

*[This is an unofficial consolidation of the Tobacco and Vapour Products Control Act, prepared July 8, 2016 for convenience only. This consolidation includes all amendments in force as of that date and reflects how the Act will read on September 1, 2016, the date on which B.C. Reg. 149/2016 brings into force amendments to the Act.]*

## TOBACCO AND VAPOUR PRODUCTS CONTROL ACT

### CHAPTER 451

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#### **Definitions**

**1** In this Act:

“**activated e-cigarette**” means an e-cigarette in which an e-substance is being vapourized;

“**administrative penalty**” means a monetary penalty or prohibition order imposed under section 6.1;

“**administrator**” means the administrator designated under section 5;

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“**conviction**”, except in section 12, means a conviction for an offence under this Act or under the *Tobacco Act* (Canada);

“**director**” means the director under section 1 of the *Tobacco Tax Act*;

“**e-cigarette**” means the following:

- (a) a product or device, whether or not it resembles a cigarette, containing an electronic or battery-powered heating element capable of vapourizing an e-substance for inhalation or release into the air;
- (b) a prescribed product or device similar in nature or use to a product or device described in paragraph (a);

“**enforcement officer**” means an enforcement officer designated under section 3;

“**e-substance**” means a solid, liquid or gas

- (a) that, on being heated, produces a vapour for use in an e-cigarette, regardless of whether the solid, liquid or gas contains nicotine, and
- (b) that is not a controlled substance within the meaning of the *Controlled Drugs and Substances Act* (Canada);

“**lease**” means to lease as either lessor or lessee;

“**retail**” means a sale to a person for the person’s own consumption or use, or for consumption or use by another person;

“**tobacco**” means tobacco leaves or products produced from tobacco in any form or for any use;

“**vapour product**” means the following:

- (a) an e-cigarette;
- (b) an e-substance;
- (c) a cartridge for or a component of an e-cigarette.

**Prohibitions**

- 2 (1) A person must not deal in, sell, offer for sale, distribute, provide, advertise or promote the use of tobacco or vapour products
- (a) except in compliance with this Act and the regulations made under this Act,
  - (b) in a manner that allows a consumer or purchaser of tobacco or vapour products to be deceived or misled concerning its character, toxicity, composition, merit or safety, or
  - (c) in a manner that interferes with initiatives by government to prevent injury to the health of a consumer or purchaser of tobacco or vapour products or to restrain the use and consumption of tobacco or vapour products.
- (2) A person must not sell, offer for sale, provide or distribute tobacco or vapour products to an individual who has not reached the age specified by regulation under section 11 (2) (g).

- (2.1) It is a defence to a charge under subsection (2) if the person charged with the contravention demonstrates that, in concluding that the individual reached the age specified by regulation, the person
- (a) required the individual to produce a prescribed form of identification,
  - (b) examined the identification, and
  - (c) reasonably believed that the identification
    - (i) was that of the individual, and
    - (ii) had not been altered or otherwise falsified.
- (3) A person must not sell or offer for sale tobacco products from an opened package.
- (4) A person must not sell or offer to sell tobacco or vapour products at retail at a location to which a prohibition order under section 6.1 (2) (b) applies.

**Tobacco and vapour products not  
to be sold in certain places**

- 2.1** (1) A person must not deal in, sell, offer for sale or distribute tobacco or vapour products in any of the following places:
- (a) land, or a building or structure, used primarily for the purposes of a hospital or other health care services;
  - (b) the campus of a public university or other public post-secondary institution;
  - (c) a building or structure that is owned or leased by a public body that is used primarily for athletic or recreation purposes;
  - (d) a building or structure that is owned or leased by the government or a Crown corporation or agency;
  - (e) a prescribed place.
- (2) Subject to subsection (3), if any person contravenes subsection (1) in respect of a place, each manager, owner and lessee of the place is deemed to have contravened that subsection and each is liable for the contravention.
- (3) It is a defence to a charge under subsection (2) if the manager, owner or lessee, as applicable, demonstrates that he or she exercised reasonable care and diligence to prevent the contravention.
- (4) Subsection (2) applies whether or not the person who dealt in, sold, offered for sale or distributed tobacco or vapour products, or any other person, is charged with contravening subsection (1).

