

Requirements under the *Tobacco and Vapour Products Control Act* and Tobacco and Vapour Products Control Regulation

The new laws around the sale, display, promotion and use of tobacco and vapour products will **come into effect on Sept. 1, 2016**. On that day, all retailers and users of these products must adjust their practices to meet the requirements of the new *Tobacco and Vapour Products Control Act* and the Tobacco and Vapour Products Control Regulation. The information below is intended to give a general overview of the new requirements. A copy of the new *Tobacco and Vapour Products Control Act* and Vapour Products Control Regulation will be released in July 2016.

Most of the changes relate to the sale, display, promotion and use of vapour products/electronic cigarettes. There are some additional changes to the buffer zone and use on health authority sites for tobacco as well as vapour products/electronic cigarettes. All other requirements for tobacco display, sale and use remain as they were in the previous *Tobacco Control Act* and Tobacco Control Regulation, as well as the current *Tobacco Tax Act* and Tobacco Tax Regulation, and the federal *Tobacco Act*. Your local government may also have requirements.

The information provided gives a general overview of the legislative standards, including:

- ▶ the sale, display, promotion and use of vapour products in stores;
- ▶ the use of vapour products in public and work spaces;
- ▶ buffer zone and use on health authority sites for both tobacco and vapour products; and
- ▶ enforcement of the new laws, including penalties.

Requirements for the sale and promotion of vapour products in stores

What is a vapour product?

A vapour product or electronic cigarette is defined as a device that contains an electronic or battery-powered heating element that can vapourize an e-substance.

An e-substance is a solid, liquid or gas that when heated by the element in an e-cigarette, produces a vapour for use in an e-cigarette. All e-substances are covered by the new legislation and it does not matter if the e-substance contains nicotine or is nicotine-free.

Both the device and the e-substance are subject to restrictions on sale, display, promotion and use.

Who can buy vapour products?

Any adult over the age of 19 can purchase a vapour product.

Retailers must ensure that they sell vapour products only to people over 19 years of age. Only government-issued identification (e.g. a passport, driver's licence or identification card with a photograph) can be used to confirm a person's age.

It is important to note that it is illegal to give or provide any vapour products to someone under the age of 19. If you suspect someone is providing vapour products to minors, please contact enforcement staff at your local [regional health authority](#).

Can I display vapour products in my store?

A key goal in the new legislation is ensuring youth are not encouraged to use vapour products. As a result, vapour products cannot be advertised or displayed in stores where those under 19 years of age have access.

- ▶ **If your store allows all ages to enter the store**, then you must ensure that the vapour products and any advertisements for vapour products are not visible to minors in your store. This includes any objects like mugs or hats that promote brands or manufacturers of vapour products. Within your store, you can inform customers that you have vapour products for sale, using basic signs with general information such the price range of single use or refillable products. The information must be small black letters that on a white background and the page cannot be larger than a standard letter size page.
- ▶ **If your store only allows adults to enter the store**, then you may have vapour products and their promotions out on display. However, you must ensure that people looking into the store from outside cannot see the vapour products or their advertisements.

Any vending machines that sell vapour products must be in adult-only venues.

Can tobacco or vapour products be advertised outside of retail stores – for example, on a sandwich board, newspaper or billboard?

Our advertising regulations will apply to retail premises. If you wish to advertise outside of those premises, then you must review the requirements set by your local and federal governments.

What are the display requirements for tobacco and vapour products in duty free stores?

Duty free stores are treated the same as all other retail stores in British Columbia. Duty-free stores that sell tobacco or vapour products can either stop youth from entering their premises or place these products in age-restricted areas.

In the case of displays of these products in duty free stores, federal legislation does not take precedence over provincial legislation. These laws will continue to be enforced in duty free stores by enforcement officers from health authorities.

What signs must I post if I want to sell vapour products?

Under the new legislation, anyone selling vapour products must post two mandated warning signs at your cash till or point of sale:

1. One sign faces the customers and informs them they must be at least 19 years of age to buy vapour products.



2. A second sign faces the retailer/employee of retailer and reminds them that only those 19 or older with approved identification can buy vapour products.



You must use only the signs provided by the Ministry of Health. Please contact your local [regional health authority](#) to receive your copies of the new signs.

What signs must I post if I want to sell tobacco products?

It is important to note that the Ministry of Health has updated the signs required by tobacco retailers. There are now just two mandated signs that retailers must place at the point of sale:

1. One sign faces the customers and informs them they must be at least 19 years of age to buy tobacco products.



2. A second sign faces the retailer/employee of retailer and reminds them that only those 19 or older with approved identification can buy tobacco products.



You must use only the signs provided by the Ministry of Health. Please contact your local [regional health authority](#) to receive your copies of your signs.

Tobacco retailers are no longer required to post the 17cm by 35cm graphic warning sign. These signs may have had a picture of a fish-hook or a small girl with an oxygen mask on. These signs can be removed.

