

*Strengthening Ontario's Smoking and Vaping Laws*  
Summary of Proposed Regulation under  
*Smoke-Free Ontario Act, 2017*

## Introduction

The *Smoke-Free Ontario Act, 2017* (SFOA, 2017) – Schedule 3 to Bill 174 --received Royal Assent on December 12, 2017. The SFOA, 2017 will come into force on a day to be proclaimed by the Lieutenant Governor. When it comes into force, the SFOA, 2017 will repeal the existing *Smoke-Free Ontario Act* (SFOA) and *Electronic Cigarettes Act, 2015* (ECA) and replace them with a single legislative framework. The SFOA, 2017 will regulate the sale, supply, use, display, promotion of tobacco and vapour products (e.g. e-cigarettes, including heat-not-burn devices, and e-cigarette accessories), and the smoking and vaping of medical cannabis. Additional substances could be made subject to the SFOA, 2017 by regulation in the future.

The following summary outlines the proposed regulation that would be made under the SFOA, 2017. The proposed regulation responds to the changing landscape related to tobacco, vapour products and medical cannabis.

- Since the enactment of the *Smoke-Free Ontario Act* in 2006, the prevalence of tobacco smoking has significantly decreased – from 20.9% in 2005 to 16.7% in 2016 (CCHS, 2017). However, in recent years, the rate of tobacco smoking has plateaued. Approximately two million Ontarians still smoke tobacco cigarettes. Tobacco use remains the leading cause of preventable disease and death in Ontario.
- E-cigarettes are a relatively new and quickly evolving technology. The evidence concerning their potential health effects and implications for tobacco control efforts is in its early stages.
- The federal government has proposed to legalize recreational cannabis in July 2018 and has indicated that medical cannabis will continue as a separate system post-legalization. Evidence about the use, forms, and effectiveness of medical cannabis is still evolving. Smoking is the most common way of consuming medical cannabis<sup>1</sup>.

## Proposed Regulation

The following summary outlines the proposed regulation that would be made under the SFOA, 2017. The ministry is soliciting feedback on the content of the proposed new regulation.

### Places of Use

The SFOA, 2017, when it comes into force, will prohibit the smoking of tobacco, the use of e-cigarettes (including e-cigarettes containing medical cannabis), and the smoking of medical cannabis in the following places:

- Enclosed public places
- Enclosed workplaces

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<sup>1</sup> Canadian Centre on Substance Abuse. “Clearing the Smoke on Cannabis: Respiratory Effects of Cannabis Smoking.” J. Diplock and D. Plecas. 2015

- Primary and secondary schools and their grounds
- Indoor common areas in condominiums, apartment buildings and university/college residences
- Child care centres
- Places where home child care is provided
- Places where an early years program or service is provided
- Reserved seating areas of outdoor sports or entertainment venues

The proposed regulation, if approved, would prohibit the smoking of tobacco, the use of e-cigarettes (including e-cigarettes containing medical cannabis) and the smoking of medical cannabis in the following additional places:

- Restaurant and bar patios (except for uncovered patios established by a veterans' organization prior to November 18, 2013, provided that the patio is not used to vape recreational cannabis)
- Sheltered areas with a roof and more than two walls to which the public is invited or employees frequent
- Children's playgrounds and public areas within 20 metres of playgrounds
- Sporting areas owned by the Province, a municipality or post-secondary campus (excluding golf courses), adjacent spectator areas, and public areas within 20 metres of these places
- Nine meters from any entrance or exit of a public hospital, private hospital, psychiatric facility, long-term care home, and independent health facility
- Outdoor grounds of public hospitals, private hospitals and psychiatric facilities
- Outdoor grounds of certain Ontario government office buildings
- Public areas within 20 metres from the perimeter of the grounds of a school or a youth and/or children's recreation centre during the designated hours that children and youth are allowed to use the facility
- Nine metres from a restaurant or bar patio

