



HOUSE USE ONLY

CHAIR:

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1st SESSION, 67th GENERAL ASSEMBLY
Province of Prince Edward Island
3 CHARLES III, 2024

(Bill No. 71)

**An Act to Amend the Tobacco and Electronic Smoking
Device Sales and Access Act**

Hon. Mark McLane
Minister of Health and Wellness

GOVERNMENT BILL

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Acting King's Printer
Charlottetown, Prince Edward Island

**For House
Use Only**

**Prince Edward Island
Legislative Assembly**

AMENDMENTS

ASSEMBLY / SESSION / YEAR
67th General Assembly / 1st / 2024

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TITLE: An Act to Amend the Tobacco and Electronic Smoking Device Sales and Access Act

#	SECTION	AMENDMENT	DATE

NOTED: _____ **CERTIFIED CORRECT:** _____
COMMITTEE CLERK **CHAIR, IN COMMITTEE**



AN ACT TO AMEND THE TOBACCO AND ELECTRONIC SMOKING DEVICE SALES AND ACCESS ACT

BILL NO. 71

2024

BE IT ENACTED by the Lieutenant Governor and the Legislative Assembly of the Province of Prince Edward Island as follows:

1. **The *Tobacco and Electronic Smoking Device Sales and Access Act* R.S.P.E.I. 1988, Cap. T-3.1, is amended by the addition of the following heading immediately before section 1:**

INTERPRETATION AND ADMINISTRATION

2. **The Act is amended by the addition of the following after section 1:**

- 1.1 **Application of Act**

For greater certainty, this Act does not abrogate or interfere with the authority of the Cannabis Management Corporation under the *Cannabis Management Corporation Act* R.S.P.E.I. 1988, Cap. C-1.3, to sell, offer to sell, expose for sale and have in its possession for sale, to persons who may lawfully purchase cannabis, items that are related to or used in the consumption of cannabis.

3. (1) **Subsection 3(2) of the Act is amended**

- (a) **by the repeal of clause (a) and the substitution of the following:**

- (a) enter and inspect, during regular business hours, the business premises of a person who sells tobacco or an electronic smoking device at retail, which may include
 - (i) examining and taking copies of any records related to tobacco, an electronic smoking device or a prescribed flavouring agent, and
 - (ii) opening any container or package that contains or may contain tobacco, an electronic smoking device or a prescribed flavouring agent;

(b) by the addition of the following after clause (a):

- (a.1) seize, take away, impound or hold anything located at the business premises of a person who sells tobacco or an electronic smoking device at retail that the inspector has reasonable grounds to believe
- (i) is or was used in connection with a contravention of this Act or the regulations, or
 - (ii) will afford evidence relevant to a contravention of this Act or the regulations;

(2) Section 3 of the Act is amended by the addition of the following after subsection (2):

Assistance from peace officer

- (3) An inspector may request assistance from a peace officer, and the peace officer shall assist the inspector, in
- (a) exercising the inspector's powers or performing the inspector's duties under this Act or the regulations; or
 - (b) enforcing this Act or the regulations.

4. The Act is amended by the deletion of the heading "FLAVOURED TOBACCO" immediately before section 3.1 and the substitution of the following:

PROHIBITED PRODUCTS

5. Section 3.1 of the Act is repealed and the following substituted:

3.1 Definition of "sell or offer to sell"

- (1) In this section, "sell or offer to sell" includes possessing, keeping or storing for the purpose of selling or offering for sale.

Sale of flavoured tobacco or electronic smoking device

- (2) No person shall sell or offer to sell at retail, tobacco or an electronic smoking device that contains a prescribed flavouring agent.

Presumed intention to sell flavoured product

- (3) A person who
- (a) sells or offers to sell tobacco or electronic smoking devices at retail; and
 - (b) possesses, keeps or stores tobacco or an electronic smoking device that contains a prescribed flavouring agent,

is presumed to possess, keep or store the tobacco or electronic smoking device that contains a prescribed flavouring agent for the purpose of selling it or offering it for sale at retail, unless the contrary is proven.

Sale of flavouring agent or electronic smoking device with high nicotine content

- (4) No person shall sell or offer to sell at a tobacconist shop,
- (a) a prescribed flavouring agent; or

- (b) an electronic smoking device with a nicotine concentration that exceeds a prescribed number of milligrams per millilitre according to its packaging.

