

Tobacco Access Act

CHAPTER 14 OF THE ACTS OF 1993

as amended by

1999, c. 12; 2006, c. 47; 2014, c. 58, ss. 2, 3;
2015, c. 26; 2020, c. 2, s. 17; 2020, c. 18, ss. 4-8



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amended 1999, c. 12; 2006, c. 47; 2014, c. 58, ss. 2, 3;
2015, c. 26; 2020, c. 2, s. 17; 2020, c. 18, ss. 4-8

**An Act to Restrict the Access to
Tobacco and Tobacco Products**

title amended 1999, c. 12, s. 1.

NOTE - Section 8 of this Act is subject to proclamation. See Section 14.

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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 *Tobacco Access Act*. 1993, c. 14, s. 1.

Purpose of Act

2 The purpose of this Act is to protect the health of Nova Scotians, and in particular young persons, by

- (a) restricting their access to tobacco and tobacco products; and
- (b) protecting them from inducements to use tobacco,

in light of the risks associated with the use of tobacco. 1993, c. 14, s. 2; 1999, c. 12, s. 2.

Interpretation

3 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 and includes all components used in conjunction with the device, including the e-liquid, cartridge and any other component that may be sold separately from the device itself;

(aa) “employee” of a vendor includes any servant or agent of the vendor;

(b) “enforcement officer” means a person designated pursuant to this Act as an enforcement officer and includes a member of a municipal police force within the meaning of the *Police Act* and a member of the Royal Canadian Mounted Police;

(ba) “flavoured tobacco” means tobacco that

(i) has a characterizing scent or flavour, other than tobacco, that is noticeable before or during use, or both,

(ii) by its packaging, labelling, advertising or otherwise, is represented as having a characterizing flavour, or

(iii) is designated under the regulations as being flavoured,

but does not include tobacco exempted by the regulations;

(c) “Minister” means the Minister of Health and Wellness;

(ca) “pharmacy” means a pharmacy as defined by the *Pharmacy Act*;

(d) “self-service tobacco display” means a retail display of tobacco or tobacco products where a customer has access to the tobacco or tobacco products without the intervention of the vendor or an employee of the vendor;

(e) “tobacco” means tobacco in any form, intended to be consumed in any manner, and, for greater certainty, includes snuff, tobacco leaves, any extract of tobacco leaves and electronic cigarettes, but does not include any food, drug or device that contains nicotine to which the *Food and Drugs Act* (Canada) applies;

(f) “tobacco product” means a cigarette paper, cigarette tube, cigarette filter, cigarette maker, cigarette holder or pipe;

(g) “tobacco vending machine” includes any automatic machine that dispenses tobacco, or a tobacco product whether or not the machine dispenses any other product;

(h) “vendor” means a vendor within the meaning of Part III or IIIA of the *Revenue Act*. 1993, c. 14, s. 3; 1999, c. 12, s. 3; O.I.C. 2011-15; 2014, c. 58, s. 2; 2015, c. 26, s. 1; 2020, c. 2, s. 17; 2020, c. 18, s. 4.

Enforcement officers

4 The Minister may designate persons or classes of persons to act as enforcement officers for the purpose of this Act and the regulations. 1993, c. 14, s. 4.

Prohibitions

5 (1) No vendor or employee of a vendor shall sell or give tobacco or a tobacco product to a person under the age of nineteen years.

(2) No person shall

(a) purchase tobacco or a tobacco product on behalf of, or for the purpose of resale; or

(b) give tobacco or a tobacco product,

to a person under the age of nineteen years.

(2A) No vendor or employee of a vendor that displays tobacco or tobacco products in an establishment shall permit any person under the age of nineteen years to enter or be in that establishment.

(3) It is not a defence to a prosecution pursuant to subsection (1) for the vendor or other person to show that the person under the age of nineteen years appeared to be above that age.

(4) A vendor or an employee of a vendor shall require a person appearing to the vendor or employee to be under the age of nineteen years to provide proof of age before selling tobacco to that person and to carry out such procedures as may be prescribed by the regulations. 1993, c. 14, s. 5; 1999, c. 12, s. 4; 2006, c. 47, s. 1.

Vending machines and displays

6 No person shall locate on any premises or in any place accessible to the public, or have on any such premises or in any such place owned by or in the possession or control of that person, a tobacco vending machine or a self-service tobacco display. 1993, c. 14, s. 6.

