



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

SMOKE-FREE PLACES ACT

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This document is *not* the official version of the Act. The Act and the amendments as printed under the authority of the King's Printer for the province should be consulted to determine the authoritative statement of the law.

For more information concerning the history of this Act, please see the *Table of Public Acts* on the Prince Edward Island Government web site (www.princeedwardisland.ca).

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SMOKE-FREE PLACES ACT

Table of Contents

Section	Page
INTERPRETATION AND APPLICATION	5
1. Definitions.....	5
2. “correctional centre”	7
3. Conflict with other Acts, regulations or bylaws	7
SMOKING RESTRICTIONS	7
4. Prohibition respecting smoking.....	7
5. Exception — exempted facilities	7
6. Exception — designated smoking area	7
7. Duty of owner or employer	8
DESIGNATED SMOKING AREAS	8
8. Designated smoking area	8
9. Designated smoking room in long-term care facility	8
10. Designated smoking area, workplace.....	9
11. Employees not required to work in designated smoking room	9
SIGNS	9
12. Signs required	9
INSPECTORS, COMPLAINTS AND ORDERS	9
13. Inspectors	9
14. Powers of inspector	9
15. Complaints	10
16. Order	11
GENERAL	12
17. Discriminatory action against complainant.....	12
18. Liability of inspectors	12
19. Offence.....	12
19.1 Police may stop motor vehicle	12
20. Regulations	13



SMOKE-FREE PLACES ACT

CHAPTER S-4.2

INTERPRETATION AND APPLICATION

1. Definitions

In this Act

- (a) **“Chief Inspector”** means the Chief Inspector appointed pursuant to section 13(1);
- (b) **“designated smoking area”** means
 - (i) an outdoor area of a public place or workplace that is designated as a designated smoking area under subsection 8(1), or
 - (ii) a designated smoking room;
- (c) **“designated smoking room”** means a room in a long-term care facility that is designated as a designated smoking area under subsection 9(1);
- (d) **“eating establishment”** means an establishment where ready-to-eat food is prepared for sale or sold to the public, and includes
 - (i) restaurants,
 - (ii) lunch counters,
 - (iii) snack bars,
 - (iv) canteens at road sides or recreational facilities,
 - (v) cafeterias,
 - (vi) banquet facilities,
 - (vii) catering outlets and services,
 - (viii) delicatessens,
 - (ix) bakeries,
 - (x) food vending outlets,
 - (xi) food take-out establishments, and
 - (xii) a grocery store that contains a snack bar or other place where food is served;
- (d.1) **“electronic smoking device”** means an electronic or battery-operated device used or intended to be used to deliver vapourized solutions by inhalation from the device in a manner that resembles smoking tobacco, such as an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe or electronic waterpipe;
- (e) **“employee”** means
 - (i) a person employed in a workplace by an employer, or
 - (ii) a person in a workplace for any purpose in connection therewith;

- (f) “**employer**” means a person who employs one or more employees, or who contracts for the services of one or more employees, and includes a constructor or contractor;
- (g) “**inspector**” means
 - (i) a person who is appointed as an inspector, or as the Chief Inspector, under subsection 13(1), or
 - (ii) a person deemed under the regulations to be an inspector by virtue of his or her office under another enactment;
- (h) “**licensed premises**” means premises for which a liquor license to sell liquor issued under the *Liquor Control Act* R.S.P.E.I. 1988, Cap. L-14 is in effect;
- (i) “**long-term care facility**” means
 - (i) a nursing home or community care facility for which a license issued under the *Community Care Facilities and Nursing Homes Act* R.S.P.E.I. 1988, Cap. C-13 is in effect, and
 - (ii) a nursing home that is operated by the Government or an agent of the Government;
- (j) “**Minister**” means the member of the Executive Council designated by the Lieutenant Governor in Council to administer this Act;
- (j.1) “**motor vehicle**” means a motor vehicle as defined in the *Highway Traffic Act* R.S.P.E.I. 1988, Cap. H-5;
- (k) “**owner**” means an owner of a public place or workplace and includes a person who has, or who appears to have, responsibility for and control over the activities of the public place or workplace;
- (k.1) “**patio**” means any outdoor area that is used or operated as part of, or in conjunction with, an eating establishment or a licensed premises;
- (l) “**public place**” means
 - (i) a place that is open to members of the public, and includes
 - (A) the part of an office building, a retail store or other commercial establishment that is open to members of the public,
 - (B) the part of a building in which health services are provided and that is open to patients or members of the public,
 - (C) the part of an early learning and child care centre that is open to children or members of the public,
 - (D) the part of an educational institution or educational facility that is open to students or members of the public,
 - (E) the part of an eating establishment that is open to members of the public, whether or not the eating establishment is a licensed premises,
 - (F) the part of a licensed premises that is open to members of the public, whether or not the licensed premises is an eating establishment or part of an eating establishment, or
 - (G) a vehicle or the enclosed areas of a vessel, where the vehicle or vessel is designed or used for carrying passengers for compensation,
 - (ii) any part of a long-term care facility, or
 - (iii) any other place designated in the regulations as a public place;
- (m) repealed by 2018,c.20,Sch.4,s.1(a);