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**No tobacco or vapour product use on school property**

**2.2** (1) In this section:

“**board**” means

- (a) a board or francophone education authority under the *School Act*, or
- (b) an authority under the *Independent School Act*;

“**school property**” means property that is

- (a) owned or leased by, or operated under the authority of, a board, and
  - (b) used for the purposes of delivering educational programs or other learning programs,
- and includes real property and improvements, and personal property;

“**superintendent**” means

- (a) the superintendent of schools under the *School Act*, or
- (b) a person exercising similar authority in respect of an independent school.

- (2) Subject to subsection (3), a person must not smoke or use tobacco, or hold lighted tobacco, in or on school property.
- (3) Subsection (2) does not apply to the ceremonial use of tobacco in or on school property if the ceremonial use of tobacco is approved by the board and it is performed
  - (a) in relation to a traditional aboriginal cultural activity, or
  - (b) by a prescribed group for a prescribed purpose.
- (3.1) A person must not use an e-cigarette, or hold an activated e-cigarette, in or on school property.
- (4) Subject to subsection (5), if any person contravenes subsection (2) or (3.1), the board, superintendent and principal each are deemed to have contravened that subsection and each is liable for the contravention.
- (5) It is a defence to a charge under subsection (4) if the board, superintendent or principal demonstrates that each exercised reasonable care and diligence to prevent the contravention.
- (6) Subsection (4) applies whether or not the person who
  - (a) smoked or used tobacco, or held lighted tobacco, or any other person, is charged with contravening subsection (2), or
  - (b) used an e-cigarette or held an activated e-cigarette, or any other person, is charged with contravening subsection (3.1).

**No tobacco or vapour product use  
on health board property**

**2.21** (1) In this section:

“**health board**” means

- (a) a regional health board designated under the *Health Authorities Act*, and
- (b) the board or other governing body of a prescribed organization having as one of its purposes the delivery of health services;

“**health board property**” means the following that are, in whole or in part, owned or leased by, or operated under the authority of, a health board:

- (a) real property and improvements;
- (b) personal property.

(2) Subject to subsection (3), a person must not do any of the following in or on health board property:

- (a) smoke or use tobacco, or hold lighted tobacco;
- (b) use an e-cigarette, or hold an activated e-cigarette.

(3) Subsection (2) does not apply to the following:

- (a) the ceremonial use of tobacco in or on health board property if the ceremonial use of tobacco is approved by the health board and it is performed
  - (i) in relation to a traditional aboriginal cultural activity, or
  - (ii) by a prescribed group for a prescribed purpose;
- (b) the smoking, use or holding of tobacco, or the use or holding of an activated e-cigarette, in or on any area of health board property that is designated by the health board as an area in which a person may use tobacco or e-cigarettes.

**No tobacco or vapour product use  
in or near certain places**

**2.3** (1) Subject to subsection (2), a person must not smoke tobacco, hold lighted tobacco, use an e-cigarette, or hold an activated e-cigarette

- (a) in any building, structure, vehicle or any other place that is fully or substantially enclosed and
  - (i) is 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,
  - (ii) is a workplace, or
  - (iii) is a prescribed place, or
- (b) within a prescribed distance from a doorway, window or air intake of a place described in paragraph (a).

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- (2) Subsection (1) does not apply to the ceremonial use of tobacco
  - (a) in relation to a traditional aboriginal cultural activity, or
  - (b) by a prescribed group for a prescribed purpose.
- (3) Subject to subsection (5), if any person contravenes subsection (1) in respect of a place described under subsection (1) (a) (i) or (iii), each manager, owner and lessee of the place is deemed to have contravened that subsection and each is liable for the contravention.
- (4) Subject to subsection (5), if any person contravenes subsection (1) in respect of a workplace, the employer is deemed to have contravened that subsection and is liable for the contravention.
- (5) It is a defence to a charge under subsection (3) or (4) if the manager, owner, lessee or employer, as applicable, demonstrates that he or she exercised reasonable care and diligence to prevent the contravention.
- (6) Subsections (3) and (4) apply whether or not the person who smoked or held lighted tobacco or used or held an activated e-cigarette, as described in subsection (1), or any other person, is charged with contravening subsection (1).

