



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

TOBACCO AND ELECTRONIC SMOKING DEVICE SALES AND ACCESS 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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TOBACCO AND ELECTRONIC SMOKING DEVICE SALES AND ACCESS ACT

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TOBACCO AND ELECTRONIC SMOKING DEVICE SALES AND ACCESS ACT

CHAPTER T-3.1

1. Definitions

In this Act

- (a) **“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, and includes a cartridge, solution or replaceable component used or intended to be used in such a device;
- (a.1) **“inspector”** means a person designated under subsection 3(1);
- (b) **“Minister”** means the Minister of Health and Wellness;
- (c) **“tobacco”** means tobacco in any form, and includes any tobacco-related product;
- (c.1) **“tobacconist shop”** means a place or premises in which the primary business conducted is the retail sale of tobacco or electronic smoking devices, or both;
- (c.2) **“tobacco-related product”** means any product that may be used in the consumption of tobacco, and includes a cigarette paper, a cigarette tube, a cigarette filter, a cigarette maker, a cigarette holder, a pipe, a waterpipe, a pipe cleaner and a cigar clip;
- (d) **“vending machine”** means any automatic machine for the sale of tobacco or an electronic smoking device.
- (d.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.
- (e) repealed by 2004,c.20,s.2. 1991,c.44,s.1; 2004,c.20,s.2; 2009,c.73,s.2; 2010,c.31,s.3; 2015,c.17,s.2; 2019,c.40,s.1.

2. Administration

The Minister is responsible for the administration of this Act. 1991,c.44,s.2.

3. Inspectors

- (1) The Minister may designate public health officials appointed under the *Public Health Act* R.S.P.E.I. 1988, Cap. P-30.1 or other persons as inspectors.

Powers of entry etc.

- (2) For the purpose of enforcing this Act and the regulations an inspector may

- (a) enter and inspect the business premises of a person who sells tobacco or an electronic smoking device by retail and examine and take copies of any records relevant to a prosecution of a violation of this Act;
- (b) investigate any complaint of a violation of this Act and examine a person referred to in clause (a) or an employee of such a person to determine if a violation occurred;
- (c) make test purchases, or take samples of tobacco or an electronic smoking device;
- (d) give directions to a person referred to in clause (a);
- (e) issue a ticket summons or information in respect of a violation of this Act;
- (f) record and report convictions under this Act. *1991,c.44,s.3; 1993,c.30,s.61; 2004,c.20,s.3; 2005,c.22,s.1; 2015,c.17,s.3.*

FLAVOURED TOBACCO

3.1 Sale of tobacco with flavouring agent

No person shall sell or offer to sell tobacco or an electronic smoking device that contains a prescribed flavouring agent. *2015,c.17,s.4; 2019,c.40,s.2.*

PROVISION OF TOBACCO OR AN ELECTRONIC SMOKING DEVICE TO PERSONS UNDER 21

4. Sale or supply to person under 21

- (1) No person shall sell or supply tobacco or an electronic smoking device to a person under the age of 21 years.

Purchase of tobacco or an electronic smoking device for person under 21

- (2) No person shall purchase or attempt to purchase tobacco or an electronic smoking device on behalf of, or for the purpose of resale to, a person under the age of 21 years.

Defence - person appearing to be over 21

- (3) It is not a defence to a prosecution for a contravention of this section for the defendant to show that the person under the age of 21 years appeared to be 21 years of age or older.

Sale or supply to person appearing to be under 21

- (4) No person shall sell or supply tobacco or an electronic smoking device to a person who appears to be under the age of 21 years unless that person first produces, as proof that he or she is 21 years of age or older, a prescribed form of identification that shows his or her age and that contains a photograph of the person.

Alteration of prescribed form of identification

- (5) No person shall sell or supply tobacco or an electronic smoking device to a person who produces, as proof of his or her age, a document that is a prescribed form of identification if it appears that the document has been altered or is not authentic.

Exception—Aboriginal spiritual practices

- (6) Nothing in this section prevents a person from giving tobacco to a person who is or appears to be under the age of 21 years if the gift is made solely for use in traditional Aboriginal spiritual or cultural practices or ceremonies.

Transitional

- (7) Subsections (1), (2), (4) and (5) do not apply in respect of the sale, supply or resale to, or purchase or attempt to purchase on behalf of, a person who became 19 years of age before the date this subsection came into force. *1991,c.44,s.4; 1995,c.42,s.1; 2004,c.20,s.4; 2015,c.17,s.6; 2019,c.40,s.4.*

SALE PROHIBITED IN DESIGNATED PLACES

4.1 Sale in a designated place

- (1) No person shall sell tobacco or an electronic smoking device in a designated place.

