

Smoke-free Places Act

CHAPTER 12 OF THE ACTS OF 2002

as amended by

2002, c. 30, s. 19; 2005, c. 42, s. 90; 2005, c. 59;
2007, c. 54; 2014, c. 58, s. 1



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**An Act to Protect Young Persons
and Other Persons from Tobacco Smoke**

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(The table of contents is not part of the statute)

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Short title

1 This Act may be cited as the *Smoke-free Places Act*. 2002, c. 12, s. 1.

Interpretation

2 In this Act,

(a) “electronic cigarette” means a vaporizer or inhalant-type device, whether called an electronic cigarette or any other name, containing a power source and heating element designed to heat a substance and produce a vapour intended to be inhaled;

(aa) “employer” includes any person who supervises employees in a place of employment;

(b) “enclosed place” means the inside or other enclosed part of a building, vehicle or watercraft or other indoor space but does not include a private residence;

(c) “inspector” means an inspector appointed pursuant to this Act;

(d) “manager” of an enclosed place referred to in Section 5 or 6 means any person who has responsibility for and control over the activities of the place, and includes the owner of the place;

- (e) “Minister” means the Minister of Health Promotion;
- (f) “place of employment” means an enclosed place, other than a vehicle, in which employees perform the duties of their employment and includes an adjacent corridor, lobby, stairwell, elevator, escalator, eating area, washroom, restroom or other common area frequented by employees during the course of their employment but does not include a rental unit of roofed accommodation within the meaning of the *Tourist Accommodations Act*;
- (g) “school” means a public or private elementary or secondary school;
- (h) “smoke” means smoke, inhale or exhale smoke from, burn, carry, hold or otherwise have control over a lit or heated cigarette, cigar, pipe, water pipe, electronic cigarette or other device that burns or heats tobacco or another substance that is intended to be smoked or inhaled;
- (i) “tobacco” means tobacco as defined in Part III of the *Revenue Act*[:];
- (j) “water pipe” means any lighted or heated smoking equipment used to burn tobacco or non-tobacco substances or any combination thereof and draw the resulting smoke through a liquid before it is inhaled. 2002, c. 12, s. 2; 2005, c. 59, s. 1; 2014, c. 58, s. 1.

Application of Act

3 (1) This Act binds Her Majesty in right of the Province.

(2) Nothing in this Act affects the rights of aboriginal people respecting traditional aboriginal spiritual or cultural practices or ceremonies. 2002, c. 12, s. 3.

Supervision of Act

4 The Minister has the general supervision and management of this Act. 2002, c. 12, s. 4.

Prohibitions

5 (1) No person shall smoke in any enclosed place that is or includes

- (a) a daycare or pre-school;
- (b) a school, community college or university;
- (c) a library, art gallery or museum;
- (d) a health-care facility;
- (e) a cinema or theatre;
- (f) a video arcade or pool hall;

(g) a recreational facility where the primary activity is physical recreation, including, but not limited to, a bowling alley, fitness centre, gymnasium, pool or rink;

(h) a multi-service centre, community centre or hall, arena, fire hall or church hall;

(i) a meeting or conference room or hall, ballroom or conference centre;

(j) a retail shop, boutique, market or store or shopping mall;

(k) a laundromat;

(l) a ferry, ferry terminal, bus, bus station or shelter, taxi, taxi shelter, limousine or vehicle carrying passengers for hire;

(m) a vehicle used in the course of employment while carrying two or more employees;

(n) the common area of a commercial building or multi-unit residential building including, but not limited to, corridors, lobbies, stairwells, elevators, escalators, eating areas, washrooms and restrooms;

(na) a restaurant;

(nb) a lounge or beverage room;

(nc) a private club;

(nd) a cabaret, club or other place licensed to serve alcoholic beverages;

(ne) a place that is being used for bingo;

(nf) a facility as defined in the *Hospitals Act*;

(o) offices of the Government of the Province, a municipality, a village or a school board, or any agency thereof;

(p) a provincial jail, prison, detention centre, lock-up or reformatory or another provincial penal institution; or

(q) any building or facility designated by the regulations,

except as permitted by Section 6.

(2) No person shall smoke on the grounds of a school.

(2A) No person shall smoke in a motor vehicle when any person under the age of nineteen years is present in the vehicle regardless of whether any window, sunroof, cartop, door or other feature of the vehicle is open.

(3) No person shall smoke in the outdoor area of a restaurant or a place licensed to serve alcoholic beverages if that area is used for the serving or consumption of food or beverages.