**Prohibitions on display or promotion of tobacco and vapour products**

- 2.4** (1) A person must not
- (a) display tobacco products or vapour products, or
  - (b) advertise or promote the use of tobacco or vapour products by means of a sign or otherwise
- in any manner prohibited by the regulations.
- (2) Despite subsection (1), the minister may order an exemption from a provision of the regulations made in relation to this section in respect of the retail of tobacco from a building or structure that
- (a) is a protected heritage property within the meaning of the *Local Government Act* or of the *Vancouver Charter*, and
  - (b) in the opinion of the minister, has a historic connection to the retail of tobacco.

**Exception for prescribed medical products**

- 2.41** A person is exempt from the prohibitions set out in sections 2 to 2.4, other than section 2 (1), with respect to vapour products that are prescribed products or devices intended to be used for medical purposes, including to reduce nicotine dependence.

**Enforcement officers**

- 3** (1) The minister may designate as enforcement officers any persons or categories of persons the minister considers qualified to be so designated.

- (2) To carry out the duties of an enforcement officer under this Act, an enforcement officer may at any reasonable time enter and inspect any place
  - (a) to which the public has access and where tobacco or vapour products are offered for sale, or
  - (b) to which any of sections 2.1 to 2.3 apply.
- (3) If an enforcement officer reasonably believes that a contravention or an offence under this Act has been committed, the enforcement officer may seize and detain for the purposes of this Act any item that may constitute evidence of the contravention or offence if the item is
  - (a) in plain view, and
  - (b) in a place to which the public has access.
- (4) A person must not
  - (a) hinder, obstruct or otherwise interfere with an enforcement officer who is acting under this Act, or
  - (b) knowingly make a false or misleading statement, or provide or produce a false document or thing, to an enforcement officer who is acting under this Act.

**Detention or return of things seized**

- 4** (1) If an item is detained under section 3 (3), an enforcement officer must give a receipt for the item to the person from whom it was seized and
  - (a) promptly return the item to the owner of the item, after making copies or taking extracts from the item insofar as the enforcement officer considers this to be required for the purposes of this Act, and the making of copies or the taking of extracts is to be under the supervision of an enforcement officer and at the expense of the person from whom it was seized, or
  - (b) retain the item and make it available for review by the person from whom it was seized, if the enforcement officer considers that retention of the item is necessary and reasonable for the purposes of
    - (i) an investigation of a contravention or an offence under this Act,
    - (ii) the imposition of an administrative penalty under section 6.1, or
    - (iii) the prosecution of an offence under this Act.
- (2) A copy made or extract taken under subsection (1), certified by an enforcement officer as a true copy or extract from the original, is admissible in evidence to the same extent as, and has the same evidentiary value as, the item of which it is a copy or from which it is an extract.
- (3) On conviction for an offence under this Act, an item detained under section 3 (3) in relation to the offence and not returned under subsection (1) is forfeited to the government.

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- (4) An item that is retained under subsection (1) (b) must be returned to its owner, on written request of that person to the administrator, within 120 days of its seizure, unless
- (a) the administrator considers that the item is required for the purposes of a proceeding under this Act, or
  - (b) subsection (3) applies.
- (5) If the owner of an item that is retained under subsection (1) (b) has not made a written request to the administrator for its return within 120 days of its seizure, the item is forfeited to the government.

**Duties of administrator**

- 5** (1) The minister may designate a public service employee to be the administrator.
- (2) The administrator may, in writing, delegate to any person or entity any of the administrator's functions, duties or powers under this Act, except the power to delegate under this subsection.
- (3) A delegation under subsection (2)
- (a) may be cancelled,
  - (b) does not prevent the administrator from carrying out the delegated function or duty or exercising the delegated power, and
  - (c) may be subject to the terms the administrator considers appropriate.