- (n) **“smoke”**, as a verb, means to smoke, utilize, hold or otherwise have control over
- (i) an ignited tobacco product or another ignited product or substance that is intended to be smoked, or
 - (ii) an operating electronic smoking device, waterpipe or other device or instrument used or intended to be used to deliver vapour or smoke by inhalation from the device or instrument in a manner that resembles smoking tobacco or another product or substance that is intended to be smoked;
- (o) **“tobacco product”** means a product manufactured from tobacco and intended to be smoked; and
- (o.1) **“waterpipe”** means an instrument used or intended to be used to smoke tobacco or other products, in which smoke generated during its operation passes through a liquid before it may be inhaled from the instrument;
- (p) **“workplace”** means any place, including a construction site, where an employee is engaged in work, and includes any cafeteria, corridor, lobby, restroom, elevator, escalator, stairwell or other common area within that place, but does not include any area of a shelter for victims of domestic violence. *2002,c.25,s.1; 2003,c.44,s.1; 2009,c.86,s.1; 2010,c.8,s.79; 2010,c.31,s.3; 2010,c.44,s.15(1); 2015,c.15,s.1; 2018,c.20,Sch.4,s.1.*

2. “correctional centre”

Repealed by *2002,c.25,s.2.*

3. Conflict with other Acts, regulations or bylaws

Where a provision of an Act, a regulation or a bylaw of a municipality or city respecting smoking in a public place or workplace conflicts with a provision of this Act or the regulations made under this Act, the provision of this Act or the regulations made under this Act prevails, unless the conflicting provision imposes a more stringent requirement or restriction. *2002,c.25,s.3.*

SMOKING RESTRICTIONS

4. Prohibition respecting smoking

- (1) No person shall smoke in a public place or workplace except as permitted by this Act and the regulations.

Smoking in a motor vehicle in which person under 19 is present

- (2) No person shall smoke in a motor vehicle while any person under the age of nineteen years is present in the motor vehicle regardless of whether any window, sunroof, car-top roof, door or other feature of the motor vehicle is open. *2002,c.25,s.4; 2009,c.86,s.2.*

5. Exception — exempted facilities

Repealed by *2009,c.86,s.3. 2002,c.25,s.5; 2003,c.44,s.2; 2009,c.86,s.3.*

6. Exception — designated smoking area

A person may smoke in a designated smoking area in a public place or workplace. *2002,c.25,s.6.*

7. Duty of owner or employer

The owner of a public place or workplace, or an employer at a workplace, shall ensure

- (a) if the public place or workplace has no designated smoking areas, that persons refrain from smoking in the public place or workplace; or
- (b) if the public place or workplace has one or more designated smoking areas, that persons smoke only in the designated smoking areas. *2002, c.25, s.7.*

DESIGNATED SMOKING AREAS

8. Designated smoking area

- (1) Subject to subsection (2), an owner of a public place or workplace or an employer at a workplace may, in accordance with the regulations, designate an outdoor area of the public place or workplace as a designated smoking area for those persons who are permitted to use the area by the owner or employer, if
 - (a) the outdoor area is located a prescribed minimum distance from any entrance to or outdoor air intake for the indoor non-smoking areas of the public place or workplace; and
 - (b) the indoor non-smoking areas of the public place or workplace are structurally separated from the outdoor area by walls, ceilings, windows and doors that fully enclose the indoor non-smoking areas.

