, e-substance or component is sold. (“produit de vapotage”) 2017, c. 26, Sched. 3, s. 1 (1); 2018, c. 12, Sched. 4, s. 1.

Private dwelling

(2) For greater certainty, and without restricting the generality of the expression, the following are primarily private dwellings for the purposes of the definition of “enclosed workplace” in subsection (1):

1. Private self-contained living quarters in any multi-unit building or facility.
2. Any other prescribed place.

“Use”, electronic cigarettes

(3) In this Act,

“use”, with respect to electronic cigarettes, includes any of the following:

1. Inhaling vapour from an electronic cigarette.
2. Exhaling vapour from an electronic cigarette.
3. Holding an activated electronic cigarette.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 1 - 17/10/2018

Application

2 This Act applies to,

- (a) tobacco in any processed or unprocessed form that may be smoked, inhaled or chewed, including snuff, but not to products intended for use in nicotine replacement therapy;
- (b) cannabis;
- (c) vapour products; and
- (d) prescribed products and substances. 2017, c. 26, Sched. 3, s. 2; 2018, c. 12, Sched. 4, s. 2.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 2 - 17/10/2018

SALE, SUPPLY, PROMOTION

Persons under 19

3 (1) No person shall sell or supply any of the following to a person who is less than 19 years old:

1. A tobacco product.
2. A vapour product.
3. A prescribed product or substance.

Apparent age

(2) No person shall sell or supply any of the following to a person who appears to be less than 25 years old unless he or she has required the person to provide identification and is satisfied that the person is at least 19 years old:

1. A tobacco product.
2. A vapour product.
3. A prescribed product or substance.

Defence

(3) It is a defence to a charge under subsection (1) or (2) that the defendant believed the person receiving the product to be at least 19 years old because the person produced a prescribed form of identification showing that the person was at least 19 years old and there was no apparent reason to doubt the authenticity of the document or that it was issued to the person producing it.

Improper documentation

(4) No person shall present as evidence of his or her age identification that was not lawfully issued to him or her.

Display, etc. of tobacco products

4 (1) No person shall, in any place where tobacco products or tobacco product accessories are sold or offered for sale, display or permit the display of any of the following products in any manner that would permit a consumer to view or handle the product before purchasing it:

1. A tobacco product.
2. A tobacco product accessory that is associated with a brand of tobacco product. 2018, c. 12, Sched. 4, s. 3.

Promotion

- (2) No person shall promote tobacco products or tobacco product accessories,
 - (a) in any place where tobacco products or tobacco product accessories are sold or offered for sale; or
 - (b) in any manner, if the promotion is visible from outside a place in which tobacco products or tobacco product accessories are sold or offered for sale. 2018, c. 12, Sched. 4, s. 3.

Exceptions

- (3) Despite subsection (2), if the regulations so provide, a person may post one or more signs providing information about tobacco products or tobacco product accessories and their price, but only if the sign or signs meet the prescribed conditions. 2018, c. 12, Sched. 4, s. 3.

Same

- (4) Despite subsection (2), if the regulations so provide, a person may make available one or more documents providing information about tobacco products or tobacco product accessories and their price, but only if the document or documents meet the prescribed conditions. 2018, c. 12, Sched. 4, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 3 - 17/10/2018

Display, etc., of vapour products

- 4.1** (1) No person shall, in any place where vapour products are sold or offered for sale, display or permit the display of vapour products in any manner that would permit a consumer to view or handle the product before purchasing it, except in accordance with the regulations, if any. 2018, c. 12, Sched. 4, s. 3.

Promotion

- (2) No person shall promote vapour products, except in accordance with the regulations, if any,
 - (a) in any place where vapour products are sold or offered for sale; or
 - (b) in any manner, if the promotion is visible from outside a place in which vapour products are sold or offered for sale. 2018, c. 12, Sched. 4, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 3 - 17/10/2018

Display, etc., of prescribed products and substances

- 4.2** (1) No person shall, in any place where a prescribed product or substance is sold or offered for sale, display or permit the display of a prescribed product or substance in any manner that would permit a consumer to view or handle the product before purchasing it, except in accordance with the regulations, if any. 2018, c. 12, Sched. 4, s. 3.

Promotion

- (2) No person shall promote a prescribed product or substance, except in accordance with the regulations, if any,
 - (a) in any place where a prescribed product or substance is sold or offered for sale; or
 - (b) in any manner, if the promotion is visible from outside a place in which a prescribed product or substance is sold or offered for sale. 2018, c. 12, Sched. 4, s. 3.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 3 - 17/10/2018

Places of entertainment

- 5** (1) No person shall promote, by any means, tobacco products, vapour products or a prescribed product or substance or their sale at any place of entertainment.

Definition

- (2) In this section,

“place of entertainment” means 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, and which is primarily devoted to eating, drinking or any form of amusement.