### **Exemptions for Places of Use**

The SFOA, 2017 sets out limited exemptions for the smoking of tobacco, and the smoking and vaping of medical cannabis in:

- Controlled rooms in residential care facilities (e.g., long-term care homes, certain retirement homes, publicly funded supportive housing), designated psychiatric facilities and designated veterans' facilities.
- Guest rooms in hotels, motels and inns that have been designated by the proprietor or employer to accommodate tobacco smoking or medical cannabis smoking/vaping.
- Scientific research and testing facilities, if the smoking or vaping is for the purpose of conducting research or testing concerning tobacco, vapour products or cannabis.

The SFOA, 2017 will also have an exemption for the smoking and vaping of medical cannabis in residential hospices.

The SFOA, 2017 will have an exemption for the use of tobacco for traditional Indigenous cultural and spiritual purposes. The Act will also include an obligation on the operator of certain health care facilities to set aside an indoor area to accommodate the use of tobacco for traditional Indigenous cultural or spiritual purposes, at the request of an Indigenous resident.

To assist with the implementation of the exemptions in the SFOA, 2017, the proposed regulation would:

- Designate the following facilities as facilities that may construct and operate a controlled room for tobacco smoking or medical cannabis smoking or vaping:
  - Homes for special care licensed under the *Homes for Special Care Act*
  - Psychiatric facilities formerly designated under the now repealed *Mental Hospitals Act*
  - Specific veterans' facilities: the Parkwood Hospital site of St. Joseph's Health Care London, and the Kilgour wing (K wing) and the George Hees wing (L wing) of the Sunnybrook and Women's College Health Sciences Centre
- Prescribe private hospitals and independent health facilities as health care facilities that must accommodate the indoor use of tobacco for traditional Indigenous spiritual and cultural purposes, at the request of an Indigenous resident of the facility.
- Prescribe structural, ventilation, maintenance and signage requirements for facilities with controlled rooms.
- Expand the exemptions for the smoking of tobacco and the smoking and vaping of medical cannabis in designated guest rooms of hotels, motels and inns, and in controlled rooms of residential care facilities, designated veterans' facilities and designated psychiatric facilities, to include all e-cigarette use.
- Exempt the use of a vapour product by an actor in a stage production, if certain conditions are met (e.g., e-cigarette cannot contain a controlled substance or cannabis, vapour must be unscented, and no consideration can be provided for the depiction of the e-cigarette in the production).
- Allow retailers operating under the proposed display exemption (see Display and Promotion section below) to activate an e-cigarette for the purposes of testing a vapour product or demonstrating to a customer how to operate a vapour product, provided that no vapour is inhaled or exhaled from the product.

## Places of Sale

The SFOA, 2017, when it comes into force, will prohibit the sale of tobacco and vapour products in the following places:

- public hospitals
- long-term care homes
- pharmacies
- grocery stores that contain pharmacies
- post-secondary education campuses
- certain Ontario government office buildings
- primary and secondary schools and their grounds
- child care centres
- places where home child care is provided

The proposed regulation would prescribe a private hospital and an independent health facility as additional places where the sale of tobacco and vapour products would be prohibited.

## Flavoured Tobacco

The SFOA, 2017 will prohibit the sale and distribution of flavoured tobacco products. “Flavoured tobacco products” are defined to include a tobacco product that is represented as being flavoured, that contains a flavouring agent or that is presented by its packaging, by advertisement or otherwise as being flavoured.

The proposed regulation would define “flavouring agent” to mean one or more artificial or natural ingredients contained in any of the component parts of a tobacco product, as a constituent or an additive, that impart a distinguishing aroma or flavour other than tobacco either before or during the consumption of the tobacco product, including aromas or flavours of herbs and spices.

