

Regulatory Discussion Paper: Options for the regulation of vapour products and extending the regulation of tobacco products in British Columbia

This paper has been developed by the Ministry of Health to seek comments and feedback on the development of proposed regulations regarding vapour products and tobacco control in British Columbia.

In April 2015, the Government of B.C. passed legislation aimed at stopping the use of vapour products by young people in B.C.; the *Tobacco Control Amendment Act* received Royal Assent on May 14, 2015. When it comes into effect, there will be new legislative requirements for the display, sale and use of vapour and tobacco products in British Columbia.

The next step will be finalizing the regulation that will give additional detail to the legislation passed earlier this year. This regulatory discussion paper outlines the general scope of the proposed regulatory requirements. The ministry seeks input on the elements of the proposed regulation that deal with:

- ▶ Date of coming into force.
- ▶ Minimum age of customers and required identification.
- ▶ Restrictions on the promotion, sale and use of vapour products.
- ▶ An increase to the size of the buffer zone outside doorways, open windows and air intakes for tobacco and vapour products.
- ▶ The use of vapour products and tobacco on health authority property.

Many of the current regulations related to tobacco remain unchanged.

These provisions are proposed to come into force February 1, 2016 and will be enforced by health authority enforcement officers. Enforcement officers will use a range of progressive enforcement tools (education, verbal warnings, written warnings, compliance plans, tickets and/or administrative hearings) to ensure retailers comply with the regulation. Background information on the penalties for contravening the legislation is set out in Appendix 1 of this document for reference by respondents.

Respondents are encouraged to review the proposed regulatory approach described in this paper and **e-mail** feedback to the ministry by 11:59 pm on **November 20, 2015** at bill14.consultation@gov.bc.ca. Attachments will be accepted. An optional template for response is provided in Appendix 2 at the end of this paper.

The *Tobacco Control Amendment Act* can be found at the following location:

https://www.leg.bc.ca/content/data%20-%20ldp/Pages/40th4th/3rd_read/gov14-3.htm. (You may be prompted for a user name and password; please click on the "cancel" button to be taken directly to the page).

The *Tobacco Control Act* may be found at the following location:

http://www.bclaws.ca/civix/document/id/complete/statreg/96451_01

It is important to note that the information set out in this paper is for consultation purposes only and should not be relied upon to interpret the Act or the regulation. The final regulation may differ from the proposals in this paper.

1. Date of coming into force.

It is proposed that the regulation will come into force on February 1, 2016.

2. Minimum age of customer.

The ministry proposes that retailers be permitted to sell vapour products only to those nineteen years of age and older.

(This proposal is the same as the current requirements for the sale of tobacco.)

3. Proof of age.

The ministry proposes that retailers of vapour products confirm a customer's age by relying upon one of the following forms of identification:

- ▶ a passport;
- ▶ a driver's licence that displays a photograph and the date of birth of the holder; or
- ▶ an identification card issued by a government agency, displaying a photograph and the date of birth of the holder.

(This proposal is the same as the current requirements for the purchase of tobacco.)

4. Place where vapour products cannot be sold.

Section 2.1 of the proposed *Tobacco and Vapour Products Control Act* outlines places where vapour products are not to be sold. The proposed regulation provides additional information on the places where vapour products are not to be sold, including:

- ▶ any place on the campus of a public university or post-secondary institution that is used for education, research or student services.
- ▶ on public body property (e.g., property owned by municipalities; regional districts; library boards; Vancouver Park Board; or Islands Trust councils, committees or boards).

(This proposal is the same as the current requirements for the sale of tobacco.)

5. Prohibitions on display or promotion of vapour products.

Retailers who sell vapour products must ensure that those under 19 years of age cannot see the retail display or promotion of vapour products. If those under 19 years of age are allowed into a place where vapour products are sold (e.g., convenience store or gas station), then there can be no display or promotion of vapour products. A retailer cannot advertise or promote vapour product brands on signs, videos, clothing or other tangible objects to which youth have access.

If only adults are allowed into a place where vapour products are sold, then the adult-oriented store must ensure that no display or promotion of vapour products can be seen from the outside by a minor.

(This proposal is the same as the current requirements for the display or promotion of tobacco.)