What if my store sells both tobacco and vapour products?

The Ministry of Health has created signs that retailers of both products should use:

1. One sign faces the customers and informs them they must be at least 19 years of age to buy tobacco and vapour products.
2. A second sign faces the retailer/employee of retailer and reminds them that only those 19 or older with approved identification can buy tobacco and vapour products.



Only the signs provided by the Ministry of Health can be used. Please contact your local [regional health authority](#) to receive your copies of your signs.

Are there any stores that cannot sell tobacco or vapour products?

There are a number of public places in B.C. that cannot sell tobacco or vapour products. Retail outlets in the following locations cannot sell tobacco or vapour products:

- ▶ Any publicly owned or leased hospital or health-care facility.
- ▶ Any publicly owned or leased post-secondary buildings that are used for education, research or student services.
- ▶ Any municipal or regional district buildings used for athletics, recreation or library services.
- ▶ Any building owned or leased by government or crown corporations or agencies.

Requirements for use of vapour products

What restrictions are there on the use of vapour products?

Vapour products cannot be used inside of substantially enclosed public or workplaces. This includes places such as offices, malls, cafés, stores and other places in which the public can enter and/or people work, along with the break rooms and bathrooms within these sites. The common areas of hotels, apartments and condominiums, such as the hallways, laundry room or party room are also considered public or workplaces.

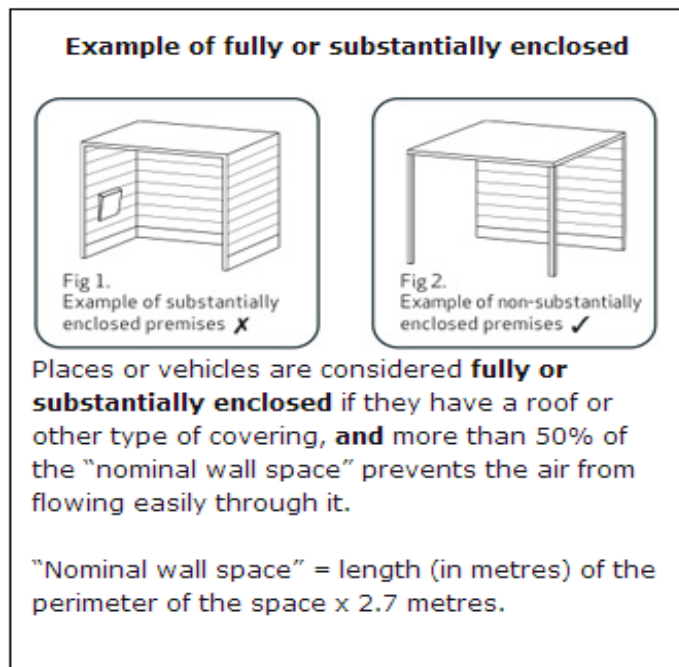
Business managers, owners or lessees have legal responsibilities to prevent people from using vapour products in most fully or substantially enclosed public places and workplaces.

Businesses and organizations should contact their [regional health authority](#) if they require further guidance on whether their premises are fully or substantially enclosed.

Can customers use vapour products in a vapour products store?

An exception was made in the Regulation to allow customers in adult-only vapour products stores to learn how to use vapour products or to test products that they wish to buy. The exception has the following conditions:

- ▶ Retailers/employees can hold and activate vapour products only for the purpose of showing customers how to use the product.
- ▶ Retailers/employees cannot inhale or use the vapour product.
- ▶ A customer can sample an e-substance in the store if:
 - They are testing or sampling products that they intend to purchase and consume off-site; and
 - Only two customers may sample vapour products at any time in a retail store.
- ▶ Retailers/employees cannot use vapour products on site.
- ▶ Retailers must take steps to ensure the second hand vapour does not escape to adjacent premises or public areas.



What are the restrictions on using tobacco or vapour products outdoors?

The Tobacco and Vapour Products Control Regulation sets a six-metre zone around all doorways, air intakes and open windows to any substantially enclosed public and work places in B.C. (previously, the buffer zone was three metres). This means there must be a six-metre area around any doorway, air intake or open window to any public or work place in which no one can stand and use tobacco or vapour products. This protects against emissions entering these places and protects people as they enter or exit.

Places that may be considered public or workplaces include stores, offices, and entrances to condominiums/apartment buildings, work vehicles (e.g., delivery vans), public transit, taxis, cafes, casinos and pubs/bars.

There is an exception to the buffer zone restriction:

- ▶ Tobacco and vapour products can be used on an outdoor hospitality patio (e.g., patio of a bar, casino, café) that is within a buffer zone if there are no open windows, doors or active air intakes between the patio and the hospitality venue. For example, patrons can use vapour products on a casino's patio as long as the doors are closed except for exiting/entering, the windows to the casino are closed and the air intake is not operating.