Sale in prohibited places

6 (1) No person shall sell or offer to sell tobacco products, vapour products or a prescribed product or substance in the following places:

1. A hospital as defined in the *Public Hospitals Act*.
2. A psychiatric facility as defined in the *Mental Health Act*.
3. A long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*.
4. A pharmacy as defined in the *Drug and Pharmacies Regulation Act*.
5. An establishment where goods or services are sold or offered for sale to the public, if,
 - i. a pharmacy as defined in the *Drug and Pharmacies Regulation Act* is located within the establishment, or
 - ii. customers of such a pharmacy can pass into the establishment directly or by the use of a corridor or area used exclusively to connect the pharmacy with the establishment.
6. The campuses of a post-secondary institution.
7. A school within the meaning of the *Education Act*.
8. A building or portion of a building occupied by a private school within the meaning of the *Education Act* and the grounds surrounding the buildings of a private school where a private school is the only occupant of the premises, and the grounds annexed to a private school, where a private school is not the only occupant of the premises.
9. A child care centre within the meaning of the *Child Care and Early Years Act, 2014*.
10. A place where home child care is provided within the meaning of the *Child Care and Early Years Act, 2014*, whether or not children are present.
11. A prescribed place or a place that belongs to a prescribed class.

Note: Subsection 6 (2) comes into force on a day to be named by proclamation of the Lieutenant Governor. (See: 2017, c. 26, Sched. 3, s. 30)

Establishment

(2) For the purposes of paragraph 5 of subsection (1), the reference to an establishment includes an area used by persons to enter or exit the establishment if goods or services are sold or offered for sale in the area by the owner or operator of the establishment.

Signs in retail stores

7 No person shall, in any place, sell or offer to sell tobacco products, vapour products or a prescribed product or substance at retail unless the prescribed signs are posted at the place in the prescribed manner.

Packaging

8 No person shall sell or offer to sell a tobacco product, a vapour product or a prescribed product or substance at retail or for subsequent sale at retail, or distribute or offer to distribute a tobacco product, a vapour product or a prescribed product or substance for that purpose, unless it is packaged in accordance with the regulations.

Flavoured products

9 No person shall sell or offer to sell any of the following at retail or for subsequent sale at retail or distribute or offer to distribute any of the following for the purpose of sale or subsequent sale at retail:

1. A flavoured tobacco product, other than a flavoured tobacco product that has been prescribed as being exempt from this paragraph.
2. A vapour product that has been prescribed as a flavoured vapour product for the purposes of this paragraph.
3. A prescribed product or substance that has been prescribed as a flavoured product or substance for the purposes of this paragraph.

Vending machines: general prohibition

10 (1) No owner or occupier of a place shall have a vending machine for selling or dispensing tobacco products, vapour products or a prescribed product or substance in any part of the place.

Exceptions

- (2) Subsection (1) does not apply with respect to a vending machine,
- (a) that does not contain anything mentioned in subsection (1) and that,
 - (i) is in a place to which the public does not have access, or

- (ii) is inoperable; or
- (b) that contains something mentioned in subsection (1) but that is only operable by a retailer or an employee of a retailer.

REPORTS FROM WHOLESALERS AND DISTRIBUTORS

Reports

11 A person who, in Ontario, sells or distributes tobacco products, vapour products or a prescribed product or substance for subsequent sale at retail shall submit reports to the Minister in accordance with the regulations.

PROHIBITIONS RE SMOKING, USE, ETC.

Prohibitions

12 (1) Subject to any exceptions that may be provided for in the regulations, no person shall do any of the following in a place mentioned in subsection (2):

1. Smoke or hold lighted tobacco.
2. Smoke or hold lighted cannabis.
3. Use an electronic cigarette.
4. Consume a prescribed product or substance, in a prescribed manner. 2017, c. 26, Sched. 3, s. 12 (1); 2018, c. 12, Sched. 4, s. 4.

Prohibited places

(2) The following are the places for the purposes of subsection (1):

1. An enclosed public place.
2. An enclosed workplace.
3. A school within the meaning of the *Education Act*.
4. A building or the grounds surrounding the building of a private school within the meaning of the *Education Act*, where the private school is the only occupant of the premises, or the grounds annexed to a private school, where the private school is not the only occupant of the premises.
5. Any indoor common area in a condominium, apartment building or university or college residence, including, without being limited to, elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies and exercise areas.
6. A child care centre within the meaning of the *Child Care and Early Years Act, 2014*.
7. A place where home child care is provided within the meaning of the *Child Care and Early Years Act, 2014*, whether or not children are present.
8. A place where an early years program or service is provided within the meaning of the *Child Care and Early Years Act, 2014*.
9. The reserved seating area of a sports arena or entertainment venue.
10. A prescribed place or area, or a place or area that belongs to a prescribed class.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 4 - 17/10/2018

