

VAPOUR PRODUCTS

INTENTIONS PAPER

WOTTHOW/PFC

DECEMBER 2019

B.C. MINISTRY OF HEALTH



EXECUTIVE SUMMARY

On November 14, 2019, the Minister of Health announced the intention to strengthen the current regulatory framework to address the rise in youth vaping. The Ministry of Health (the Ministry) is proposing new regulations under the *Tobacco and Vapour Products Control Act* (TVPCA) and the *Public Health Act* (PHA) with the proposed regulations under the TVPCA and the PHA to be enacted on April 1, 2020.

As part of the process to develop the regulatory framework, the Ministry is seeking comments on the proposed regulatory changes outlined in this intentions paper. The intentions paper provides:

- a summary of the proposed regulations;
- implications of the regulations for youth, consumers, industry and retailers;
- intended implementation timeframe for the proposed regulations; and,
- information on how to provide comments to the Ministry.

Those interested are invited to submit comments on the proposed changes until January 24, 2020, at 4:30 p.m., using the following:

Email: vaping.info@gov.bc.ca

Mail: Health Protection Branch
Ministry of Health
PO BOX 9646 Stn Prov Govt
Victoria BC V8W 9P1

Personal information is collected by the Ministry of Health under the authority of section 26(c) and 26(e) of the *Freedom of Information and Protection of Privacy Act*, for the purposes of informing the vaping regulatory framework. If you have any questions about the collection, use and disclosure of your personal information, please contact: Lee Scalzo, A/Manager, Tobacco and Vapour Products Program, Health Protection Branch, Population and Public Health. Ministry of Health, PO BOX 9646 Stn Prov Govt, Victoria BC, V8W 9P1. Telephone: 250-952-3105

The Ministry also encourages associations to distribute the intentions paper among their members. All submissions will be treated with confidentiality by Ministry staff when preparing consultation reports. Please note however that comments you provide and information that identifies you as the source of those comments may be publicly available if a Freedom of Information request is made under the *Freedom of Information and Protection of Privacy Act*.

INTRODUCTION

What is Vaping and What are Vapour Products?

Vaping is the inhaling and exhaling of an aerosol or vapour e-substance produced by a vapour product device. The vapour product device can be an electronic cigarette (known as an “e-cigarette”), vape pen, or personal vaporizer (known as “mods”). The device consists of a mouthpiece, a battery, a cartridge for e-substances, and a heating element that is usually powered by a battery. The e-substance may or may not contain nicotine or have a flavouring compound. Flavouring compounds are chemicals or blends of chemicals used to make different flavours. The e-substance aerosol may contain dozens of chemicals. British Columbia’s (B.C.’s) regulations need to be strengthened to protect youth from the harms of vaping and vapour products.

What Regulatory Action is the Ministry Proposing?

On November 14, 2019, the Minister of Health and the Government of B.C. introduced a 10-point plan to protect young people from the harms of vaping and vapour products. Critical to this plan is the introduction of new regulations.

10-POINT ACTION PLAN SUMMARY:

1. Regulate nicotine content in vapour products.
2. Restrict the sale of flavoured vapour products.
3. Implement new labelling requirements to include plain packaging and health warnings.
4. Strengthen restrictions on public advertising.
5. Enhance compliance and enforcement of provincial laws and regulations controlling vapour products.
6. Increase the provincial sales tax on vapour products and accessories.
7. Create a provincial youth advisory committee to support and advise on youth vaping, education, social awareness and other initiatives.
8. Distribute the B.C. Lung Association Vaping Prevention Toolkit to all schools for students, parents and educators.
9. Launch a ‘stop vaping’ youth social awareness and marketing campaign.
10. Enhanced QuitNow resources for youth wanting to quit vaping.

DOES THE PROVINCE ALREADY REGULATE AND CONTROL VAPING AND VAPOUR PRODUCTS?

Background Information on Federal and Provincial Vaping Legislation

Both the federal and provincial governments have the authority to regulate vapour products.