**Agreement to obtain information**

- 5.1** The minister may, for the purpose of administering or enforcing this Act as it relates to tobacco, enter into an agreement to collect information obtained under the *Tobacco Tax Act*.

**Reporting convictions to the administrator**

- 6** (1) A judge and every registrar, deputy registrar or clerk of any court must immediately send to the administrator a transcript, copy or record for each conviction made by the judge.
- (2) A transcript, copy or record sent to the administrator under subsection (1) is evidence of the conviction, appeal or proceedings to which it refers.

**Administrative penalties**

- 6.1** (1) Subject to the regulations, the administrator may make an order under subsection (2) if satisfied on a balance of probabilities that a person has contravened
- (a) a prescribed provision of this Act or of the regulations, or
  - (b) an order of the administrator.



- (2) The administrator, by order, may do one or both of the following:
- (a) impose a monetary penalty on the person, in accordance with the prescribed schedule of penalties;
  - (b) prohibit the person, in accordance with the prescribed schedule of prohibition periods, from selling tobacco or vapour products or offering to sell tobacco or vapour products at retail
    - (i) from the location at which the contravention occurred, and
    - (ii) subject to the regulations, if the administrator is satisfied that it is in the public interest to do so, from any other location, if the person sells or offers to sell tobacco or vapour products at retail at more than one location.
- (2.1) For the purposes of subsection (2) (b), if the contravention that is the subject of the administrative penalty is in respect of
- (a) tobacco only, a prohibition order made under that subsection may be made only in respect of tobacco, and
  - (b) vapour products only, a prohibition order made under that subsection may be made only in respect of vapour products.
- (3) Before making an order under this section, the administrator must provide the person with an opportunity to be heard.
- (4) For the purposes of imposing an increased administrative penalty for a second or subsequent contravention as prescribed within a 5 year period, the only question to be considered is the sequence of the orders imposing administrative penalties and no consideration may be given to the sequence of the contraventions or whether any contravention occurred before or after an order imposing an administrative penalty.
- (5) If the administrator makes an order under this section, the administrator must, in the prescribed manner, deliver to the person who is the subject of the order an administrative penalty notice in the prescribed form.

**Administrative penalties as alternatives  
to offence proceedings**

- 6.2** (1) If the administrator imposes an administrative penalty on a person, a prosecution for an offence under this Act may not be brought against the person for the same contravention that is the subject of the administrative penalty.
- (2) A person who has been charged with an offence under this Act may not be subject to an administrative penalty in respect of the circumstances that gave rise to the charge.

**Amount of monetary penalty**

- 6.3** (1) A monetary penalty imposed under section 6.1 (2) (a) may not exceed \$5 000.

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- (2) If a contravention referred to in section 6.1 (1) continues for more than one day, separate monetary penalties, each not exceeding the maximum permitted under subsection (1) of this section, may be imposed for each day the contravention continues.

**Recovery of monetary penalty**

- 6.4** (1) A person required to pay a monetary penalty must pay the penalty within 30 days of the date on which the notice referred to in section 6.1 (5) is delivered to the person.
- (2) If a person fails to pay a monetary penalty as required under subsection (1), the administrator may file with the Supreme Court or Provincial Court a certified copy of the administrative penalty notice imposing the penalty and, on being filed, the notice has the same force and effect, and all proceedings may be taken on the notice as if it were a judgment of that court.

**Liability of employees, officers, directors or agents of corporations**

- 6.5** If a corporation contravenes
- (a) a prescribed provision of this Act or the regulations, or
  - (b) a prohibition order under section 6.1 (2) (b),
- the administrator may impose a monetary penalty on an employee, officer, director or agent of the corporation who authorizes, permits or acquiesces in the contravention, whether or not a penalty is imposed on the corporation.