NOTE: You may live in a community/municipality that has greater restrictions on outdoor smoke/vape use. Some communities in B.C. ban use on hospitality patios, they may have buffer zones that are larger than six metres or they may ban use on outdoor spaces, such as beaches or playgrounds. If your community has such a bylaw, it takes precedence over the provincial requirement. Whichever requirement is more restrictive is the requirement you must follow. As an example, the provincial legislation allows vapour product use on a hospitality patio. However, your community/municipality bans it through a bylaw. Therefore, the community/municipality bylaw is the one that must be followed.

What is my responsibility as a manager or business owner to enforce the buffer zone?

Owners and managers are required to take reasonable steps to prevent people from smoking/vaping within the six metre buffer zone on their property. They are not required to enforce the law on public property such as sidewalks, unless the person is within the control of the owner (such as a customer or patron) or is their employee. For example, if you place a bench at the doorway to your store, you must make sure people do not use tobacco or vapour products while sitting there.

What are the restrictions for tobacco and vapour product use on health authority sites?

Tobacco and vapour products cannot be used on the grounds of a health authority site, unless in an area that the health authority has decided is a designated use area. Health authorities may designate an area for tobacco products only, for vapour products only or for both products. Health authorities are not required to have designated areas for either product.

Residents of a hospital or residential care facility can use tobacco or vapour products inside the hospital or residential care facility only if there is a designated, specially constructed room that meets the standards set by [WorkSafeBC's Occupational Health and Safety Guidelines, Part 4](#). Only residents can use the room – visitors and staff cannot. However, it is important to note that health authorities are not required to provide such rooms. If residents are concerned about how they will cope without tobacco or vapour products while they are on site, they should speak to facility staff. Nicotine medication can regulate nicotine levels and make the adjustment easier.

The new laws are aligned to health authority policy which has banned tobacco and vapour product use except in designated areas. Many health authorities are seeking to have smoke and vape free premises.

Can a health authority allow e-cigarette/vapour product use in a designated outdoor smoking area but ban smoking tobacco products on the entire health board property?

The legislation gives Health Authorities the discretion to implement designated outdoor smoking areas that allow tobacco **or** e-cigarette/vapour product use. It is up to health authorities to decide if they will designate an area for the use of one, both or neither of these products.

The legislation allows for an exception for prescribed medical products. Does that mean people can use vapour products inside public and work places if their doctor prescribes them?

No, it does not. In this section, 'prescribed' means prescribed by regulation and does not mean a doctor's prescription. In this context, 'prescribed' is a regulatory term and allows our regulation to create a schedule of medical devices approved by Health Canada.

Does this legislation discourage the use of vapour products as a harm reduction tool for tobacco users?

One of the goals in this legislation is to let adults make the choice to use vapour products while ensuring youth cannot buy them and are not encouraged to use them by retail advertisement and displays. If an adult wants to buy a vapour product to use instead of tobacco, they can do so. However, there are many people who do not want to be exposed to the emissions from vapour products in enclosed public or work places.

We do want to remind people that they can get regulated sources of nicotine through a number of approved nicotine replacement products that have been reviewed and approved by Health Canada. Our [BC Smoking Cessation Program](#) offers twelve weeks of nicotine replacement gum, patch, lozenge or inhaler.

Enforcement of the legislation, including penalties

Who enforces the legislation?

Enforcement officers in the [regional health authorities](#) are responsible for enforcing the *Tobacco and Vapour Products Control Act* and the Tobacco and Vapour Products Control Regulation.

Their work is guided by a progressive enforcement model that includes: education and awareness, verbal warning, letter warning, ticketing and administrative hearings. Their goal is to ensure everyone is meeting the requirements of the legislation through education and progressive enforcement options. Many times, an enforcement officer will work with retailers to educate them on the requirements and help parties comply with the new laws.

What are the penalties for violations of the legislation?

If an enforcement officer believes a retailer or their employee has contravened the *Tobacco and Vapour Products Control Act* or Regulation, the officer has two main options:

- **A ticket can be issued:** tickets vary from \$345 or \$575 depending on the contravention. Fine amounts for contraventions of the Tobacco and Vapour Products Control Act and Regulation are provided under the Violation Ticket Administration and Fines Regulation, B.C. Reg. 89/97.
- **A request can be made for an administrative hearing:** an administrative hearing is usually for more serious violations and allows both the retailer and enforcement officer an opportunity to provide evidence in a hearing. If a contravention is found, adjudicators can set monetary penalties and/or suspend tobacco sales authorizations and prohibit the sale of vapour products. Monetary penalties range up to \$5,000, and suspensions of tobacco sales authorizations and prohibition of sale of vapour products range up to 180 days.

If an enforcement officer believes an individual has contravened one of the *Tobacco and Vapour Products Control Act* or Regulation sections that deal with use in a prohibited place, the ticket is \$58 per violation.