Exemptions

13 (1) Subsection 12 (1) does not apply to a person who smokes or holds lighted tobacco or cannabis or who uses an electronic cigarette in an indoor room in a residence that also serves as an enclosed workplace if the following conditions are met, and the obligations under sections 14 and 15 do not apply to a proprietor or employer with respect to such a room if the proprietor or employer complies with any prescribed requirements respecting the room:

1. The residence is,
 - i. a long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*,
 - ii. a residential facility that is operated as a retirement home and that provides care, in addition to accommodation, to the residents of the home,
 - iii. a supportive housing residence funded or administered through the Ministry of Health and Long-Term Care or the Ministry of Children, Community and Social Services,

- iv. a psychiatric facility that is designated in the regulations, or
 - v. a facility for veterans that is designated in the regulations.
2. The room has been designated as a controlled area for smoking tobacco or cannabis or for the use of electronic cigarettes, or for any or all of them, as the case may be.
 3. A resident who desires to use the room must be able, in the opinion of the proprietor or employer, to do so safely without assistance from an employee. An employee who does not desire to enter the room shall not be required to do so.
 4. Use of the room is limited to residents of the residence.
 5. The room is an enclosed space that,
 - i. is fitted with proper ventilation in compliance with the regulations,
 - ii. is identified as a controlled area by means of prescribed signs, displayed in the prescribed manner, and
 - iii. meets any other prescribed requirements. 2018, c. 12, Sched. 4, s. 5.

Hotels, motels, inns

(2) Subsection 12 (1) does not apply to a person who smokes or holds lighted tobacco or cannabis or who uses an electronic cigarette in a guest room in a hotel, motel or inn if the following conditions are met, and the obligations under sections 14 and 15 do not apply to a proprietor or employer with respect to a guest room described in paragraphs 2 to 5 if the proprietor or employer complies with any prescribed requirements respecting the guest room:

1. The person is a registered guest of the hotel, motel or inn, or the invited guest of a registered guest.
2. The guest room is designed primarily as sleeping accommodation.
3. The guest room has been designated as a guest room that accommodates smoking tobacco or cannabis or the use of electronic cigarettes, or any or all of them, as the case may be, by the management of the hotel, motel or inn.
4. The guest room is fully enclosed by floor-to-ceiling walls, a ceiling and doors that separate it physically from any adjacent area in which smoking or the use of electronic cigarettes is prohibited by this Act.
5. The guest room conforms to any other prescribed requirements. 2018, c. 12, Sched. 4, s. 5.

Scientific research and testing facilities

(3) Subsection 12 (1) does not apply to a person who smokes or holds lighted tobacco or cannabis or who uses an electronic cigarette in a scientific research and testing facility for the purpose of conducting research or testing concerning tobacco products, cannabis or vapour products, as the case may be, and the obligations under sections 14 and 15 do not apply to a proprietor or employer with respect to the research and testing carried on in such a facility. 2018, c. 12, Sched. 4, s. 5.

Hospices, other facilities

(4) Subsection 12 (1) does not apply to a person who smokes or holds lighted cannabis or who uses an electronic cigarette in a hospice that complies with the prescribed requirements or in another prescribed facility, as long as any requirements provided for in the regulations are complied with. 2018, c. 12, Sched. 4, s. 5.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 5 - 17/10/2018

Employer obligations

14 (1) Every employer shall, with respect to an enclosed workplace or other place or area mentioned in subsection 12 (2) over which the employer exercises control,

- (a) ensure compliance with subsection 12 (1);
- (b) give notice to each employee in the enclosed workplace or other place or area of the prohibitions under subsection 12 (1) in accordance with the regulations, if any;
- (c) post any prescribed signs respecting the prohibitions under subsection 12 (1) throughout the enclosed workplace, place or area, including washrooms, in the prescribed manner;
- (d) ensure that no ashtrays or similar equipment remain in the enclosed workplace or place or area, other than a vehicle in which the manufacturer has installed an ashtray;
- (e) ensure that a person who refuses to comply with subsection 12 (1) does not remain in the enclosed workplace or place or area; and
- (f) ensure compliance with any other prescribed obligations.

Prohibition

(2) No employer or person acting on behalf of an employer shall take any of the following actions against an employee because the employee has acted in accordance with, or has sought the enforcement of, this Act:

1. Dismissing or threatening to dismiss the employee.
2. Disciplining or suspending the employee, or threatening to do so.
3. Imposing a penalty upon the employee.
4. Intimidating or coercing the employee.

Complaint

(3) The Lieutenant Governor in Council may make regulations specifying the procedure that applies where an employee complains that subsection (2) has not been complied with, including the provisions of another Act or any regulations that apply, with necessary modifications.