**Limitation period**

- 6.6** The time limit for proceeding under section 6.1 is 2 years after the date on which the contravention occurred.

**7 to 10** [Repealed 2006-10-7.]

**Sign indicating prohibition order**

- 10.1** If the administrator makes a prohibition order under section 6.1 (2) (b),
- (a) the person who is the subject of the order must, for the prohibition period, post a sign in the location to which the order applies stating that an order has been made prohibiting the sale of tobacco or vapour products, as applicable, at retail at that location,
  - (b) the sign must be posted in accordance with and meet the requirements of the regulations, and
  - (c) the administrator must publicize
    - (i) the name of the person who is the subject of the order,
    - (ii) the location to which the order applies,

- (iii) the name under which business is conducted at the location, and
- (iv) the content of the sign that is required to be posted under paragraph (a).

#### **Reporting prohibition orders to director**

**10.2** If the administrator orders a prohibition period under section 6.1 (2) (b) that is longer than 14 days, the administrator must send a copy of the order to the director.

#### **Removing tobacco or vapour products from public display**

**10.3** A person must not display

- (a) tobacco at a location to which a prohibition order, made under section 6.1 (2) (b) in respect of tobacco, applies, or
- (b) vapour products at a location to which a prohibition order, made under section 6.1 (2) (b) in respect of vapour products, applies.

#### **Power to make regulations**

- 11**
- (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
  - (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
    - (a) respecting the labelling and packaging, and the selling, distribution, offering, exposure, promotion and advertising, of tobacco and vapour products in British Columbia, including prohibiting the display of tobacco or vapour products and prohibiting forms of promotion or advertising of the use of tobacco or vapour products in British Columbia;
    - (b) respecting the testing and analyzing of tobacco or vapour products that are sold, distributed, advertised or promoted in British Columbia;
    - (c) requiring a manufacturer, distributor, wholesaler or retailer of tobacco or vapour products in British Columbia to submit samples for testing or analysis;
    - (d) respecting the taking of samples and the seizure, detention, forfeiture and disposition of tobacco or vapour products in British Columbia;
    - (e) specifying the content, form and manner of presentation of a warning that must be displayed with tobacco or vapour products at the time the tobacco or vapour products are offered for sale or are sold to a purchaser;
    - (f) specifying the minimum number or amount of tobacco products that must be in a package if the package is to be sold, offered for sale, distributed, advertised or promoted to persons;
    - (g) specifying the age for the purposes of section 2 (2);

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- (h) exempting any tobacco or vapour product from all or any of the provisions of this Act or the regulations, and prescribing the conditions of an exemption;
- (h.1) specifying the size, content and form of a sign referred to in section 10.1 and the location where and manner in which the sign must be posted;
- (h.2) respecting
  - (i) the information that must be disclosed to the public or as provided under subparagraph (ii) by a manufacturer, distributor, wholesaler or retailer about
    - (A) the ingredients, additives or any other components of tobacco or vapour products,
    - (B) the emissions of tobacco or e-substances which arise or may arise from any use of tobacco or vapour products, and
    - (C) the health hazards and effects which arise or may arise from exposure by any means, whether voluntary or not, to tobacco or vapour products, or to the emissions of tobacco or e-substances,
  - (ii) the persons, entities or class or classes of persons or entities to whom the information must be disclosed, and
  - (iii) the content, form, manner and timing of the disclosure;
- (i) prescribing forms for the purposes of this Act and the regulations;
- (j) respecting administrative penalties, including the following:
  - (i) prescribing provisions of this Act or the regulations for which a contravention may result in the imposition of an administrative penalty;
  - (ii) establishing procedures to be followed by the administrator in providing an opportunity to be heard under section 6.1 (3), which need not entail an oral hearing, and establishing evidentiary rules respecting opportunities to be heard;
  - (iii) establishing consequences for failing to appear or provide submissions, as applicable, on an opportunity to be heard under section 6.1 (3), which may include, but are not limited to, proceeding in the absence of the person who fails to appear or without their submission, as applicable;
  - (iv) prescribing, in relation to a contravention under section 6.1 (1), whether an administrative penalty may be imposed if the person who committed the contravention demonstrates to the satisfaction of the administrator that the person exercised due diligence to prevent the contravention;
  - (v) prescribing a schedule of penalties for the purposes of section 6.1 (2) (a) and the matters to be considered by the administrator in imposing a monetary penalty in a particular case;

