



PRINCE EDWARD ISLAND
ÎLE-DU-PRINCE-ÉDOUARD

TOBACCO AND ELECTRONIC SMOKING DEVICE SALES AND ACCESS ACT

PLEASE NOTE

This document, prepared by the *Legislative Counsel Office*, is an office consolidation of this Act, current to February 1, 2025. It is intended for information and reference purposes only.

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).

If you find any errors or omissions in this consolidation, please contact:

Legislative Counsel Office
Tel: (902) 368-4292
Email: legislation@gov.pe.ca



TOBACCO AND ELECTRONIC SMOKING DEVICE SALES AND ACCESS ACT

Table of Contents

| Section | Page |
|---|-----------|
| INTERPRETATION AND ADMINISTRATION | 5 |
| 1. Definitions..... | 5 |
| 1.1 Application of Act..... | 5 |
| 2. Administration | 6 |
| 3. Inspectors | 6 |
| PROHIBITED PRODUCTS | 6 |
| 3.1 Definition of “sell or offer to sell” | 6 |
| PROVISION OF TOBACCO OR AN ELECTRONIC SMOKING DEVICE TO PERSONS UNDER 21 | 7 |
| 4. Sale or supply to person under 21 | 7 |
| SALE PROHIBITED IN DESIGNATED PLACES | 8 |
| 4.1 Sale in a designated place | 8 |
| 4.2 Sale only in tobacconist shop..... | 9 |
| VENDING MACHINES, DISPLAYS AND ADVERTISING | 9 |
| 5. Vending machines..... | 9 |
| 5.1 Tobacco not to be displayed..... | 9 |
| 5.2 Tobacco not to be advertised or promoted | 10 |
| 5.3 Device not to be advertised or promoted | 10 |
| 5.4 False, misleading or deceptive advertising | 11 |
| REQUIRED SIGNS | 11 |
| 6. Signs respecting tobacco..... | 11 |
| 6.1 Notice of suspension or cancellation of retail vendor’s license | 12 |
| GENERAL | 12 |
| 7. Limitation of liability | 12 |
| 7.1 Obstruction..... | 12 |
| 8. Offences and penalties | 12 |
| 8.1 Forfeiture of seized items..... | 13 |
| 9. Regulations | 14 |



TOBACCO AND ELECTRONIC SMOKING DEVICE SALES AND ACCESS ACT

CHAPTER T-3.1

INTERPRETATION AND ADMINISTRATION

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.

1.1 Application of Act

For greater certainty, this Act does not abrogate or interfere with the authority of the Cannabis Management Corporation under the *Cannabis Management Corporation Act* R.S.P.E.I. 1988, Cap. C-1.3, to sell, offer to sell, expose for sale and have in its possession for sale, to persons who may lawfully purchase cannabis, items that are related to or used in the consumption of cannabis. 2024,c.78,s.2.

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, during regular business hours, the business premises of a person who sells tobacco or an electronic smoking device at retail, which may include
 - (i) examining and taking copies of any records related to tobacco, an electronic smoking device or a prescribed flavouring agent, and
 - (ii) opening any container or package that contains or may contain tobacco, an electronic smoking device or a prescribed flavouring agent;
 - (a.1) seize, take away, impound or hold anything located at the business premises of a person who sells tobacco or an electronic smoking device at retail that the inspector has reasonable grounds to believe
 - (i) is or was used in connection with a contravention of this Act or the regulations, or
 - (ii) will afford evidence relevant to a contravention of this Act or the regulations;
 - (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.

Assistance from peace officer

- (3) An inspector may request assistance from a peace officer, and the peace officer shall assist the inspector, in
- (a) exercising the inspector's powers or performing the inspector's duties under this Act or the regulations; or
 - (b) enforcing this Act or the regulations. *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; 2024,c.78,s.3.*

PROHIBITED PRODUCTS

3.1 Definition of "sell or offer to sell"

- (1) In this section, "sell or offer to sell" includes possessing, keeping or storing for the purpose of selling or offering for sale.

Sale of flavoured tobacco or electronic smoking device

- (2) No person shall sell or offer to sell at retail, tobacco or an electronic smoking device that contains a prescribed flavouring agent.

Presumed intention to sell flavoured product

- (3) A person who
- (a) sells or offers to sell tobacco or electronic smoking devices at retail; and
 - (b) possesses, keeps or stores tobacco or an electronic smoking device that contains a prescribed flavouring agent,
- is presumed to possess, keep or store the tobacco or electronic smoking device that contains a prescribed flavouring agent for the purpose of selling it or offering it for sale at retail, unless the contrary is proven.

Sale of flavouring agent or electronic smoking device with high nicotine content

- (4) No person shall sell or offer to sell at a tobacconist shop,
- (a) a prescribed flavouring agent; or
 - (b) an electronic smoking device with a nicotine concentration that exceeds a prescribed number of milligrams per millilitre according to its packaging.