6. Retail signage restrictions.

Inside stores that youth can enter, retailers will be permitted to inform the public that tobacco or vapour products are for sale, with up to three general signs that meet the following criteria:

- ▶ Each sign must not be larger than 968 cm² (approximately a letter-sized sheet of paper).
- ▶ The background of the sign must be white and the text of the sign must be black, with numbers/text up to 5 cm in height.
- ▶ The only graphic or design permitted is the "\$" symbol in front of a price.
- ▶ The sign(s) must not include the name, abbreviation or any other thing that could identify a vapour product brand or manufacturer.
- ▶ The sign(s) may advertise only the types of vapour products for sale and the price range for those vapour products.

Stores that restrict youth from entering will be allowed to display promotional signage inside the adult-only area and not visible to youth from outside that area.

7. Use of vapour products in public spaces and workplaces.

These restrictions apply to public spaces and workplaces that are fully or substantially enclosed. A building, structure or vehicle is fully or substantially enclosed when it has a roof or other covering and more than 50% of the nominal wall space is enclosed by any material that does not permit air to flow easily through it. Nominal wall space is determined by calculating the length, in metres, of the perimeter of the building, structure, vehicle or place, and multiplying it by 2.7 metres.

The ministry proposes that:

- ▶ Vapour product use will not be permitted in the fully or substantially enclosed areas of a workplace. A workplace is any place in which a person performs services in return for compensation and includes any places that are used in conjunction with the workplace (e.g., bathroom, meeting room, coffee/break room). If the workplace is in a private home, then vapour products cannot be used in that workplace by any person during any period in which a person performs services in return for compensation.
- ▶ Vapour product use will not be permitted in the fully or substantially enclosed areas of public places such as cafes, stores, casinos, bars, common areas of multi-unit dwellings (e.g., hallways and laundry rooms of apartment buildings, condominiums and dormitories) and transit shelters.

(The proposals listed above are the same as the current requirements for the use of tobacco.)

The ministry proposes that:

- ▶ Tobacco and vapour product use will also be prohibited within a buffer zone of six metres of open windows, air intakes and doorways of these public and workplaces. Managers, owners, lessees and employers will not be responsible for vapour use within these areas as long as people are just passing through the area and are not customers, clients or employees of the public/workplace. It is also important to note that local governments, agencies, owners and managers can set buffer zones that are larger than the zone set by regulation; if a larger buffer zone exists, it takes precedence.

(This proposal increases the buffer zone for tobacco from three metres to six metres and sets the same buffer zone of six metres for vapour products.)

The ministry proposes that vapour product use will be allowed in the following areas:

- ▶ Near a transit shelter, including within the buffer zone.
- ▶ On the patio of a public place that sells food or beverages, or of a casino or bingo hall, as long as the patio is not fully or substantially enclosed and any doorway or air intake between the patio and public place is closed.
- ▶ Within the sleeping or private rooms of a hotel if vapour product use is permitted (although use is banned in common public or work areas such as hallways and banquet rooms).
- ▶ A person in care or a resident (as per the *Community Care and Assisted Living Act* or the *Hospital Act*) may use a vapour product within a room designated for use within a community care facility, assisted living residence or a hospital, if one is provided. Please refer to section 4.23 of the Tobacco Control Regulation for the definition of "person in care or resident."

(These proposals are the same as the current requirements for the use of tobacco.)

8. Restrictions on use of tobacco and vapour products on health authority sites.

The ministry proposes that the use of tobacco and vapour products be restricted at sites owned, leased or operated by Island Health, Vancouver Coastal Health, Fraser Health, Interior Health, Northern Health, the Provincial Health Services Authority and the Providence Health Care Society. If one of these entities wants to allow the use of tobacco and/or vapour products on its grounds, the entity must designate specific areas for that purpose.

Appendix 1: Information on enforcement and penalties for contraventions

Health authority enforcement officers will enforce the legislation and use a range of progressive enforcement tools (education, verbal warnings, written warnings, compliance plans, tickets and/or administrative hearings) to ensure retailers of vapour products comply with the legislation.

