Ontario

Ministry of Health

Smoke-Free Ontario Act, 2017

How the Act Affects: Tobacco and Vapour Product Retailers

The Basics

The *Smoke-Free Ontario Act, 2017* (SFOA, 2017) prohibits the smoking of tobacco, the use of electronic cigarettes (e-cigarettes) to vape any substance, and the smoking of cannabis (medical and recreational) in enclosed workplaces and enclosed public places, as well as other designated places in Ontario, to protect workers and the public from second-hand smoke and vapour.

Tobacco and Vapour Products Retailers

Retailers have a legal responsibility to ensure that they and their employees understand and comply with the requirements under the SFOA, 2017.

Tobacco products include:

- cigarettes
- cigars
- cigarillos
- pipe tobacco
- heat-not-burn tobacco (heat sticks or capsules)
- electronic cigarettes and components
- e-liquid (e.g., ‘e-juice’)
- e-liquid pods

Age Restrictions on the Sale and Supply of Tobacco Products and Vapour Products

The SFOA, 2017 prohibits the sale or supply of tobacco products or vapour products to anyone who is less than 19 years old. The Act also prohibits the sale or supply of

tobacco or vapour products to anyone who appears to be younger than 25 years old unless ID is provided and the retailer is satisfied that the person is at least 19 years old.

Restrictions on the Retail Sale of Flavoured Tobacco and Vapour Products

The sale of flavoured tobacco and vapour products is regulated under the SFOA, 2017. It is against the law to sell or offer to sell flavoured tobacco products at retail, unless the flavoured tobacco product is exempt from this prohibition. See the Fact Sheet on *How the Act Affects: Flavoured Tobacco Products* for more information.

It is also against the law to sell or offer to sell flavoured vapour products at retail, unless you are a Specialty Vape Store or Cannabis Retail Store or the flavoured vapour product is exempt from this prohibition. See the Fact Sheet on *How the Act Affects: Flavoured Vapour Products* for more information.

Restrictions on the Retail Sale of Vapour Products Based on Nicotine Concentration

It is against the law to sell or offer to sell vapour products with a nicotine concentration of more than 20mg/mL at retail.

Restrictions on the Display of Tobacco Products, Branded Tobacco Accessories and Vapour Products

Tobacco and vapour products must not be displayed in a retail store. In addition, tobacco product accessories associated with a brand of tobacco (branded tobacco accessories) (e.g., lighters) also cannot be displayed. This means:

- Tobacco products, branded tobacco accessories, and vapour products must be hidden from view before they are purchased.
- Customers are not allowed to handle tobacco products, branded tobacco accessories, or vapour products before they purchase them.
- Store owners must ensure that tobacco products, branded tobacco accessories, and vapour products are not displayed to a potential consumer while re-stocking, conducting inventory checks or opening the storage units at any other time.

- The brief time when a seller opens and closes the storage unit and transfers the product to a customer following purchase is not considered “displaying” the product.

Any inappropriate display of tobacco products, branded tobacco accessories, or vapour products – whether intentional or unintentional – could result in charges to the salesperson or store owner.

Examples of Acceptable Storage for:

tobacco products, branded tobacco accessories, or vapour products storage and dispensing systems include:

- overhead containers where only the clerk can see the products
- below-the-counter drawers or cabinets where only the clerk can see the products
- single package dispensing, gravity-fed devices
- devices that cover shelves with a top-hinge “flip up” cover that close automatically or immediately by gravity
- slim drawers that open in sections and expose only the spine of product packages
- countertop devices and rotating trays of tobacco and vapour products where only the clerk can see them

Examples of Unacceptable Storage for:

tobacco products, branded tobacco accessories, or vapour products storage and dispensing systems include:

- ‘garage door’ style covers which, when open, show a large portion of tobacco products, branded tobacco accessories or vapour products
- large cupboards which, when open, allow the customer to see a large selection of the products
- retrofit devices that “flip down” on a bottom hinge, that do not close automatically and would remain open unless properly closed
- curtains or blinds
- horizontal sliding doors such as closet doors

Small tags are permitted on the outside of storage units to help a clerk find the particular products contained in each unit. However, in the case of tobacco products, branded tobacco accessories, or vapour products the tags must:

- use black type on a white background
- use letters up to 14 point type size
- not use logos or colour
- not be larger than 2” x 1” (5 cm x 2.5 cm)
- not include price information

Retailers may use coloured-coded stickers to assist with brand identification as long as the stickers are not visible to customers. If the retailer chooses to use these stickers they must be used in conjunction with the exterior black and white product identification tags as described above.