(3A) No manager of an enclosed place referred to in subsection (1), of the grounds of a school or of an outdoor area referred to in subsection (3) shall permit any person to smoke in that place, on those grounds or in that area.

(4) No person shall smoke in an outdoor area within four metres of an intake for a building ventilation system, an open window of a place of employment or an entrance to a place of employment. 2002, c. 12, s. 5; 2005, c. 59, s. 2; 2007, c. 54, s. 1.

Prohibitions and exceptions

6 (1) No person shall smoke in any enclosed place that is or includes

(a) and (b) *repealed 2005, c. 59, s. 3.*

(c) any building or facility designated by the regulations;

or

(d) to (f) *repealed 2005, c. 59, s. 3.*

(g) a nursing home or residential care facility licensed under the *Homes for Special Care Act*, a home for aged or disabled persons to which the *Homes for Special Care Act* applies or a part of a health-care facility used for the acute or long-term care of veterans;

(h) *repealed 2005, c. 59, s. 3.*

except a resident of that place in an area that no person under the age of nineteen years is permitted to enter or be in and that is separately enclosed and separately ventilated, as prescribed by the regulations, from any part of an enclosed place in which smoking is prohibited by this Act.

(2) No manager of an enclosed place referred to in subsection (1) shall permit any person to smoke in that place except as provided in that subsection.

(3) No person under the age of nineteen years shall enter or be in an enclosed place referred to in subsection (1) in which smoking is permitted by that subsection.

(4) No manager of an enclosed place referred to in subsection (1) shall permit any person under the age of nineteen years to enter or be in an area of that place in which smoking is permitted by that subsection.

(5) to (9) *repealed 2005, c. 59, s. 3.*

2002, c. 12, s. 6; 2005, c. 42, s. 90; 2005, c. 59, s. 3.

Places of employment

7 (1) No person shall smoke in any place of employment except as permitted by Section 6.

(2) No employer shall permit any person to smoke in any place of employment except as permitted by Section 6. 2005, c. 59, s. 4.

8 *repealed 2005, c. 59, s. 4.*

Ashtrays not permitted

9 (1) No employer or manager shall permit any ashtrays in any place at any time when smoking is prohibited in that place by this Act.

(2) Subsection (1) does not apply to a motor vehicle. 2002, c. 12, s. 9; 2005, c. 54, s. 2.

Protection of employees

10 For greater certainty, Sections 43 to 46 of the *Occupational Health and Safety Act* apply to a place of employment under this Act. 2005, c. 59, s. 5.

Under age possession prohibited

11 (1) No person under the age of nineteen years may possess tobacco.

(2) Where a peace officer has reasonable grounds to believe that a person under the age of nineteen years is in possession of tobacco, the peace officer may search that person and confiscate any tobacco in that person's possession.

(3) A person who believes that the confiscation of an item pursuant to subsection (2) was wrongful because

(a) the person from whom the item was confiscated was not under the age of nineteen years at the time the item was confiscated; or

(b) the item confiscated was not tobacco,

may, within seven days of the confiscation, apply to a judge of the provincial court for the return of the item confiscated.

(4) Where the judge is satisfied that the confiscation was wrongful for the reason set out in clause (3)(a) or (b), the judge shall order that the item be returned to the person from whom it was confiscated.

(5) In an application pursuant to subsection (3), the burden is upon the applicant to prove that the confiscation was wrongful.

- (6) Where
- (a) no application is made within seven days of the confiscation; or
 - (b) the application is dismissed,

the item confiscated is forfeited to Her Majesty in right of the Province.

(7) Notwithstanding any enactment, subsection (1) does not create an offence except as provided by the regulations.

(8) Nothing in this Section prohibits the possession of tobacco by a person under the age of nineteen years for the purpose of enforcing, or ensuring compliance with, any enactment prohibiting or restricting the sale of tobacco to persons under the age of nineteen years if such possession is authorized by a person whose duty it is to enforce, or ensure compliance with, the enactment. 2002, c. 12, s. 11; 2005, c. 59, s. 6.

Inspectors

12 (1) The Minister may appoint or designate inspectors for the purpose of this Act.