Presumed intention to sell

- (5) A person who
 - (a) sells or offers to sell tobacco or electronic smoking devices at a tobacconist shop; and
 - (b) possesses, keeps or stores a product referred to in clause (4)(a) or (b),is presumed to possess, keep or store the product referred to in clause (4)(a) or (b) for the purpose of selling it or offering it for sale at a tobacconist shop, unless the contrary is proven.

6. Subsection 4.1(3) of the Act is repealed.

7. Section 7 of the Act is repealed and the following substituted:

7. Limitation of liability

- (1) The Minister, an inspector or any other person acting under the authority of this Act or the regulations is not liable in any civil action for anything done or not done, in good faith, in the performance or intended performance of a duty or the exercise or intended exercise of a power under this Act or the regulations.

No liability for reporting or assisting

- (2) A person is not liable in any civil action for reporting a contravention or suspected contravention of this Act or the regulations or assisting an inspector in performing the inspector's duties or exercising the inspector's powers under this Act or the regulations, provided the person is acting in good faith.

8. Section 8 of the Act is repealed and the following substituted:

8. Offences and penalties

- (1) Every person who contravenes a provision of this Act or the regulations, or whose employee contravenes subsection 3.1(2) or (4), 4(1), (4) or (5), or 5.1(1) or (1.1), or clause 5.2(1)(a) or 5.3(1)(a), is guilty of an offence and liable on summary conviction
 - (a) where the person is an individual,
 - (i) for a first offence, to a fine of \$1,000,
 - (ii) for a second offence, to a fine of \$2,500, and
 - (iii) for a third or subsequent offence, to a fine of \$5,000; and
 - (b) where the person is a corporation,
 - (i) for a first offence, to a fine of \$5,000,
 - (ii) for a second offence, to a fine of \$10,000, and
 - (iii) for a third or subsequent offence, to a fine of \$25,000.

Continuing offence

- (2) A contravention of this Act or the regulations that is of a continuing nature constitutes a separate offence in respect of each day or part of a day that it continues.

Additional penalties

- (3) Where a person who sells or offers to sell tobacco or electronic smoking devices at retail is found guilty of an offence related to a contravention of subsection 3.1(2) or (4), or 4(1), for a second or subsequent time, a judge of the provincial court may, in addition to imposing the applicable fine under subsection (1), make an order prohibiting the person from selling or offering to sell tobacco or electronic smoking devices at retail, at the business premises where the contravention occurred or any premises where the business is relocated, for
- (a) in the case of a second offence, up to seven consecutive days;
 - (b) in the case of a third offence, up to 30 consecutive days; and
 - (c) in the case of a fourth or subsequent offence, up to 90 consecutive days.

Order posted

- (4) A person who is subject to an order made under subsection (3) shall post the order as directed by an inspector, at the business premises where the order applies, for the duration of the order.

9. The Act is amended by the addition of the following after section 8:

8.1 Forfeiture of seized items

- (1) Anything seized under this Act is forfeited to the Government unless, within 30 days following the seizure, the person from whom the thing was seized, or the owner of the thing, applies to the Supreme Court to establish the right to possession of the thing.

Right to possession

- (2) For the purpose of an application under subsection (1), the applicant has the right to possession of the thing seized if the possession did not, at the time the seizure was made, constitute a contravention of this Act or the regulations.

Restoration order

- (3) On an application made under subsection (1), the Supreme Court may order that the thing seized be restored to the applicant if the court is satisfied that
- (a) the applicant is entitled to possession of the thing seized;
 - (b) the thing seized is not required as evidence in any proceeding;
 - (c) continued detention of the thing is not necessary to prevent the commission of an offence; and
 - (d) it is unlikely that the thing would be forfeited upon conviction under subsection (6).

Alternative order

- (4) Where the court is satisfied that an applicant is entitled to possession of the thing seized but is not satisfied as to all of the matters mentioned in clauses (3)(b) to (d), the court may order that the thing seized be restored to the applicant
- (a) upon the expiration of three months from the date of the seizure, if no proceeding in respect of an offence has been commenced; or
 - (b) upon the final conclusion of any such proceeding, subject to subsection (6).