Proprietor obligations

15 Every proprietor of an enclosed public place or other place or area mentioned in subsection 12 (2) shall,

- (a) ensure compliance with subsection 12 (1) with respect to the enclosed public place, place or area;
- (b) give notice to each person in the enclosed public place, place or area of the prohibitions under subsection 12 (1) in accordance with the regulations, if any;
- (c) post any prescribed signs respecting the prohibitions under subsection 12 (1) throughout the enclosed public place, place or area, including washrooms, in the prescribed manner;
- (d) ensure that no ashtrays or similar equipment remain in the enclosed public place, place or area, other than a vehicle in which the manufacturer has installed an ashtray;
- (e) ensure that a person who refuses to comply with subsection 12 (1) does not remain in the enclosed public place, place or area; and
- (f) ensure compliance with any other prescribed obligations.

Protection for home health-care workers

16 (1) Every home health-care worker has the right to request a person not to do any of the following in the home health-care worker's presence while they are providing health care services:

1. Smoke or hold lighted tobacco.
2. Smoke or hold lighted cannabis.
3. Use an electronic cigarette.
4. Consume a prescribed product or substance, in a prescribed manner. 2017, c. 26, Sched. 3, s. 16 (1); 2018, c. 12, Sched. 4, s. 6.

Right to leave

(2) Where a person refuses to comply with a request referred to in subsection (1), the home health-care worker has the right to leave without providing any further services, unless to do so would present an immediate serious danger to the health of any person.

Restriction

(3) A home health-care worker who has exercised the right to leave shall comply with any procedures provided for in the regulations.

Definition

(4) In this section,

“home health-care worker” means a person who provides health-care services in private homes, that is provided or arranged by,

- (a) a local health integration network as defined in subsection 2 (1) of the *Local Health System Integration Act, 2006*,

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (a) of the definition of “home health-care worker” in subsection 16 (4) of the Act is repealed. (See: 2019, c. 5, Sched. 3, s. 22 (1))

- (b) an entity that receives funding from the Ministry of Health and Long-Term Care or a local health integration network as defined in subsection 2 (1) of the *Local Health System Integration Act, 2006*, or

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) of the definition of “home health-care worker” in subsection 16 (4) of the Act is amended by striking out “or a local health integration network as defined in subsection 2 (1) of the *Local Health System Integration Act, 2006*” at the end and substituting “a local health integration network as defined in subsection 2 (1) of the *Local Health System Integration Act, 2006*, or the Agency within the meaning of the *Connecting Care Act, 2019*”. (See: 2019, c. 5, Sched. 3, s. 22 (2))

Note: On a day to be named by proclamation of the Lieutenant Governor, clause (b) of the definition of “home health-care worker” in subsection 16 (4) of the Act is amended by striking out “a local health integration network as defined in subsection 2 (1) of the *Local Health System Integration Act, 2006*,”. (See: 2019, c. 5, Sched. 3, s. 22 (3))

(c) a prescribed person or entity.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 6 - 17/10/2018

2019, c. 5, Sched. 3, s. 22 (1-3) - not in force

Motor vehicles

17 (1) Subject to the regulations, no person shall do any of the following in a motor vehicle:

1. Smoke tobacco or have lighted tobacco while another person who is less than 16 years old is present in the vehicle.
2. Use an electronic cigarette or have an activated electronic cigarette while another person who is less than 16 years old is present in the vehicle.
3. REPEALED: 2018, c. 12, Sched. 4, s. 7.
4. Consume a prescribed product or substance, in a prescribed manner, or have a prescribed product or substance. 2017, c. 26, Sched. 3, s. 17 (1); 2018, c. 12, Sched. 4, s. 7.

Proof of age

(2) In a prosecution under this section, a court may find evidence that the person enforcing this section honestly and reasonably believed another person to be less than 16 years old to be sufficient proof of the other person’s age.

Enforcement

(3) Despite section 20, this section shall be enforced by police officers or by any other person or class of persons designated in writing by the Minister to enforce this section.

Definition

(4) In this section,

“motor vehicle” means, subject to the regulations, a motor vehicle as defined in subsection 1 (1) of the *Highway Traffic Act*.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 7 - 17/10/2018

Cannabis, vehicles and boats

17.1 (1) No person shall consume cannabis in any manner in a vehicle or boat while,

- (a) the person is driving or has care or control of the vehicle or boat, regardless of whether the vehicle or boat is in motion; or
- (b) the person is a passenger in a vehicle or boat that is being driven by another person or that is under the care or control of another person, regardless of whether the vehicle or boat is in motion. 2018, c. 12, Sched. 4, s. 8.

Enforcement

(2) Despite section 20, this section shall be enforced by police officers or by any other person or class of persons designated in writing by the Minister to enforce this section. 2018, c. 12, Sched. 4, s. 8.