Restrictions on the Promotion of Tobacco Products, Tobacco Accessories, and Vapour Products

The SFOA, 2017 prohibits stores from promoting the sale of tobacco products, tobacco accessories and vapour products by means of any commercial act or practice or use of any commercial communication, through any media or other means that is intended to or is likely to:

- encourage their purchase or use or the purchase or use of a particular brand; or
- create an awareness of or an association with the products or with a brand or a manufacturer or seller

A retailer may post up to three signs providing information about tobacco products or tobacco product accessories and their price, and up to three signs providing information about vapour products and their price, in order to inform customers that they sell tobacco products, tobacco product accessories, and/or vapour products.

Further:

- The size of the sign cannot be greater than 968 square centimeters.
- The sign must have black text and white background.
- The sign must not identify a brand of tobacco, tobacco accessory, or vapour product.

Informational Document

A retailer may also make available an informational document (e.g., brochure, catalogue) about tobacco products, tobacco product accessories, or vapour products, and their price, if the following conditions are met:

- The document is only made available for viewing inside the retail store and is not removed from the store; and
- The document cannot be viewed by a person who is less than 19 years old, other than the owner or occupier of the retail store or one of their employees. (For the purposes of this condition, a person who appears to be less than 25 years old is deemed to be less than 19 years old unless the person making the document available has required that person to provide identification and is satisfied that the person is at least 19 years old).

Exemptions for Tobacconists and Specialty Vape Stores

Retailers that wish to display and promote tobacco products and branded tobacco accessories or vapour products must register as Tobacconists or Specialty Vape Stores, respectively. See the Fact Sheets for Tobacconists and Specialty Vape Stores for more information.

Exemption for Cannabis Retail Stores

Cannabis Retail Stores (within the meaning of the *Cannabis Licence Act, 2018*), are exempt from the prohibition on promoting and displaying vapour products in the SFOA, 2017.

Required Signs

"No Smoking" and "No Vaping" signs, or a dual "No Smoking and No Vaping" sign must be posted at all store entrances, exits, washrooms, in appropriate locations and sufficient numbers, so that employees and customers know that smoking and vaping is not permitted.

Tobacco Retailers

All stores selling tobacco products must post, in clear view of the customer at the point of sale:

- a Tobacco Product Age Restriction sign

- a Tobacco Product Identification sign

Vapour Product Retailers

All stores selling vapour products must post, in clear view of the customer at the point of sale:

- a Vapour Product Age Restriction sign
- a Vapour Product Identification sign

For information on where to get signs, please contact your local Public Health Unit.

Age-Based Sales Restrictions

Before selling tobacco or vapour products to anyone who appears to be less than 25 years old, a retailer must request identification and be satisfied that the person is at least 19 years old. Acceptable identification must include a photograph of the person, the person's date of birth, and it must reasonably appear to have been issued by a government or the Liquor Control Board of Ontario. Some examples are:

- Ontario driver's licence
- Ontario photo card
- Canadian passport
- Canadian citizenship
- Canadian Armed Forces identification card
- Liquor Control Board of Ontario photo card

While retailers may not request an Ontario Health Card, it can be accepted as identification if it is offered by the customer and includes their picture and date of birth.

Owner Liability

The SFOA, 2017 states that the business owner is liable for any violation of the Act's sale, display or promotion restrictions committed in their business, unless the owner exercised due diligence to avoid a violation (e.g., properly trained employees on the requirements of the Act).

100% Vape and Smoke-Free

Business owners have a responsibility to ensure that the entire premises are smoke-free and vape-free at all times.

Enforcement

Local Public Health Units will carry out inspections and respond to complaints regarding retailers to enforce the SFOA, 2017.

Penalties

There are several penalties that a retailer could face for violating the SFOA, 2017. Retailers are advised to review the Act to understand their responsibilities, and the fines that may result from failing to comply.

Tobacco Sales Offences

Certain activities prohibited under the Act are categorized as Tobacco Sales Offences. These include:

- selling or supplying tobacco to someone under the age of 19
- failing to request identification from someone appearing to be less than 25
- failing to post the mandatory *Tobacco Product Age Restriction and Tobacco Identification signs*
- selling tobacco not packaged in accordance with the regulations
- selling tobacco in a vending machine
- some activities related to selling unmarked cigarettes under the *Tobacco Tax Act*
  If the Ministry of Health is notified that there are **two or more owner convictions for tobacco sales** offences committed in the same location within a five-year period, even if the ownership changes, that location will be subject to an **automatic prohibition**. If that were to happen, that location could not sell or store any tobacco and no wholesaler or distributor could deliver tobacco to that location. An automatic prohibition lasts for six, nine or twelve months, depending on the number of convictions for tobacco sales offences that have taken place within the five-year period.

You may also obtain information by calling toll-free:

- **INFOline:** 1-866-532-3161
- **TTY**: 1-800-387-5559

Hours of operation: Monday to Friday, 8:30 a.m. - 5:00 p.m. (Eastern Time).

Additional Resources:

- Smoke-Free Ontario Act, 2017, S.O. 2017, c. 26, Sched. 3 | ontario.ca
- Rules for selling tobacco and vapour products | ontario.ca