Restriction

- (2) An outdoor area in the following public places or workplaces may not be designated as a designated smoking area under subsection (1):
 - (a) the portion of a public place or workplace that is used as a day care centre or nursery school;
 - (b) an elementary, intermediate or secondary school;
 - (c) a hospital;
 - (d) a patio, except during the hours prescribed in the regulations.

Exception

- (3) Notwithstanding subsection (2), an outdoor area at Hillsborough Hospital may be designated as a designated smoking area under subsection (1) for the patients of Hillsborough Hospital.

Restriction respecting smoking at Hillsborough Hospital

- (4) Notwithstanding section 6, where an outdoor area at Hillsborough Hospital is designated as a designated smoking area under subsection (1) for the patients of Hillsborough Hospital, no person may smoke in the designated smoking area other than a patient of Hillsborough Hospital. *2002, c.25, s.8; 2003, c.44, s.3; 2009, c.86, s.4; 2010, c.44, s.15(2).*

9. Designated smoking room in long-term care facility

- (1) An owner of a long-term care facility may, in accordance with the regulations, designate a room in the long-term care facility as a designated smoking area for residents of the facility, if the room
 - (a) is fully enclosed by walls, a ceiling, windows and doors;
 - (b) is equipped with a ventilation system as required by the regulations;

- (c) is constructed, designed and located as required by the regulations; and
- (d) is not ordinarily used or occupied by non-smokers.

Prohibition respecting a long-term care facility

- (2) Notwithstanding section 6, where a room in a long-term care facility is designated as a designated smoking room under subsection (1) for residents of the facility, no person may smoke in the designated smoking room other than a resident of the long-term care facility. *2002, c.25, s.9; 2003, c.44, s.4; 2009, c.86, s.5.*

10. Designated smoking area, workplace

Repealed by *2003, c.44, s.5.*

11. Employees not required to work in designated smoking room

No owner of a long-term care facility, and no employer at a long-term care facility shall

- (a) require an employee to enter or work in a designated smoking room in the long-term care facility; or
- (b) permit an employee to enter or work in a designated smoking room in the long-term care facility, except in the circumstances and in accordance with the requirements set out in the regulations. *2002, c.25, s.11; 2009, c.86, s.6.*

SIGNS

12. Signs required

The owner of a public place or workplace or the employer at a workplace shall, in accordance with the regulations, post and keep posted at the public place or workplace those signs respecting smoking in a public place or workplace that may be required by the regulations, including

- (a) signs that indicate smoking is not permitted on the premises;
- (b) signs that indicate smoking is not permitted outside of a designated smoking area; and
- (c) signs that identify designated smoking areas. *2002, c.25, s.12; 2003, c.44, s.6.*

INSPECTORS, COMPLAINTS AND ORDERS

13. Inspectors

- (1) The Minister shall appoint a Chief Inspector and may appoint one or more inspectors.

Accountability

- (2) An inspector is accountable to the Chief Inspector. *2002, c.25, s.13.*

14. Powers of inspector

- (1) For the purpose of ensuring compliance with this Act, other than subsection 4(2), and the regulations and any order made under this Act, an inspector may, on presentation, if required, of a certificate of identification signed by the Minister,

- (a) at any reasonable time, and without a warrant or notice, enter and inspect any public place or workplace, conduct tests and make such examinations as the inspector considers necessary or advisable;
- (b) require the production of records, drawings, specifications, books, plans or other documents in the possession of the owner of a public place or the employer at a workplace that relate to
 - (i) the public place or workplace, or
 - (ii) the health and safety of any persons, including employees, at the public place or workplace,

and remove them temporarily for the purpose of making copies;