Definitions

(3) In this section,

“boat” includes any ship or boat or any other description of a vessel used or designed to be used in the navigation of water; (“bateau”)

“vehicle” means, subject to the regulations,

- (a) a motor vehicle within the meaning of the *Highway Traffic Act*,
- (b) a motorized snow vehicle within the meaning of the *Motorized Snow Vehicles Act*. (“véhicule”) 2018, c. 12, Sched. 4, s. 8.

Section Amendments with date in force (d/m/y)

CONFLICT WITH OTHER LEGISLATION

Conflict with other legislation

18 Where there is a conflict between a provision of this Act and a provision of another Act, a regulation or a municipal by-law that deals with a matter to which this Act applies, the provision that is more restrictive of the matter to which this Act applies prevails, subject to section 19.

TRADITIONAL USE OF TOBACCO BY INDIGENOUS PERSONS

Purpose

19 (1) The purpose of this section is to acknowledge the traditional use of tobacco that forms part of Indigenous culture and spirituality.

Non-application of s. 3

(2) Section 3 does not prohibit a person from giving tobacco to an Indigenous person who is or appears to be less than 19 years of age or 25 years of age, as the case may be, if the gift is made for traditional Indigenous cultural or spiritual purposes.

Non-application of smoking prohibitions

(3) No provision of this Act or any other Act, regulation or municipal by-law that prohibits smoking in a place or area,

- (a) prohibits an Indigenous person from smoking tobacco or holding lighted tobacco there, if the activity is carried out for traditional Indigenous cultural or spiritual purposes; or
- (b) prohibits a non-Indigenous person from smoking tobacco or holding lighted tobacco there, if the activity is carried out with an Indigenous person and for traditional Indigenous cultural or spiritual purposes.

Place for traditional use of tobacco

(4) At the request of an Indigenous resident, the operator of any of the following shall set aside an indoor area, separate from any area where smoking is otherwise permitted, for the use of tobacco for traditional Indigenous cultural or spiritual purposes:

1. A hospital as defined in the *Public Hospitals Act*.
2. A psychiatric facility designated under the regulations.
3. A long-term care home within the meaning of the *Long-Term Care Homes Act, 2007*.
4. A home for special care under the *Homes for Special Care Act*.
5. A place that belongs to a prescribed class.

ENFORCEMENT

Inspectors

20 (1) The Minister may appoint inspectors for the purposes of this Act.

Inspection

(2) Subject to subsection (4), for the purpose of determining whether this Act is being complied with, an inspector may, without a warrant or notice, and at any time, enter and inspect,

- (a) any place where a prohibition under section 5, 6 or 12 applies;
- (b) the establishments of the manufacturers, wholesalers, distributors and retailers of anything to which this Act applies; and
- (c) any place where the inspector has reasonable grounds to believe that an activity regulated or prohibited under this Act is taking place.

Restricted appointments

(3) The Minister may, in an appointment, restrict the inspector's powers of entry and inspection to specified places or kinds of places.

Dwellings

(4) An inspector shall not enter into a place or part of a place that is a dwelling, without the consent of the occupant.

Use of force

(5) An inspector is not entitled to use force to enter and inspect a place.

Identification

(6) An inspector conducting an inspection shall produce, on request, evidence of his or her appointment.

Powers of inspector

(7) An inspector conducting an inspection may,

- (a) examine a record or other thing that is or may be relevant to the inspection;
- (b) demand the production for inspection of a record or other thing that is or may be relevant to the inspection;
- (c) remove for review and copying a record or other thing that is or may be relevant to the inspection;
- (d) in order to produce a record in readable form, use data storage, information processing or retrieval devices or systems that are normally used in carrying on business in the place;
- (e) remove a sample of a substance or any other thing that is or may be relevant to the inspection or take a specimen that is or may be relevant to the inspection;
- (f) question a person on any matter that is or may be relevant to the inspection, including questioning a person separate and apart from others;
- (g) if he or she finds that an employer is not complying with subsection 14 (1), direct the employer or a person whom the inspector believes to be in charge of the enclosed workplace, place or area to comply with the provision and may require the direction to be carried out forthwith or within such period of time as the inspector specifies; and
- (h) if he or she finds that a proprietor is not complying with section 15, direct the proprietor or a person whom the inspector believes to be in charge of the enclosed public place, place or area to comply with the provision and may require the direction to be carried out forthwith or within such period of time as the inspector specifies.

Vending machines

(8) An inspector conducting an inspection may open a vending machine described in subsection 10 (1) if,

- (a) the vending machine is operable or is in a place to which the public has access;
- (b) the owner or operator of a place referred to in subsection 10 (1) refuses or is unable to open the machine; and
- (c) the inspector has reasonable grounds to believe that the exception in clause 10 (2) (b) does not apply or the inspector has reasonable grounds to believe that tobacco products are being stored in the machine in contravention of section 22.