Tickets

It is important to note that ticket amounts will be set under the Violation Ticket and Fines Administration Regulation, which is administered by the Ministry of Justice. If an enforcement officer decides to write a ticket, proposed ticket amounts are:

- ▶ Sell vapour products to person under 19: \$575.00
- ▶ Sell vapour products where prohibition order applies: \$575.00
- ▶ Sell vapour products in prohibited place: \$575.00
- ▶ Use vapour products on school property: \$58.00
- ▶ Permit vapour products on school property: \$58.00
- ▶ Use vapour products in prohibited place: \$575.00
- ▶ Permit vapour products use in prohibited place: \$575.00
- ▶ Permit vapour products in workplace: \$575.00
- ▶ Display vapour products in prohibited manner: \$575.00
- ▶ Promote vapour products in prohibited manner: \$575.00
- ▶ Fail to display prohibition order sign: \$575.00
- ▶ Fail to display prohibition sign in accordance with requirements: \$575.00
- ▶ Fail to display point of sale signs: \$345.00

Administrative Hearings

The regulation will specify which matters may be subject to an administrative hearing, the range of penalties that the administrator may impose, and the factors that the administrator must consider when assessing penalties. The ministry proposes that sections of the regulation that deal with the sale and display/promotion of vapour products be included in the administrative penalty system. In addition, the proposed regulation will provide that:

- ▶ The notice of hearing will be in writing, delivered at least forty-five days before the hearing and will describe the contravention and the date, time and place of the hearing.
- ▶ A person may apply to the administrator for an adjournment, but granting an adjournment will be at the administrator's discretion.
- ▶ A hearing may be written, electronic and/or oral.

- ▶ If, after notice has been served, a person fails to attend a hearing or make submissions, the administrator may proceed with the hearing.
- ▶ A defence of due diligence is available.
- ▶ Factors to be considered in imposing a penalty will include any prior written warnings from enforcement officers concerning the subject matter of the contravention, whether the person has an ownership interest in the business found to be in contravention or is an employee or agent.

Contravention	Penalty		
	First Contravention	Second Contravention	Subsequent Contravention
<ul style="list-style-type: none"> • Selling vapour products to a minor • Selling from a place that is prohibited because of an order of the administrator 	\$0-1000 fine and/or 0-30 day prohibition period	\$0-3000 fine and/or 0-90 day prohibition period	\$0-5000 fine and/or 0-180 day prohibition period
<ul style="list-style-type: none"> • Displaying, advertising or promoting vapour products where youth have access • Failure to post prohibition sign 	\$0-1000 fine and/or 0-30 day prohibition period	\$1000-4000 fine and/or 30-90 day prohibition period	\$4000-5000 fine and/or 90-180 day prohibition period
<ul style="list-style-type: none"> • Failure to post point of sale signs 	\$0-1000 fine and/or 0-30 day prohibition period	\$1000-3000 fine and/or 30-90 day prohibition period	\$3000-5000 fine and/or 90-180 day prohibition period
<ul style="list-style-type: none"> • Failure to pay monetary penalty within 30 days 	0-30 day prohibition period	30-90 day prohibition period	90-180 day prohibition period

(This proposal is similar to the current administrative hearing penalties for tobacco-related contraventions.)

If a retailer has been found, through the administrative hearing process, to have contravened the legislation and is prohibited from selling vapour products, signs must be posted to inform customers. The signs will describe the scope of the prohibition (tobacco, vapour products or tobacco and vapour products) and the signs must be posted at:

- ▶ each place where a tobacco or vapour product was displayed for sale at the location identified in the order, and
- ▶ each entrance to the location identified in the order.

Each sign must contain the address of the location, dates on which the prohibition period starts and ends, and specific wording advising that a contravention has occurred and the retailer cannot sell tobacco and/or vapour products.

Appendix 2: Template for Responses to the Regulatory Discussion Paper

Written comments can come in any form, but if respondents wish to use a template to organize their responses, they may fill in this template and send it in to the ministry. Respondents may reply to one, some or all sections.

Respondents must e-mail feedback to the ministry by 11:59 pm on **November 20, 2015** at bill14.consultation@gov.bc.ca. Attachments will be accepted.

Name:

Address:

Email:

Telephone:

Date of Written Submission:

1. Date of coming into force.
2. Minimum age of customer.
3. Proof of age.
4. Place where vapour products cannot be sold.
5. Prohibitions on display or promotion of vapour products.
6. Retail signage restrictions.
7. Use of vapour products in public and workplaces.
8. Restrictions on use of tobacco and vapour products on health authority sites.