Prohibitions

7 No person shall sell or offer for sale

(a) cigarettes in packages of fewer than twenty cigarettes;

(b) unpackaged cigarettes;

(c) flavoured tobacco;

(d) flavoured cigarette papers;

(e) tobacco with a nicotine concentration above the amount prescribed in the regulations; or

(f) an electronic cigarette with a capacity above the amount prescribed in the regulations. 1999, c. 12, s. 5; 2015, c. 26, s. 2; 2020, c. 18, s. 5.

Products appearing to be tobacco products

8 No person shall sell or offer for sale any product, including a confectionery, designed to appear as a cigarette or other form of tobacco or as a tobacco product. 1993, c. 14, s. 8.

Signs and promotional materials

9 (1) A vendor shall display signs in such form and manner and disclosing such information relating to the sale of tobacco and the effect of tobacco on health as may be prescribed by the regulations.

(2) No person shall display or permit the display of any sign or material promoting or advertising the sale of or otherwise respecting tobacco or tobacco products except as prescribed by the regulations. 1993, c. 14, s. 9; 2006, c. 47, s. 2.

Packaging

9A All packaging containing tobacco or tobacco products must comply with such conditions as may be prescribed by the regulations, including the content and form of information to be displayed on it. 2006, c. 47, s. 3.

Displaying and storing

9AA (1) No vendor or employee of a vendor shall display or permit the display of tobacco or tobacco products except as prescribed by the regulations.

(2) No vendor or employee of a vendor shall store tobacco or tobacco products except as prescribed by the regulations. 2006, c. 47, s. 3.

Prohibition respecting pharmacy

9B No person shall sell tobacco in

- (a) a pharmacy;
- (b) an establishment where goods or services are sold or offered for sale to the public if
 - (i) a pharmacy is located within the establishment, or
 - (ii) the customers of a pharmacy can pass into the establishment directly or by use of a corridor or area used exclusively to connect the pharmacy and the establishment; or
- (c) an establishment designated by the regulations. 1999, c. 12, s. 7; 2006, c. 47, s. 4.

Powers of enforcement officer

10 For the purpose of enforcing this Act and the regulations, an enforcement officer may

- (a) make test purchases, or take samples of tobacco, a tobacco product or a product designed to appear as a cigarette or other form of tobacco or as a tobacco product;
- (b) investigate any complaint of a contravention of this Act or the regulations and examine a vendor or employee of a vendor to determine if a contravention has occurred;
- (c) from time to time and at all reasonable times, enter upon the business premises of a vendor or any other person if it is reasonably necessary to do so in order to determine whether or not this Act and the regulations are being complied with;

(d) do any other thing for the purpose of enforcing this Act and the regulations. 1993, c. 14, s. 10.

Power to seize without warrant

10A (1) An enforcement officer may seize without a warrant any thing that is produced to the enforcement officer or that is in plain view during an inspection that the enforcement officer believes may be used as evidence of an offence.

(2) An enforcement officer may remove the thing seized or detain it in the place where it is seized.

(3) An enforcement officer shall inform the person from whom the thing was seized of the reason for the seizure and shall give the person a receipt for it.

(4) Any thing seized pursuant to this Act or the regulations that is illegal to possess by the person from whom the thing was seized is forfeited to Her Majesty in right of the Province.

(5) Where a person is convicted of an offence under this Act, in addition to any penalty imposed, any thing seized pursuant to this Act or the regulations by means of or in relation to which the offence was committed is forfeited to Her Majesty in right of the Province.

(6) Any thing forfeited to Her Majesty in right of the Province pursuant to subsection (4) or (5) may be disposed of as the Minister directs. 2020, c. 18, s. 6.

Vendors and employees to provide reasonable assistance

10B A vendor or employee of a vendor shall

(a) give an enforcement officer all reasonable assistance to enable the enforcement officer to exercise the enforcement officer's powers and duties under this Act or the regulations; and

(b) furnish all information relative to the exercise of those powers and duties that the enforcement officer may reasonably require. 2020, c. 18, s. 6.

Order to comply

10C (1) Where an enforcement officer finds that a vendor or an employee of a vendor is not complying with a provision of this Act or the regulations, the enforcement officer may order the vendor or the employee of a vendor to comply with the provision and may require the order to be carried out immediately or within such period of time as the enforcement officer specifies.

(2) An order made pursuant to subsection (1) must indicate, generally, the nature and, where appropriate, the location of the non-compliance with this Act or the regulations. 2020, c. 18, s. 6.