Exemption from liability

(9) No person is liable for damage done to a vending machine in connection with an opening under subsection (8).

Seizure and forfeiture

(10) An inspector acting under subsection (8) may seize any tobacco products, vapour products, prescribed products and substances and funds found in the machine and, where the inspector has done so, the products are forfeited to the Crown and shall be dealt with as the Minister directs, and the funds are forfeited to the Minister of Finance.

Written demand

(11) A demand that a record or other thing be produced for inspection must be in writing and include a statement of the nature of the record or thing required, and may include a date and time for the record or other thing to be produced.

Obligation to produce and assist

(12) If an inspector demands that a record or other thing be produced for inspection, the person who has custody of the record or thing shall produce it and, in the case of a record, shall on request provide any assistance that is reasonably necessary to interpret the record or to produce it in a readable form.

Records and things removed from place

(13) A record or other thing that has been removed for review and copying shall be,

- (a) made available to the person from whom it was removed, for review and copying, on request and at a time and place that are convenient for the person and for the inspector; and
- (b) returned to the person within a reasonable time.

Copy admissible in evidence

(14) A copy of a record that purports to be certified by an inspector as being a true copy of the original is admissible in evidence to the same extent as the original, and has the same evidentiary value, without proof of the signature or official character of the person appearing to have certified the copy.

Seizure

(15) An inspector in a place under the authority of this section may seize anything that is being stored, sold, offered for sale, distributed or offered for distribution contrary to this Act, and anything seized under this section is forfeited to the Crown and shall be dealt with as the Minister directs.

Obstruction

(16) No person shall,

- (a) hinder, obstruct or interfere with an inspector, or attempt to hinder, obstruct, or interfere with an inspector who is,
 - (i) conducting an inspection, or
 - (ii) making a seizure under subsection (10) or (15);
- (b) refuse to answer questions on any matter that is or may be relevant to the inspection;
- (c) provide the inspector with false or misleading information; or
- (d) fail to comply with a direction under clause (7) (g) or (h).

Confidentiality

(17) An inspector shall keep confidential all personal health information that comes to the inspector's knowledge in the course of an inspection and shall not communicate any personal health information to any other person except as required for the administration of this Act or as otherwise required or permitted by law.

Restrictions, personal health information

(18) An inspector shall not collect, use or disclose more personal health information than is reasonably necessary to meet the purpose of the collection, use or disclosure, as the case may be.

Offences

21 (1) Subject to subsection (2), a person who contravenes a provision of this Act set out in Table 1 or 2 to this section is guilty of an offence and on conviction is liable to a fine determined in accordance with subsection (3).

Continuing offence, signs

(2) A person who is convicted of contravening section 7 or clause 14 (1) (c) or 15 (c) or subsection 23 (1) or (5) is liable to the fine determined in accordance with subsection (3) for each day or part of a day on which the offence occurs or continues.

Determining maximum fine

(3) The fine, or daily fine, as the case may be, shall not exceed an amount determined as follows:

1. Establish the number of times the defendant has been convicted of the same offence during the five years preceding the current conviction.
2. If,
 - i. the defendant is an individual and the offence is with respect to tobacco or tobacco products, the amount is set out in Column 3 of Table 1 to this section, opposite the number of previous convictions in Column 2 and the provision number of the provision contravened in Column 1, and
 - ii. the defendant is an individual and the offence is not with respect to tobacco or tobacco products, the amount is set out in Column 3 of Table 2 to this section, opposite the number of previous convictions in Column 2 and the provision number of the provision contravened in Column 1.
3. If,
 - i. the defendant is a corporation and the offence is with respect to tobacco or tobacco products, the amount is set out in Column 4 of Table 1 to this section, opposite the number of previous convictions in Column 2 and the provision number of the provision contravened in Column 1, and
 - ii. the defendant is a corporation and the offence is not with respect to tobacco or tobacco products, the amount is set out in Column 4 of Table 2 to this section, opposite the number of previous convictions in Column 2 and the provision number of the provision contravened in Column 1.

Sequence of convictions

(4) In establishing the number of times the defendant has been convicted of the same offence for the purposes of subsection (3), the only question to be considered is the sequence of convictions, and no consideration shall be given to the sequence of commission of offences or to whether an offence occurred before or after a conviction.

Continuing offence, vending machine

(5) A person who contravenes subsection 10 (1) is guilty of an offence and on conviction is liable, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$2,000.

Offence, failure to submit report

(6) A person who contravenes section 11 is guilty of an offence and on conviction is liable to a fine of not more than \$100,000.

Offence, motor vehicle

(7) A person who contravenes section 17 is guilty of an offence and on conviction is liable to a fine of not more than \$250.

Duty of directors and officers

(8) A director or officer of a corporation that engages in the manufacture, sale or distribution of tobacco products, vapour products or a prescribed product or substance has a duty to take all reasonable care to prevent the corporation from contravening this Act.