- (c) require the production of documents or records that the inspector, on reasonable grounds, considers relevant to the investigation of a complaint, and remove them temporarily for the purpose of making copies;
- (d) take photographs or recordings of any public place or workplace and any activity taking place in any public place or workplace;
- (e) make any examination, investigation or inquiry as the inspector considers necessary to ascertain whether there is compliance with this Act and the regulations or any order made under this Act;
- (f) inspect, take samples and conduct tests of samples, including tests in which a sample is destroyed, of any article, material, or thing to which the Act or the regulations, or an order made under this Act, apply;
- (g) in an examination, inspection, investigation, inquiry or test, be accompanied and assisted by a peace officer or a person having special expert or professional knowledge of any matter;
- (h) at any reasonable time seize and detain for such time as may be necessary anything by means of or in relation to which the inspector, on reasonable grounds, believes any provision of this Act or the regulations, or an order made under this Act, has been contravened;
- (i) make inquiries of any person who is or was in a public place or workplace; and
- (j) exercise such other powers as may be necessary or incidental to the carrying out of the inspector's functions pursuant to this Act or the regulations.

Obstruction

- (2) No person shall obstruct or attempt to obstruct, or fail to cooperate with, an inspector in the exercise of his or her functions under this Act or the regulations. *2002,c.25,s.14; 2009,c.86,s.7.*

15. Complaints

- (1) A complaint alleging that there has been a contravention of this Act, other than subsection 4(2), or the regulations or a failure to comply with an order issued under this Act may be made by any person to the Chief Inspector.

Form of complaint

- (2) A complaint shall be made in a manner or in a form acceptable to, and shall provide the information required by, the Chief Inspector.

Investigation

- (3) The Chief Inspector may investigate or direct an inspector to investigate a complaint made under this section. *2002,c.25,s.15; 2009,c.86,s.8.*

16. Order

- (1) Where an inspector has reasonable grounds to believe
- (a) that either there has been a contravention of a provision of this Act, other than subsection 4(2), or the regulations; or
 - (b) that both
 - (i) remedial action is necessary to ensure compliance with this Act, other than subsection 4(2), or the regulations, and
 - (ii) less intrusive means of dealing with the matter are not likely to be sufficiently effective,

the inspector may issue an order requiring any person appearing to have responsibility to take such remedial action as may be specified in the order.

Contents of order

- (2) An order made under subsection (1)
- (a) may be given orally or in writing to a person who is responsible for taking remedial action under the order;
 - (b) shall specify
 - (i) the reasons why it was made, and
 - (ii) the name of any person responsible for taking remedial action under the order;
 - (c) shall clearly specify what remedial action is required to be taken and the time within which that action must be taken; and
 - (d) shall indicate that a failure to comply with the order is an offence under section 19 of this Act.

Confirmation in writing

- (3) Where an inspector gives an oral order under subsection (2), the inspector shall, within 24 hours of giving the order, serve a written copy of the order to the person responsible for taking remedial action under the order.

Process for serving orders

- (4) An inspector may, under this section, effect service of a written copy of an order on a person responsible for taking remedial action under the order
- (a) by causing the written copy of the order to be posted in a conspicuous place at the public place or workplace to which the order applies; or
 - (b) by leaving the written copy of the order with
 - (i) the person responsible for taking remedial action under the order,
 - (ii) an officer, director or agent of the owner of, or the employer at, the public place or workplace to which the order applies, if the owner or employer is not named in the order as a person responsible for taking remedial action under the order, or
 - (iii) any person who appears to be in charge of the public place or workplace to which the order applies. *2002, c.25, s.16; 2009, c.86, s.9.*

GENERAL

17. Discriminatory action against complainant

- (1) No employer or union shall
- take any discriminatory action against an employee;
 - threaten to take any discriminatory action against an employee;
 - impose any penalty on an employee; or
 - intimidate or coerce an employee,

because the employee has acted in accordance with or sought the enforcement of this Act, the regulations or an order of an inspector.