(2) For the purpose of ensuring compliance with this Act and the regulations, an inspector may

- (a) enter and inspect any place to which this Act applies, at any reasonable time without warrant or notice, and make such examinations and inquiries and conduct such tests as the inspector considers necessary or advisable;
- (b) be accompanied and assisted by any person who, in the opinion of the inspector, has special knowledge or expertise;
- (c) make enquiries of any person who is or was in a place to which this Act applies;
- (d) require the production of drawings, specifications, floor plans, maintenance records or other documents for a place to which this Act applies and may inspect, examine, copy or seize them;
- (e) exercise such other powers as are prescribed by the regulations;
- (f) exercise such powers as are incidental to the powers set out in clauses (a) to (e).

(3) No person shall obstruct, interfere with or fail to co-operate with an inspector in the execution of the inspector's duties under this Act. 2002, c. 12, s. 12.

Compliance order

13 (1) Where an inspector finds that a manager or employer is not complying with a provision of this Act, the inspector may order the manager or employer to comply with the provision and may require the order to be carried out immediately or within such period of time as the inspector specifies.

(2) An order made pursuant to subsection (1) shall indicate generally the nature and, where appropriate, the location of the non-compliance with this Act. 2002, c. 12, s. 13.

Offences

14 (1) Every person, other than a manager or employer, who contravenes this Act or the regulations or fails to comply with an order made pursuant to this Act or the regulations is guilty of an offence and liable on summary conviction to a fine of not more than two thousand dollars.

(2) Every manager or employer who contravenes this Act or the regulations or fails to comply with an order made pursuant to this Act or the regulations is guilty of an offence and liable on summary conviction for a first offence to a fine of not more than two thousand dollars, for a second offence to a fine of not more than five thousand dollars and for a third or subsequent offence to a fine of not more than ten thousand dollars.

(3) In addition to any penalty levied pursuant to subsection (2) upon conviction for an offence contrary to this Act, an authority authorized to suspend or cancel any licence or permit issued in respect of the premises where the offence was committed may suspend or cancel that licence or permit. 2002, c. 12, s. 14.

Regulations

- 15 (1)** The Governor in Council may make regulations
- (a) designating any building or facility for the purpose of Section 5;
 - (b) designating any building or facility for the purpose of Section 6;
 - (c) prescribing the nature of any enclosure and ventilation for the purpose of Section 6;
 - (d) to (f) *repealed 2005, c. 59, s. 7.*
 - (g) setting air-quality standards for any part of an enclosed place where smoking is not permitted by this Act if smoking is permitted in another part of that place;
 - (h) setting air-quality standards for any part of an enclosed place where smoking is permitted by this Act;

- (i) determining design criteria for ventilation or for ensuring air quality;
- (j) prescribing the obligations of employers and managers respecting the maintenance of air-quality standards set by the regulations;
- (k) prescribing the records to be kept by employers and managers for the purpose of ensuring compliance with this Act and the regulations;
- (l) requiring the posting of signs for the purpose of this Act;
- (la) providing that subsection 11(1) creates an offence and determining the fine or other penalty for such offence;
- (m) prescribing powers and duties of inspectors;
- (n) *repealed 2005, c. 59, s. 7.*
- (o) defining “restaurant”, “lounge” and “beverage room”;
- (p) defining any other word or expression used but not defined in this Act;
- (q) further defining any word or expression defined in this Act;
- (r) respecting any matter that the Governor in Council considers necessary or advisable to carry out effectively the intent and purpose of this Act.

(2) A regulation made pursuant to this Act may be of general application or may apply to such individual or individuals, such class or classes of persons, such class or classes of places or such class or classes of matters or things as the Governor in Council determines and there may be different regulations with respect to different individuals, different classes of persons, different classes of places and different classes of matters or things.

(3) No regulation may be made pursuant to clause (1)(n) unless the regulation is recommended to the Governor in Council by the Minister where the Minister is of the opinion that there are rare and extenuating circumstances justifying the regulation and that the regulation does not compromise the intent and purpose of this Act.

(4) The exercise by the Governor in Council of the authority contained in subsection (1) is regulations within the meaning of the *Regulations Act*. 2002, c. 12, s. 15; 2002, c. 30, s. 19; 2005, c. 59, s. 7.

Conflict of Act with other authority

16 (1) Nothing in this Act affects any other authority to regulate, restrict or prohibit smoking.

(2) Where there is a conflict between this Act and any other authority, regulating, restricting or prohibiting smoking, the more restrictive authority prevails to the extent of the conflict. 2002, c. 12, s. 16.

17 *repealed 2005, c. 59, s. 8.*

Effective date and proclamation

18 (1) This Act comes into force on January 1, 2003.

(2) *repealed 2005, c. 59, s. 9.*

2002, c. 12, s. 18; 2005, c. 59, s. 9.