Offence

(9) A person who has the duty imposed by subsection (8) and fails to carry it out is guilty of an offence and on conviction is liable to a fine of not more than \$100,000.

Same

(10) A person may be prosecuted and convicted under subsection (9) even if the corporation has not been prosecuted or convicted.

Owner's liability

(11) The owner of a business shall be deemed to be liable for any contravention of section 3, 4, 4.1, 4.2, 5, 6, 7, 8 or 9 that occurs at the place of business, unless the owner exercised due diligence to prevent such a contravention. 2017, c. 26, Sched. 3, s. 21 (11); 2018, c. 12, Sched. 4, s. 9 (1).

TABLE 1

Column 1 Provision Contravened	Column 2 Number of Earlier Convictions	Column 3 Maximum Fine — Individual (amount in dollars)	Column 4 Maximum Fine — Corporation (amount in dollars)
3 (1), 3 (2), 4, 5	0	8,000	20,000
3 (1), 3 (2), 4, 5	1	20,000	40,000
3 (1), 3 (2), 4, 5	2	40,000	100,000
3 (1), 3 (2), 4, 5	3 or more	200,000	300,000
3 (4), 6 (1), 7, 14 (1) (c), 15 (c), 20 (16), 22 (4), 23 (1), 23 (4), 23 (5)	0	2,000	5,000
3 (4), 6 (1), 7, 14 (1) (c), 15 (c), 20 (16), 22 (4), 23 (1), 23 (4), 23 (5)	1	5,000	10,000
3 (4), 6 (1), 7, 14 (1) (c), 15 (c), 20 (16), 22 (4), 23 (1), 23 (4), 23 (5)	2	10,000	25,000
3 (4), 6 (1), 7, 14 (1) (c), 15 (c), 20 (16), 22 (4), 23 (1), 23 (4), 23 (5)	3 or more	50,000	75,000
8, 9	0	4,000	200,000
8, 9	1	10,000	600,000
8, 9	2	20,000	600,000
8, 9	3 or more	100,000	600,000
12 (1)	0	1,000	(not applicable)
12 (1)	1 or more	5,000	(not applicable)
14 (1) other than (c), 15 other than (c)	0	1,000	100,000
14 (1) other than (c), 15 other than (c)	1 or more	5,000	300,000
14 (2)	any	4,000	10,000
19 (4)	any	4,000	10,000

TABLE 2

Column 1 Provision Contravened	Column 2 Number of Earlier Convictions	Column 3 Maximum Fine — Individual (amount in dollars)	Column 4 Maximum Fine — Corporation (amount in dollars)
3 (1), 3 (2), 4.1, 4.2, 5	0	4,000	10,000
3 (1), 3 (2), 4.1, 4.2, 5	1	10,000	20,000
3 (1), 3 (2), 4.1, 4.2, 5	2	20,000	50,000
3 (1), 3 (2), 4.1, 4.2, 5	3 or more	100,000	150,000
3 (4), 6 (1), 7, 14 (1) (c), 15 (c), 20 (16)	0	2,000	5,000
3 (4), 6 (1), 7, 14 (1) (c), 15 (c), 20 (16)	1	5,000	10,000
3 (4), 6 (1), 7, 14 (1) (c), 15 (c), 20 (16)	2	10,000	25,000
3 (4), 6 (1), 7, 14 (1) (c), 15 (c), 20 (16)	3 or more	50,000	75,000
8, 9	0	2,000	100,000
8, 9	1	5,000	300,000
8, 9	2	10,000	300,000
8, 9	3 or more	50,000	300,000
12 (1), 17.1	0	1,000	(not applicable)
12 (1), 17.1	1 or more	5,000	(not applicable)
14 (1) other than (c), 15 other than (c)	0	1,000	100,000
14 (1) other than (c), 15 other than (c)	1 or more	5,000	300,000
14 (2)	any	4,000	10,000

2017, c. 26, Sched. 3, s. 21, Table 2; 2018, c. 12, Sched. 4, s. 9 (2, 3).

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 9 - 17/10/2018

AUTOMATIC PROHIBITION, TOBACCO SALES OFFENCES

Tobacco sales offences

22 (1) For the purpose of this section, the following are tobacco sales offences:

1. Contravening, with respect to tobacco products, subsection 3 (1) or (2), section 7 or 8 or subsection 10 (1), or subsection (4) of this section.
2. Contravening section 8 or 29 of the *Tobacco Tax Act*.