The proposed regulation would exempt the following tobacco products from the sales ban:

1. A flavoured cigar that,
  - i. Weighs more than 1.4 grams but less than 6 grams, excluding the weight of any mouthpiece or tip,
  - ii. Has a wrapper fitted in spiral form,
  - iii. Has no tipping paper, and
  - iv. Contains only a flavouring agent that imparts a flavour or aroma of wine, port, whiskey or rum.
2. A flavoured cigar that,
  - i. Weighs 6 grams or more, excluding the weight of any mouthpiece or tip,
  - ii. Has a wrapper fitted in spiral form, and
  - iii. Has no tipping paper.
3. Flavoured pipe tobacco (which would not include flavoured shisha tobacco)

## **Flavoured Vapour Products**

The SFOA, 2017 contains a prohibition on selling flavoured vapour products that have been prescribed by regulation. However, at this time, the ministry is not proposing to prescribe any flavoured vapour products as prohibited for sale at this time but may prescribe flavoured vapour products in the future.

## **Sale and Supply to Minors**

The SFOA, 2017 will carry forward existing provisions in the SFOA and ECA that prohibit the sale or supply of tobacco products and vapour products to a person who is less than 19 years old, and the sale or supply of these products to a person who appears to be less than 25 years old without asking the person to provide identification and being satisfied that the person is at least 19 years old.

The proposed regulation would prescribe the following forms of identification to verify a customer's age:

- Identification that includes a photograph of the person, states his or her date of birth, and reasonably appears to have been issued by a government.
- Examples: an Ontario driver's licence, a Canadian passport, a Canadian citizenship card with a photograph of the person to whom the card is issued, a Canadian Armed Forces identification card, or a photo card issued by the Liquor Control Board of Ontario.

The proposed regulation would also include a limited exemption that allows persons under 19 to obtain a vapour product for medical cannabis purposes. The medical cannabis user could obtain the vapour product from a parent, guardian or caregiver, or a person authorized to produce and distribute medical cannabis under applicable federal law.

## **Signs**

The SFOA, 2017, when it comes into force, will carry forward existing provisions in the SFOA and ECA that prohibit the sale of tobacco and vapour products at retail locations if prescribed signs are not posted. It would also continue the existing penalty system in the SFOA for tobacco retail locations where tobacco sales offences are repeatedly committed. These penalties are known as "automatic prohibitions" and they prohibit the retail premise from selling or storing tobacco for a period of six to twelve months.

The proposed regulation would describe the following signs that must be posted by retailers of tobacco and vapour products:

- Health warning sign about tobacco products
- Age restriction sign
- Identification sign

The requirements for these signs would be the same as currently prescribed in the SFOA and ECA regulations (e.g., signs must be posted in a place where each sign is clearly visible).

The proposed regulation would also specify the type of sign that must be posted by the owner or occupant of a retail location subject to an automatic prohibition. The requirement for this sign would also be the same as currently prescribed in the SFOA regulation.

Finally, the proposed regulation would prescribe the “no smoking” and “no vaping” signs that every employer and proprietor responsible for a smoke- or vape-free place would be required to post in accordance with the SFOA, 2017.

## Display and Promotion

The SFOA, 2017 will prohibit the display and promotion of tobacco products, branded tobacco product accessories, and vapour products at places where they are sold or offered for sale.

The proposed regulation would include exemptions that allow certain businesses to display tobacco products, branded tobacco product accessories, and/or vapour products, and promote such products, if certain conditions are met. Below is a summary of the proposed exemptions.