Presumed intention to sell

- (5) A person who
- (a) sells or offers to sell tobacco or electronic smoking devices at a tobacconist shop; and
 - (b) possesses, keeps or stores a product referred to in clause (4)(a) or (b),
- is presumed to possess, keep or store the product referred to in clause (4)(a) or (b) for the purpose of selling it or offering it for sale at a tobacconist shop, unless the contrary is proven.

2015,c.17,s.4; 2019,c.40,s.2; 2024,c.78,s.5.

**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) Repealed by 2024,c.78,s.6.

“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; 2024,c.78,s.6.

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. Limitation of liability

- (1) The Minister, an inspector or any other person acting under the authority of this Act or the regulations is not liable in any civil action for anything done or not done, in good faith, in the performance or intended performance of a duty or the exercise or intended exercise of a power under this Act or the regulations.

No liability for reporting or assisting

- (2) A person is not liable in any civil action for reporting a contravention or suspected contravention of this Act or the regulations or assisting an inspector in performing the inspector's duties or exercising the inspector's powers under this Act or the regulations, provided the person is acting in good faith. *1991,c.44,s.7; 2024,c.78,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

- (1) Every person who contravenes a provision of this Act or the regulations, or whose employee contravenes subsection 3.1(2) or (4), 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) where the person is an individual,
 - (i) for a first offence, to a fine of \$1,000,
 - (ii) for a second offence, to a fine of \$2,500, and
 - (iii) for a third or subsequent offence, to a fine of \$5,000; and
 - (b) where the person is a corporation,
 - (i) for a first offence, to a fine of \$5,000,
 - (ii) for a second offence, to a fine of \$10,000, and
 - (iii) for a third or subsequent offence, to a fine of \$25,000.

Continuing offence

- (2) A contravention of this Act or the regulations that is of a continuing nature constitutes a separate offence in respect of each day or part of a day that it continues.

Additional penalties

- (3) Where a person who sells or offers to sell tobacco or electronic smoking devices at retail is found guilty of an offence related to a contravention of subsection 3.1(2) or (4), or 4(1), for a second or subsequent time, a judge of the provincial court may, in addition to imposing the applicable fine under subsection (1), make an order prohibiting the person from selling or offering to sell tobacco or electronic smoking devices at retail, at the business premises where the contravention occurred or any premises where the business is relocated, for
- (a) in the case of a second offence, up to seven consecutive days;
 - (b) in the case of a third offence, up to 30 consecutive days; and
 - (c) in the case of a fourth or subsequent offence, up to 90 consecutive days.

Order posted

- (4) A person who is subject to an order made under subsection (3) shall post the order as directed by an inspector, at the business premises where the order applies, for the duration of the order. *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; 2024, c.78, s.8.*

8.1 Forfeiture of seized items

- (1) Anything seized under this Act is forfeited to the Government unless, within 30 days following the seizure, the person from whom the thing was seized, or the owner of the thing, applies to the Supreme Court to establish the right to possession of the thing.

Right to possession

- (2) For the purpose of an application under subsection (1), the applicant has the right to possession of the thing seized if the possession did not, at the time the seizure was made, constitute a contravention of this Act or the regulations.

Restoration order

- (3) On an application made under subsection (1), the Supreme Court may order that the thing seized be restored to the applicant if the court is satisfied that
- (a) the applicant is entitled to possession of the thing seized;
 - (b) the thing seized is not required as evidence in any proceeding;
 - (c) continued detention of the thing is not necessary to prevent the commission of an offence; and
 - (d) it is unlikely that the thing would be forfeited upon conviction under subsection (6).

Alternative order

- (4) Where the court is satisfied that an applicant is entitled to possession of the thing seized but is not satisfied as to all of the matters mentioned in clauses (3)(b) to (d), the court may order that the thing seized be restored to the applicant
- (a) upon the expiration of three months from the date of the seizure, if no proceeding in respect of an offence has been commenced; or
 - (b) upon the final conclusion of any such proceeding, subject to subsection (6).

Forfeiture if not restored on application

- (5) If an application has been made for the return of any thing seized under this Act, but upon the hearing of the application no order is made by the court under subsection (3) or (4), the thing seized is forfeited to the Government.

Forfeiture on conviction

- (6) If a person is convicted of an offence under this Act or the regulations, the court shall order that any thing seized in connection with the offence be forfeited to the Government, unless the court concludes that forfeiture would be unjust in the circumstances.

Relief against forfeiture

- (7) Any person with an interest in a thing forfeited under this section may apply to the Supreme Court for relief against forfeiture, and the court may make an order providing for any relief that it considers just, including one or more of the following orders:
- (a) an order directing that the thing be returned to the applicant;
 - (b) an order directing that any interest in the thing be vested in the applicant;
 - (c) an order directing that an amount be paid by the Government to the applicant by way of compensation for the forfeiture.

No relief against forfeiture

- (8) The court shall not order any relief under subsection (7) unless the court is satisfied that the applicant did not, directly or indirectly, participate in or benefit from any offence related to the seizure. *2024, c.78, s.9.*

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;
 - (a.2) prescribing the maximum permitted nicotine concentration of an electronic smoking device in milligrams per millilitre for the purpose of clause 3.1(4)(b);
 - (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; 2024, c.78, s.10.*