Designated places

- (2) Subject to subsection (3), the following are designated places:
- (a) a hospital as defined in the *Hospitals Act* R.S.P.E.I. 1988, Cap. H-10;
 - (b) that part of a building, other than a hospital, where health care services are provided;
 - (c) a facility that is licensed as a nursing home under the *Community Care Facilities and Nursing Homes Act* R.S.P.E.I. 1988, Cap. C-13;
 - (d) a building, or that part of a building, that is owned or occupied by
 - (i) the Government of Prince Edward Island,
 - (ii) a municipal government,
 - (iii) Health PEI,
 - (iv) an education authority, or
 - (v) a post-secondary institution, including
 - (A) the University of Prince Edward Island,
 - (B) Holland College, or
 - (C) a private training school operated by an operator as defined in the *Private Training Schools Act* R.S.P.E.I. 1988, Cap. P-20.2;
 - (e) that part of a building or a recreational facility that is a bowling alley, fitness centre, gymnasium, pool, a skating, hockey or curling rink or a similar sport or health-related activity area;
 - (f) a theatre, including a movie theatre;
 - (g) a video arcade;
 - (h) an amusement park;
 - (i) a pharmacy;
 - (j) a retail store if
 - (i) a pharmacy is located within the retail store,
 - (ii) customers or employees of a pharmacy can pass into the retail store directly from the pharmacy or by use of a corridor or area used exclusively to connect the pharmacy with the retail store, or
 - (iii) the retail store belongs to a prescribed class or type of retail store.

Hospital for mentally ill

- (3) A hospital or an institution for the mentally ill is not a designated place.

“pharmacy”, defined

- (4) In this section, “**pharmacy**” means a retail drug store that provides, for profit, a non-exclusive array of drugs and related services to the general public in a non-exclusive way. *2004,c.20,s.5; 2005,c.22,s.2,3; 2015,c.17,s.7; 2016,c.6,s.133; 2016,c.49,s.56.*

4.2 Sale only in tobacconist shop

No person shall sell an electronic smoking device except in a tobacconist shop. *2019,c.40,s.5.*

VENDING MACHINES, DISPLAYS AND ADVERTISING

5. Vending machines

No person shall permit a vending machine to be in any place that the person owns or occupies. *2004,c.20,s.6.*

5.1 Tobacco not to be displayed

- (1) Subject to subsection (2), no person shall display or permit the display of tobacco in any place or premises in which tobacco is sold or offered for sale at retail
- (a) by any means or in any manner, including the use of a countertop or wall display, that permits a consumer in the place or premises to view tobacco before purchasing it; or
 - (b) by any means or in any manner that makes tobacco visible to the public from the outside of the place or premises.

Electronic smoking devices not to be displayed

- (1.1) Subject to subsection (2), no person shall display or permit the display of an electronic smoking device in any place or premises in which an electronic smoking device is sold or offered for sale at retail
- (a) by any means or in any manner, including the use of a countertop or wall display, that permits a consumer in the place or premises to view an electronic smoking device before purchasing it; or
 - (b) by any means or in any manner that makes an electronic smoking device visible to the public from the outside of the place or premises.

Exception

- (2) The owner or person in charge of a tobacconist shop, and any person working at the tobacconist shop, may display or permit the display of tobacco or an electronic smoking device in the tobacconist shop in any manner referred to in clause (1)(a) or (1.1)(a) if persons under the age of 21 years, other than persons referred to in subsection 4(7), are not permitted access to the tobacconist shop.

Tobacconist shop

- (3) Repealed by 2019,c.40,s.6(2).

Display of package is display of product

- (4) For the purposes of this section, the display of tobacco or an electronic smoking device in packaging constitutes the display of the tobacco or electronic smoking device, as the case may be, contained in the packaging.

Tobacco or device visible if package visible

- (5) For the purposes of this section, when a package containing tobacco or an electronic smoking device is visible, the tobacco or electronic smoking device, as the case may be, contained in the package is considered visible. *1995,c.42,s.1; 2004,c.20,s.6; 2005,c.22,s.4; 2015,c.17,s.8; 2019,c.40,s.6.*

5.2 Tobacco not to be advertised or promoted

- (1) No person shall advertise or promote, or permit the advertisement or promotion of, the sale or use of tobacco
- (a) in a place or premises where tobacco is sold or offered for sale at retail;
 - (b) in a place or premises to which persons under the age of 21 years are permitted access;
 - (c) in a vehicle, building or other structure if the advertisement or promotion is visible from outside the vehicle, building or other structure; or
 - (d) on any sign located outdoors, including
 - (i) a billboard,
 - (ii) a portable sign, and
 - (iii) a sign on a bench, vehicle, building or other structure.

Advertisements or promotional material not to be visible from outside place or premises

- (2) Revoked by *2015,c.17,s.9.*

Exception

- (3) Notwithstanding subsection (1), a person may, in any place or premises in which tobacco is sold or offered for sale at retail,
- (a) display a sign that lists the types of tobacco offered for sale and their prices, if the sign complies with, and is displayed in accordance with, the requirements of the regulations; or
 - (b) display a magazine or other publication that is offered for sale and that contains tobacco advertising, if the magazine or publication
 - (i) is displayed in such a way that the tobacco advertisement is not visible to a consumer unless he or she is reading the magazine or publication, and
 - (ii) meets any requirements set out in the *Tobacco Act* (Canada) or any regulations made pursuant to that Act. *2005,c.22,s.4; 2015,c.17,s.9; 2019,c.40,s.7(a).*

5.3 Device not to be advertised or promoted

- (1) No person shall advertise or promote, or permit the advertisement or promotion of, the sale or use of an electronic smoking device
- (a) in a place or premises where an electronic smoking device is sold or offered for sale at retail;
 - (b) in a place or premises to which persons under the age of 21 years are permitted access;
 - (c) in a vehicle, building or other structure if the advertisement or promotion is visible from outside the vehicle, building or other structure; or
 - (d) on any sign located outdoors, including
 - (i) a billboard,
 - (ii) a portable sign, and

- (iii) a sign on a bench, vehicle, building or other structure.