Limitation of liability

11 No action lies against a person by reason of that person reporting a contravention or alleged contravention of this Act or the regulations unless the reporting is done falsely and maliciously. 1993, c. 14, s. 11.

Offence and penalties

12 (1) Every vendor who contravenes or whose employee contravenes subsection (1) of Section 5 is guilty of an offence and liable on summary conviction to

- (a) for a first offence, a fine not exceeding two thousand dollars;
- (b) for a second offence, a fine not exceeding five thousand dollars; or
- (c) for a third or subsequent offence, a fine not exceeding ten thousand dollars.

(2) Upon conviction of a vendor, or an employee of a vendor, for a contravention of subsection (1) of Section 5, the judge shall make an order prohibiting the vendor or a successor to the vendor's business, or an employee of the vendor or the successor, from selling tobacco from the premises at which the contravention took place or any premises to which the business is moved for

- (a) in the case of a second offence, seven consecutive days;
- (b) in case of third offence, not less than three consecutive months and not more than six consecutive months; and
- (c) in the case of a fourth or subsequent offence, not less than twelve consecutive months and not more than twenty-four consecutive months.

(3) Subject to subsections (1) and (2) and Section 12A, every person who contravenes this Act or the regulations is guilty of an offence and liable on summary conviction to a fine not exceeding two thousand dollars.

(4) In a prosecution for a contravention of clause (c) or (d) of Section 7, an indication on a container or package that the contents of the container or package are flavoured tobacco or flavoured cigarette papers is proof, in the absence of evidence to the contrary, that the contents are flavoured tobacco or flavoured cigarette papers, as the case may be.

(5) In a prosecution for a contravention of clause (e) of Section 7, an indication on a container or package of tobacco of the nicotine concentration of the tobacco is proof, in the absence of evidence to the contrary, of the nicotine concentration of the tobacco.

(6) In a prosecution for a contravention of clause (f) of Section 7, an indication on an electronic cigarette or the packaging of an electronic cigarette of the maximum capacity of the electronic cigarette is proof, in the absence of evidence to the contrary, of the maximum capacity of the electronic cigarette. 1993, c. 14, s. 12; 1999, c. 12, s. 8; 2014, c. 58, s. 3; 2015, c. 26, s. 3; 2020, c. 18, s. 7.

Offence and penalties respecting certain establishments

12A Every vendor who contravenes or whose employee contravenes Section 9AA, every owner of a pharmacy or establishment where goods and services are sold or offered for sale to the public who contravenes or whose employee contravenes Section 9B and every establishment designated in the regulations that sells

tobacco or tobacco products or whose employee sells tobacco or tobacco products in that establishment is guilty of an offence and liable on summary conviction to

- (a) for a first offence, a fine not exceeding two thousand dollars;
- (b) for a second offence, a fine not exceeding five thousand dollars; or
- (c) for a third offence or subsequent offence, a fine not exceeding ten thousand dollars. 1999, c. 12, s. 9; 2006, c. 47, s. 5.

Regulations

- 13** (1) The Governor in Council may make regulations
- (a) prescribing any matter that this Act authorizes to be prescribed by the regulations;
 - (aa) designating tobacco as flavoured tobacco;
 - (ab) exempting certain types and flavours of tobacco from the definition of “flavoured tobacco”;
 - (aba) prescribing a maximum nicotine concentration for tobacco, including different maximum concentrations for different forms of tobacco;
 - (abb) prescribing a maximum capacity for electronic cigarettes or components thereof, including different maximum capacities for different types or components of electronic cigarettes;
 - (ac) designating establishments for the purpose of Section 9B;
 - (b) defining any word or expression used in this Act and not defined in this Act;
 - (c) further defining any word or expression defined in this Act;
 - (d) respecting any matter that the Governor in Council deems necessary or advisable to carry out the intent and purpose of this Act.

(1A) A regulation may apply to all vendors or to a class of vendors and there may be different regulations for different classes of vendors.

(2) The exercise by the Governor in Council of the authority contained in subsection (1) shall be regulations within the meaning of the *Regulations Act*. 1993, c. 14, s. 13; 2006, c. 47, s. 6; 2015, c. 26, s. 4; 2020, c. 18, s. 8.

Proclamation

14 This Act comes into force on and not before such day as the Governor in Council orders and declares by proclamation. 1993, c. 14, s. 14.

Proclaimed (except Section 8) - March 29, 1994
 In force (except Section 8) - April 15, 1994