Forfeiture if not restored on application

- (5) If an application has been made for the return of any thing seized under this Act, but upon the hearing of the application no order is made by the court under subsection (3) or (4), the thing seized is forfeited to the Government.

Forfeiture on conviction

- (6) If a person is convicted of an offence under this Act or the regulations, the court shall order that any thing seized in connection with the offence be forfeited to the Government, unless the court concludes that forfeiture would be unjust in the circumstances.

Relief against forfeiture

- (7) Any person with an interest in a thing forfeited under this section may apply to the Supreme Court for relief against forfeiture, and the court may make an order providing for any relief that it considers just, including one or more of the following orders:
- (a) an order directing that the thing be returned to the applicant;
 - (b) an order directing that any interest in the thing be vested in the applicant;
 - (c) an order directing that an amount be paid by the Government to the applicant by way of compensation for the forfeiture.

No relief against forfeiture

- (8) The court shall not order any relief under subsection (7) unless the court is satisfied that the applicant did not, directly or indirectly, participate in or benefit from any offence related to the seizure.

10. Section 9 of the Act is amended by the addition of the following after clause (a.1):

- (a.2) prescribing the maximum permitted nicotine concentration of an electronic smoking device in milligrams per millilitre for the purpose of clause 3.1(4)(b);

11. This Act comes into force on a date that may be fixed by proclamation of the Lieutenant Governor in Council.

EXPLANATORY NOTES

SECTION 1 amends the Act to add a heading before section 1.

SECTION 2 clarifies that the Act does not affect the authority of the Cannabis Management Corporation under the *Cannabis Management Corporation Act* to sell, offer to sell, expose for sale and have in its possession for sale, to persons who may lawfully purchase cannabis items that are related to or used in the consumption of cannabis.

SECTION 3 amends subsection 3(2) of the Act to clarify and broaden the powers of an inspector and adds a new subsection 3(3) requiring a peace officer to assist an inspector, on request, to exercise the inspector's powers, perform the inspector's duties and enforce the Act or the regulations.

SECTION 4 repeals and replaces the heading before section 3.1 of the Act.

SECTION 5 repeals and replaces section 3.1 of the Act to add a prohibition against selling or offering to sell, in a tobacconist shop, a prescribed flavouring agent or an electronic smoking device with a nicotine concentration above a prescribed maximum. It also adds provisions presuming intention to sell or offer for sale unless the contrary is proven.

SECTION 6 repeals subsection 4.1(3) of the Act, which exempts a hospital or an institution for the mentally ill from the prohibition against selling tobacco or an electronic smoking device in a designated place.

SECTION 7 repeals and replaces section 7 of the Act to limit the liability of the Minister, an inspector or any other person acting in good faith under the authority of the Act and any person who reports a contravention or assists an inspector.

SECTION 8 repeals and replaces section 8 of the Act to provide fines for individuals and corporations for first, second and third or subsequent offences, to provide for continuing offences and to provide for a judge of the provincial court to make an order prohibiting a person from selling or offering for sale, at retail, tobacco or electronic smoking devices for a specified period as an additional penalty for certain offences.

SECTION 9 adds a new section 8.1 to the Act, providing for the forfeiture or restoration of seized items.

SECTION 10 amends section 9 of the Act to add a regulation-making power to prescribe the maximum permitted nicotine concentration for an electronic smoking device.

SECTION 11 provides for the commencement of this Act on proclamation of the Lieutenant Governor in Council.

(Bill No. 71)

**An Act to Amend the Tobacco and Electronic
Smoking Device Sales and Access Act**

<i>STAGE:</i>	<i>DATE:</i>
<i>1st Reading:</i>	November 5, 2024
<i>2nd Reading:</i>	
<i>To Committee:</i>	
<i>Reported:</i>	
<i>3rd Reading and Pass:</i>	
<i>Assent:</i>	

SIGNATURES:

Honourable Dr. Wassim Salamoun, Lieutenant Governor

Honourable Darlene Compton, Speaker

Joseph Jeffrey, Clerk

Hon. Mark McLane
Minister of Health and Wellness

GOVERNMENT BILL

2024
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