Discriminatory action

- (2) In this section, “discriminatory action” includes the discipline, suspension or dismissal of an employee. *2002, c.25, s.17; 2009, c.86, s.10.*

18. Liability of inspectors

- (1) No action or other proceeding for damages lies or shall be instituted against an inspector or any other person involved in the administration of this Act or the regulations for anything done or omitted to be done in good faith pursuant to or in the exercise or intended exercise of any power or function under this Act or the regulations.

Liability of complainants

- (2) No action or other proceeding for damages lies or shall be instituted against any person who, in good faith,
- makes a complaint to an inspector under section 15; or
 - assists an inspector in the conduct of an investigation under this Act or the regulations. *2002, c.25, s.18.*

19. Offence

- (1) A person who contravenes a provision of this Act or the regulations or who fails to comply with an order of an inspector is guilty of an offence and on summary conviction is liable to a fine of not less than \$100 and not more than \$2,000.

Continuing offence

- (2) A contravention of this Act or the regulations or a failure to comply with an order of an inspector that is of a continuing nature constitutes a separate offence in respect of each day or part of a day that it continues. *2002, c.25, s.19; 2009, c.86, s.11.*

19.1 Police may stop motor vehicle

- (1) For the purpose of ensuring compliance with subsection 4(2), a police officer may require the driver of a motor vehicle to stop.

Driver shall stop

- (2) The driver of a motor vehicle when signaled or requested to stop by a police officer shall immediately come to a safe stop.

Proof of age

- (3) In a prosecution of a contravention of subsection 4(2), a court may find evidence that a police officer enforcing this section reasonably believed a person present in a motor vehicle to be under the age of nineteen years to be sufficient proof of the person's age. *2009, c.86, s.12.*

20. Regulations

The Lieutenant Governor in Council may make regulations

- (a) respecting the designation of an outdoor area of a public place or workplace as a designated smoking area under subsection 8(1), including providing for and regulating the method of effecting such a designation;
- (a.1) prescribing, for the purpose of clause 8(1)(a), the minimum distance that an outdoor area must be from any entrance to or outdoor air intake for any indoor non-smoking area of a public place or workplace in order for the outdoor area to be designated as a designated smoking area;
- (a.2) prescribing, for the purpose of clause 8(2)(d), the hours during which a patio may be designated as a designated smoking area;
- (a.3) respecting the designation of a room of a long-term care facility as a designated smoking area, including providing for and regulating the method of effecting such a designation;
- (a.4) establishing or specifying, for the purpose of clause 9(1)(b), standards or requirements respecting the ventilation system that a room in a long-term care facility must be equipped with in order to be designated as a designated smoking area;
- (a.5) establishing or specifying, for the purpose of clause 9(1)(c), standards or requirements respecting the construction, design and location of a room in a long-term care facility that must be complied with in order for the room to be designated as a designated smoking area;
- (a.6) requiring an owner of a long-term care facility to ensure that the ventilation system of a designated smoking room is operating while smoking is occurring in the room;
- (b) respecting signs concerning smoking in public places, workplaces and designated smoking areas and rooms, including
 - (i) providing for the posting of such signs,
 - (ii) providing for the content, dimensions, form and appearance of such signs,
 - (iii) requiring any owner or employer to ensure that such signs are unobstructed and are replaced in prescribed circumstances;
- (c) repealed by *2009, c.86, s.13*;
- (d) repealed by *2009, c.86, s.13*;
- (e) defining a word or term used in the Act that is not otherwise defined in the Act;
- (f) 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;
- (g) respecting the use and cleaning of designated smoking areas;
- (h) respecting the air quality of a designated smoking area in a public place or workplace, including
 - (i) setting standards of air quality for such areas, and
 - (ii) requiring any owner or employer to ensure compliance with those standards;

- (i) deeming persons to be inspectors by virtue of the office they hold under another enactment; and
- (j) respecting any other matters that the Lieutenant Governor in Council considers necessary and advisable to carry out the purposes and provisions of this Act.
2002, c.25, s.20; 2003, c.44, s.7; 2009, c.86, s.13.