- *Tobacconists*: tobacconists registered with the local board of health would be permitted to display and promote specialty tobacco products, if at minimum 85% of the store’s revenues or inventory is dedicated to specialty tobacco products. “Specialty tobacco products” would include tobacco products and tobacco product accessories, but not cigarettes. Tobacconists would not be permitted to sell vapour products, except for heat-not-burn devices that use tobacco. The remaining up to 15% of the store’s revenues or inventory would be dedicated to other items associated or branded with the name of the tobacconist or a brand of tobacco.
- *Specialty vape stores*: specialty vape stores registered with the local board of health would be permitted to display and promote vapour products, if at minimum 85% of the store’s revenues or inventory is dedicated to vapour products, as defined in the Act. Speciality vape stores would not be permitted to sell tobacco products. The remaining up to 15% of the store’s revenues or inventory would be dedicated to other items associated or branded with the name of the vape store or a brand of vapour product.
- *Duty free tobacco retailers*: duty free retailer [as defined in subsection 2 (1) of the Customs Act (Canada)] would be permitted to display tobacco products and tobacco product accessories, consistent with the current exemption in section 5 of Ontario Regulation 48/06 under the *Smoke-Free Ontario Act*.
- *Manufacturers*: manufacturers of tobacco products or vapour products would be permitted to display and promote the products they manufacture. Tobacco manufacturers would need to hold a registration certificate under section 7 of the *Tobacco Tax Act* (Ontario).

### *Additional Proposed Conditions for Exemptions*

In order for any business described above to display and/or promote products under the exemption, the following additional conditions would need to be met, subject to any qualification noted below:

- Entry into the place of business must be restricted to persons who are 19 years of age or older. (This condition would not apply to duty free retailers).
- The products displayed inside the place of business and any promotional material cannot be visible from outside the place at any time of day.
- The place of business must be located in a building.
- The place of business must not be a thoroughfare.

### *Signs and Informational Documents*

The proposed regulation would permit any person who sells tobacco or vapour products to post informational signs and make product informational documents (i.e., specifications) available for viewing, if the following conditions are met:

- Signs: no more than three (3) signs, not exceeding 968 square centimetres, with white background and black text or graphics that do not identify or reflect a brand of tobacco product or vapour product, or any element of such a brand.
- Product informational document: only available for viewing inside the establishment by persons over 19; cannot be removed from the establishment.

### **Packaging and Health Warnings**

The SFOA, 2017, when it comes into force, will carry forward existing provisions in the SFOA that prohibit the sale of tobacco products not packaged in accordance with the regulations.

The proposed regulation would include the following packaging requirements:

- Cigarettes and cigarillos must be in packages of at least 20.
- Packaging must comply with the *Tobacco Act* (Canada) and the regulations made under that Act and the package must bear or contain the information required under that Act and those regulations and contains health warnings.

If federal Bill S-5 is passed and the *Tobacco Act* (Canada) and its regulations are amended to regulate the packaging and labelling of vapour products, then the proposed Ontario regulation would also reference those federal requirements for vapour products.



## **Procedure for Employees**

The SFOA, 2017, when it comes into force, will carry forward existing provisions in the SFOA and ECA that prohibit an employer from retaliating against an employee who has acted in accordance with or sought the enforcement of the Act.

The proposed regulation would describe the process that an employee may follow when he or she complains of retaliation. This process would mirror the process currently prescribed by regulation under the SFOA and ECA.

## **Home Health-Care Workers**

The SFOA, 2017, when it comes into force, will provide home health-care workers with a right to request that a person not smoke tobacco, use an e-cigarette (including an e-cigarette containing medical cannabis) or smoke medical cannabis, in his or her presence while he or she is providing health care services. If the person refuses, the home health-care worker will be able to leave the home without providing further services, unless to do so without would present an immediate serious danger to the health of any person.

The proposed regulation would establish the procedure that applies when a home health-care worker has exercised this right and left the home. This procedure would mirror the procedure currently prescribed by regulation under the SFOA.

## **Evidentiary Presumptions for Medical Cannabis**

The SFOA, 2017, once proclaimed into force, will prohibit the smoking and vaping of medical cannabis in certain places, and impose obligations on employers and proprietors to ensure compliance with that prohibition in the places they control that are smoke-free. Non-compliance with this prohibition or employer/proprietor obligations would be an offence under the SFOA, 2017. To assist with the prosecution of such offences, the proposed regulation would prescribe rules of evidence for proving in a prosecution that a substance is medical cannabis.