Provincial

In 2016, B.C. enacted the TVPCA and its regulation which brought vapour products into a regulatory regime. The restrictions enacted brought vapour products in line with restrictions already in place for tobacco products.

In B.C., vapour products are regulated under the TVPCA and the Tobacco and Vapour Products Control Regulation (TVPCR). Vapour products are treated the same as tobacco in that:

- they cannot be sold to anyone under 19 years of age;
- they cannot be openly displayed or advertised in any all-ages retail location;
- locations for vaping are subject to the six-metre buffer zone around all public doorways, open windows and air intakes; and,
- no vaping is permissible on school properties (K-12), hospital properties (some exceptions for designated smoking/vaping spaces), work places, restaurants or vehicles with children under 16 years of age (*Motor Vehicle Act*).

Federal

In 2018, the federal government introduced the *Tobacco and Vaping Products Act* (TVPA) to control the manufacture, sale, labelling, content (i.e., nicotine) and the promotion of vapour products. Current federal statutory authorities covering vapour products include the TVPA, *Canada Consumer Product Safety Act* (CCPSA), *Food and Drug Act* (FDA), and the Consumer Chemicals and Containers Regulation, 2001. These measures restrict the age to purchase vapour products, and prohibit sponsorships, lifestyle advertising, health claims, and endorsements of flavours specifically targeting young people.

Since August 2017, Health Canada has been actively engaged in a series of public consultations to inform and guide a future regulatory framework. Consultations have focused on further restrictions with respect to advertising, access and appeal, and labelling and packaging.

In May 2018, the federal government regulated the manufacture, sale, labelling and promotion of vapour products. The TVPA:

- made nicotine legal in vapour products;
- set the national age at 18 years;
- restricted certain youth appealing confectionary flavours; and,
- prohibited product endorsements or making any health claims.

On June 22, 2019, a proposed draft of the federal Vaping Products Labelling and Packaging Regulations, was published in the Canada Gazette, Part 1. The comment period closed on September 5, 2019. The federal government has yet to advance the file.

PROPOSED PROVINCIAL REGULATIONS

The following information outlines the proposed regulatory changes aimed at protecting youth from the harms of vaping, including:

- prescribe nicotine as a health hazard;
- restrict the sale of flavoured vapour products;
- implement new labeling requirements;
- require plain packaging; and,
- strengthen restrictions on public advertising.

1. Prescribe Nicotine as a ‘Health Hazard’

Health hazards are conditions or things that endanger public health or are associated with injury or illness. An important approach to public health in B.C. is taking measures to prevent health hazards, respond to health hazards, and regulate the operations, activities, or conditions that could pose a health hazard.

The Ministry intends to use existing legislative authorities to identify certain matters and activities related to vaping as health hazards. The following items are proposed as public health hazards:

- nicotine, unless it is authorized under other legislation; and
- e-substance vapour products without cannabis and nicotine (non-nicotine and non-cannabis e-substance).

Prescribing matters and activities related to vaping as health hazards allows the Province to place conditions on activities such as sales, distribution, marketing, promotion and messaging as outlined below.

Non-nicotine or non-cannabis e-substances will not be permitted for sale in B.C. This restriction is to prevent youth from starting vaping. Research suggests youth start vaping by using flavoured vapes that do not contain nicotine or cannabis.

2. Restrict Nicotine Concentration in Vapour Products

The Province intends to place limits on the concentration of nicotine in e-substances.

The allowable concentration of nicotine in vapour products sold or distributed in B.C. will be expected to meet the following criteria:

- the e-liquid nicotine strength must not exceed 20 mg/mL;
- e-cigarette tanks and pods cannot exceed a capacity of more than 2 mLs; and,
- the maximum volume of nicotine-containing e-liquid for sale in one refill container cannot exceed 10 mLs.