Notice

(2) On becoming aware that all of the following conditions have been satisfied, the Minister shall send a notice of the prohibition imposed by subsection (4) to the person who owns or occupies the place and to all wholesalers and distributors of tobacco in Ontario:

1. An owner of the business that operates or operated in the place has been convicted of a tobacco sales offence committed in the place.
2. During the five years preceding the conviction referred to in paragraph 1, the same owner of the business that operates or operated in the place, or a different owner of a business that operates or operated in the place, was convicted of a tobacco sales offence committed in the place.
3. The period allowed for appealing the conviction referred to in paragraph 1 has expired without an appeal being filed, or any appeal has been finally disposed of.

Date

(3) The notice shall specify the date on which it is to take effect.

Sales, storage and deliveries prohibited

(4) During the applicable period,

- (a) no person shall sell or store tobacco in the place where the tobacco sales offences were committed; and
- (b) no wholesaler or distributor shall deliver tobacco to the place or have it delivered there.

Applicable period

- (5) For the purposes of subsection (4), the applicable period is,
- (a) the six months that follow the date specified in the notice referred to in subsection (2), if there are only two convictions of tobacco sales offences committed in the same place during the five year period referred to in subsection (2);
 - (b) the nine months that follow the date specified in the notice, if there are only three convictions of tobacco sales offences committed in the same place during the five-year period referred to in subsection (2); and
 - (c) the 12 months that follow the date specified in the notice, if there are four or more convictions of tobacco sales offences committed in the same place during the five-year period referred to in subsection (2).

Defence

- (6) It is a defence to a charge under subsection (4) that the defendant had not received the notice at the time the offence was committed.

Exception

- (7) The prohibition on storing tobacco does not apply to small amounts of tobacco for the immediate personal use of persons who work in the place.

Sequence of convictions

- (8) In establishing the number of times a person was convicted of another tobacco sales offence for the purposes of this section, the only question to be considered is the sequence of convictions, and no consideration shall be given to the sequence of commission of offences or to whether an offence occurred before or after a conviction.

Signs

- 23 (1) The owner or occupier of a place that is subject to a prohibition imposed under section 22 shall ensure that signs are posted at the place in accordance with the regulations.

Posting by inspector

- (2) If signs are not posted as required, an inspector may enter the premises without a warrant and post signs in accordance with the regulations.

Application of s. 20

- (3) Subsections 20 (2), (4), (5) and (6) apply, with necessary modifications, to an inspector acting under subsection (2).

Obstruction

- (4) No person shall hinder, obstruct or interfere with an inspector acting under subsection (2), or attempt to hinder, obstruct or interfere with an inspector acting under subsection (2).

Signs not to be removed

- (5) No person shall remove a sign posted under this section while the prohibition remains in force.

REGULATIONS

Regulations

- 24 (1) The Lieutenant Governor in Council may make regulations,
- (a) defining or clarifying the meaning of any word or expression used in this Act but not otherwise defined in this Act, for the purposes of this Act or any provision of this Act;
 - (b) prescribing and governing for the purposes of this Act or any provision of this Act anything that is referred to in this Act as being prescribed, as being provided for or designated in the regulations or as being done in compliance with or in accordance with the regulations, whether or not the thing being prescribed is otherwise dealt with in this Act;
 - (c) respecting the packaging of tobacco products, vapour products and prescribed products and substances, including warnings that must be included on packages;
 - (d) governing the application of section 17, including,
 - (i) providing for exceptions and conditions,
 - (ii) providing for additional vehicles that are motor vehicles, and
 - (iii) providing for vehicles that are not motor vehicles;
- (d.1) governing the application of section 17.1, and without limiting the generality of the foregoing,
- (i) providing for exceptions to that section, and making such exceptions subject to conditions, and

- (ii) clarifying, modifying, expanding or restricting the definition of “vehicle” in that section;
- (e) governing how funds in the form of credit card or debit transactions are to be dealt with for the purposes of subsection 20 (10);
- (f) providing for how elements of an offence respecting tobacco products, vapour products, cannabis or a prescribed product or substance may be proved in a prosecution, including providing for presumptions that apply in the absence of evidence to the contrary;
- (g) providing for exemptions from this Act or any provision of this Act, and making such exemptions subject to any conditions provided for in the regulations;
- (h) generally, for carrying out the provisions, purpose and intent of this Act. 2017, c. 26, Sched. 3, s. 24 (1); 2018, c. 12, Sched. 4, s. 10.

General or specific

(2) A regulation under this Act may be general or specific in its application, and may establish different categories or classes, and may provide for different obligations or responsibilities for different categories or classes.

Section Amendments with date in force (d/m/y)

2018, c. 12, Sched. 4, s. 10 - 17/10/2018

BINDING THE CROWN

Crown bound

25 This Act binds the Crown.

26-29 OMITTED (AMENDS, REPEALS OR REVOKES OTHER LEGISLATION).

30 OMITTED (PROVIDES FOR COMING INTO FORCE OF PROVISIONS OF THIS ACT).

31 OMITTED (ENACTS SHORT TITLE OF THIS ACT).

Français

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