Exception

- (2) Notwithstanding subsection (1), a person may, in a place or premises where an electronic smoking device is sold or offered for sale at retail,
 - (a) display a sign that lists the types of electronic smoking devices offered for sale and their prices, if the sign complies with, and is displayed in accordance with, the requirements of the regulations; or
 - (b) display a magazine or other publication that is offered for sale and that contains advertising for an electronic smoking device, if the magazine or publication
 - (i) is displayed in such a way that advertising for an electronic smoking device is not visible to a consumer unless he or she is reading the magazine or publication, and
 - (ii) meets any requirements in legislation enacted by the Government of Canada respecting advertising for electronic smoking devices. *2015,c.17,s.10; 2019,c.40,s.7(b).*

5.4 False, misleading or deceptive advertising

No person shall advertise or promote the sale or use of tobacco or an electronic smoking device by any means that are false, misleading or deceptive, particularly with respect to the characteristics, health effects or health hazards of tobacco, an electronic smoking device or the emissions from tobacco or an electronic smoking device. *2015,c.17,s.10.*

REQUIRED SIGNS

6. Signs respecting tobacco

- (1) No owner or person in charge of a place or premises in which tobacco is sold or offered for sale at retail shall
 - (a) fail to display in the place or premises, any sign respecting or disclosing information concerning the sale of tobacco and the effect of tobacco on health that is required to be displayed by the regulations; or
 - (b) fail to display any sign referred to in clause (a) in the manner and locations prescribed by the regulations.

Signs respecting electronic smoking devices

- (2) No owner or person in charge of a place or premises in which an electronic smoking device is sold or offered for sale at retail shall
 - (a) fail to display in the place or premises, any sign respecting or disclosing information concerning the sale of electronic smoking devices and the effect of electronic smoking devices on health that is required to be displayed by the regulations; or
 - (b) fail to display any sign referred to in clause (a) in the manner and locations prescribed by the regulations. *1991,c.44,s.6; 2004,c.20,s.7; 2005,c.22,s.5; 2015,c.17,s.11.*

6.1 Notice of suspension or cancellation of retail vendor's license

Where the retail vendor's license issued to a retail vendor under the *Tobacco Tax Act* R.S.P.E.I. 1988, Cap. T-3.11 is suspended or cancelled under that Act, the retail vendor shall

post a notice of the suspension or cancellation that is provided by an inspector in the form required by the regulations and shall keep that notice posted,

- (a) if the license was suspended, for the duration of the suspension; or
- (b) if the license was cancelled, until a new license is issued to the retail vendor.
2005,c.22,s.5; 2008,c.33,s.1.

GENERAL

7. Civil liability

Any person who reports to an inspector or peace officer a violation or suspected violation of this Act is not liable to any civil action in respect of the allegation contained in the report or anything done in good faith in assistance of an investigation by an inspector. *1991,c.44,s.7.*

7.1 Obstruction

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. *2005,c.22,s.6.*

8. Offences and penalties

Every person who contravenes a provision of this Act or the regulations, or whose employee contravenes subsection 4(1), (4) or (5) or 5.1(1) or (1.1) or clause 5.2(1)(a) or 5.3(1)(a), is guilty of an offence and liable on summary conviction

- (a) for a first offence, to a fine of not less than \$250 and not more than \$2,000; and
- (b) for a second or subsequent offence, to a fine of not less than \$500 and not more than \$5,000. *1991,c.44,s.8; 1993,c.29,s.4; 1995,c.42,s.1; 2004,c.20,s.9; 2015,c.17,s.12; 2016,c.57,s.1.*

9. Regulations

The Lieutenant Governor in Council may make regulations

- (a) prescribing the forms of identification acceptable as proof of the age of a person;
- (a.1) prescribing flavouring agents for the purposes of section 3.1;
- (b) respecting the manner, location, form, size and content of signs permitted or required to be displayed in a place or premises in which tobacco or an electronic smoking device is sold or offered for sale at retail;
- (b.1) prescribing classes or types of retail stores for the purposes of clause 4.1(2)(j);
- (b.2) respecting the form of the notice required to be posted under section 6.1;
- (b.3) regulating signage respecting the advertisement and promotion of tobacco or an electronic smoking device; and
- (c) respecting any other matter that the Lieutenant Governor in Council considers necessary and advisable to carry out the purposes and provisions of this Act.
1991,c.44,s.9; 2004,c.20,s.10; 2005,c.22,s.7; 2015,c.17,s.13.