3. Restrict the Sale and Distribution of E-substances and Nicotine Containing Products

Currently, under the TVPCA, retailers selling vapour products are not required to have a license or any other authorization. The absence of an authorization makes it extremely difficult for health authorities, responsible for enforcing the current regulation under the TVPCA, to determine if retailers are complying with existing rules. To ensure there is communication between enforcement officers and retailers and ensure that communities have available information to inform by-laws and community planning, a notification requirement is necessary.

The proposed regulations include provisions to require retailers to notify the health authorities and/or Ministry if they are engaging in selling vapour products. This is necessary to ensure that health authorities can target their enforcement activities.

The new proposed regulations will also create different classes of retailers to distinguish between those retailers that are accessible to all-ages and those retailers that have age restrictions in place to enter the establishment (i.e., 19 years of age). This means, two classes of retailers who sell nicotine containing vapour products are contemplated at present:

Class 1: Retailers with all-ages access and age verification required to purchase – such as grocery stores and convenience stores.

Class 2: Retailers with age restrictions to enter the establishment and age verification to purchase in place – such as a specialized vapour product store.

The creation of different category of retailers, enables future restrictions to be tailored to the specific category of retailer.

Finally, retailers that engage in this regulated activity will be known as “operators” for the purposes under the PHA and therefore will be subject to the rules that govern operators. For example, under the PHA, operators are required to ensure that their employees are adequately trained.

4. Restrict the Sale of Flavoured Vapour Products

The Ministry is considering implementing restrictions on the sale of flavoured vapour products.

The Class 1 vapour product retailers (see section 3) are all-ages access retailers where age-verification is required to purchase (e.g., convenience store), and they will only be able to sell tobacco flavoured e-liquids or pods. This will provide adult smokers a choice to access nicotine vapour products where tobacco products are sold in the same retail outlets.

Class 2 vapour product retailers (see section 3) are age restricted establishments that will be able to sell tobacco flavoured e-liquids or pods and additional flavoured products that contain nicotine.

Class 1 or 2 retailers will not be permitted to sell products that imply an association with confectionary, dessert, soft drink or an energy drink (i.e., either flavour or name). The Province is considering expanding this restriction to food and beverage flavours.

Flavoured e-substances that do not contain nicotine or cannabis will not be permitted for sale in B.C.

5. New Labelling, Packaging and Health Warning Requirements

Consumers will have the necessary information to make informed decisions about using vapour products. The Ministry will require that retailers may only sell vapour products that contain the following labelling and packaging features:

- nicotine is an addictive substance and the concentration of nicotine in the e-substance;
- a hazard symbol and text to warn that the contents are poisonous;
- product ingredients; and,
- plain packaging to reduce the appeal to youth.

These regulations will ensure that all e-substances, whether in containers, bottles or packages, will have a label meeting the above criteria, at the time of purchase. Labelling of e-substances will assist adult consumers to make informed decisions about the products they ingest.

6. Strengthen Restrictions on Public Advertising

Existing Provincial rules address advertising within retail locations and the proposal extends the restrictions.

New regulations will strengthen restrictions on public advertisements so that children and youth are not exposed to messaging and advertising when they are riding the bus or waiting at bus stops, spending time in community parks or shopping malls, or from billboards as they are travelling in their communities. Restrictions will also apply to advertising and messaging of flavoured vaping products.

Retailers who are authorized to sell vapour products will be permitted to engage in some advertising within a retail establishment; however, there will be restrictions to ensure advertising is not visible to children and youth.

COMMENT SUBMISSION

The Ministry is seeking comments on the proposed regulatory changes outlined in this intentions paper. Those interested are invited to submit comments on the proposed changes until January 24, 2020, at 4:30 p.m., using the following:

Email: vaping.info@gov.bc.ca

Mail: Health Protection Branch
Ministry of Health
PO BOX 9646 Stn Prov Govt
Victoria BC V8W 9P1

The Ministry also encourages associations to distribute the intentions paper among their members. All submissions will be treated with confidentiality by Ministry staff when preparing consultation reports. Please note however that comments you provide and information that identifies you as the source of those comments may be publicly available if a Freedom of Information request is made under the *Freedom of Information and Protection of Privacy Act*.