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- (vi) prescribing a schedule of prohibition periods for the purposes of section 6.1 (2) (b) and the matters to be considered by the administrator in imposing a prohibition period in a particular case;
  - (vii) prescribing the form of notice and manner for delivery of an administrative penalty notice under section 6.1 (5);
  - (viii) establishing consequences for failing to pay a monetary penalty, which may include, but are not limited to, imposing additional penalties;
  - (ix) prescribing the manner and method for paying a monetary penalty;
  - (k) prescribing documents that may be used for proof of age.
- (3) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as contemplated in sections 2.1 to 2.41, and for the purposes of those sections the Lieutenant Governor in Council may make regulations as follows:
- (a) defining a word or phrase;
  - (b) exempting persons or places, or parts of places, from all or part of those sections, with or without conditions;
  - (c) prescribing persons or organizations, including by class;
  - (d) prescribing places, including
    - (i) by class or use, and
    - (ii) a private place;
  - (e) prescribing purposes as contemplated under sections 2.2 (3) (b), 2.21 (3) (a) (ii) and 2.3 (2) (b);
  - (f) prescribing products or devices for the purposes of section 2.41.
- (4) For the purposes of subsection (3), different regulations may be made for different persons, places or things.
- (5) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations prescribing products or devices as e-cigarettes.
- (6) A regulation made under subsection (3) (f) may adopt by reference, in whole or in part and with any changes the Lieutenant Governor in Council considers appropriate, a regulation, code, standard or rule
- (a) enacted as or under a law of another jurisdiction, including a foreign jurisdiction, or
  - (b) set by a provincial, national or international body or any other body that may make codes, standards or rules.
- (7) Unless otherwise stated, a code, standard or rule referred to in subsection (6) is adopted as amended from time to time.

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**Offences**

- 12** (1) A person who contravenes any of sections 2 to 2.4, 3 (4) or 10.1 (a) or (b), an order under section 6.1 (2) (b), or a regulation made under section 11 (2) (a), (c), (e) or (h.2) or (3) commits an offence and is liable on conviction
- (a) for a first offence to a fine of not more than \$2 500 or to imprisonment for a term not exceeding 3 months, or to both the fine and imprisonment, and
  - (b) for a subsequent offence to a fine of not more than \$5 000 or to imprisonment for a term not exceeding 6 months, or to both the fine and imprisonment.
- (2) If a corporation commits an offence under subsection (1) and an officer, director, employee or agent of the corporation directed, authorized, assented to, acquiesced in or participated in the commission of the offence, that individual also commits and is liable to the penalties for that offence.
- (3) If an officer, director, employee or agent of a corporation commits an offence under subsection (1) while acting on behalf of the corporation, the corporation also commits and is liable to the penalties for that offence.
- (4) For the purposes of subsection (3), a corporation has the burden of proving that an officer, director, employee or agent of the corporation was not acting on behalf of the corporation at the time that individual committed an offence under this Act.
- (5) No proceeding for an offence under this section may be commenced after 12 months from the date the cause of action arises.
- (6) [Repealed 2007-12-6.]
- (7) A person who continues an offence under this Act on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed.

**Offence Act**

- 12.1** Section 5 of the *Offence Act* does not apply to this Act.

**Injunction**

- 13** In addition to the penalties provided in section 12, the Attorney General may apply to the Supreme Court for an injunction against any person who, having been convicted of an offence against this Act, continues to contravene this Act or the regulations, ordering the person to cease dealing in, selling, distributing, advertising or promoting the use of tobacco or vapour products in British Columbia until the person complies with this Act or the regulations.

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