

Caution:

This consultation draft is intended to facilitate dialogue concerning its contents. Should the decision be made to proceed with the proposal, the comments received during consultation will be considered during the final preparation of the regulation. The content, structure, form and wording of the consultation draft are subject to change as a result of the consultation process and as a result of review, editing and correction by the Office of Legislative Counsel.

CONSULTATION DRAFT

ONTARIO REGULATION

To be made under the

SMOKE-FREE ONTARIO ACT

Amending O. Reg. 268/18

(GENERAL)

1. (1) The definitions of “client”, “designated person”, “licensed seller”, “registered person”, “specialty vape store” and “tobacconist” in subsection 1 (1) of Ontario Regulation 268/18 are revoked and the following substituted:

“designated person” means a person authorized to produce medical cannabis on behalf of a medical cannabis user in accordance with Part 14 of the *Cannabis Regulations* (Canada) or a court order; (“personne désignée”)

“licensed seller” means the holder of a licence for sale for medical purposes issued under the *Cannabis Regulations* (Canada); (“vendeur autorisé”)

“specialty vape store” means a retail establishment that is registered as a specialty vape store with the board of health for the place where it is located and where,

- (a) at least 85 per cent of the establishment’s total sales for the previous 12 months is from vapour products or, if the retail establishment has been in operation for less than 12 months, at least 85 per cent of the establishment’s total inventory purchases for the time it has been in existence consists of vapour products or at least 85 per cent of the total sales for the time it has been in existence consists of vapour products, and

- (b) the remainder of the establishment's total sales or inventory purchases during the applicable period in clause (a) are from or consist of other items reasonably associated with a vapour product or branded with the name of the specialty vape store or a brand of vapour product; (“boutique spécialisée de vapotage”)

“tobacconist” means a retail establishment that is registered as a tobacconist with the board of health for the place where it is located and where, subject to subsection 20 (2),

- (a) at least 85 per cent of the establishment's total sales for the previous 12 months is from specialty tobacco products or, if the retail establishment has been in operation for less than 12 months, at least 85 per cent of the establishment's total inventory purchases for the time it has been in existence consists of specialty tobacco products or at least 85 per cent of the total sales for the time it has been in existence consists of specialty tobacco products, and
- (b) the remainder of the establishment's total sales or inventory purchases during the applicable period in clause (a) is from or consists of cigarettes within the meaning of the *Tobacco Tax Act* or other items reasonably associated with a tobacco product or branded with the name of the tobacconist or a brand of tobacco product; (“marchand de tabac”)

(2) Subsection 1 (1) of the Regulation is amended by adding the following definitions:

“medical cannabis” means cannabis that is obtained for medical purposes in accordance with Part 14 of the *Cannabis Regulations* (Canada) or in accordance with a court order; (“cannabis thérapeutique”)

“medical cannabis user” means an individual who is authorized to possess cannabis for the individual's own medical purposes in accordance with Part 14 of the *Cannabis Regulations* (Canada) or in accordance with a court order; (“consommateur de cannabis thérapeutique”)

(3) Subsections 1 (2) and (3) of the Regulation are revoked and the following substituted

- (2) For the purposes of paragraph 2 of subsection 4 (1) of the Act,

“brand of tobacco product” does not include a brand of a substance that contains tobacco and that is intended exclusively for use in vapour products.

2. Clauses 4 (a) and (b) of the Regulation are revoked and the following substituted:

- (a) a tobacco product must be packaged in accordance with the requirements of the *Tobacco and Vaping Products Act* (Canada), and the package must bear or contain information required under that Act;

- (b) a vapour product must be packaged in accordance with the requirements of the *Tobacco and Vaping Products Act* (Canada), and the package must bear or contain information required under that Act;

3. Clause 7 (3) (c) of the Regulation is amended by striking out “medical cannabis” and substituting “cannabis”.

4. Sections 21, 22 and 23 of the Regulation are revoked and the following substituted:

Promotion, certain electronic cigarettes

21. For greater certainty, a person who sells or manufactures an electronic cigarette or a component of an electronic cigarette that is sold or manufactured for use with a tobacco product, but that is packaged without a tobacco product, is exempt, with respect to the electronic cigarette or the component of the electronic cigarette, from the prohibitions in subsection 4 (2) of the Act concerning tobacco product accessories.

Display and promotion rules, vapour products

22. For the purposes of section 4.1 of the Act, a person who sells vapour products or offers vapour products for sale may display and promote vapour products, as long as the display and promotion complies with the requirements under Division 2 of Part IV of the *Tobacco and Vaping Products Act* (Canada).

Exemption, display and promotion rules, manufacturers

23. (1) For the purposes of this section, a manufacturer of tobacco products is a person who,

- (a) manufactures, fabricates or produces tobacco products for distribution, sale or storage in Ontario; and
- (b) holds a manufacturer’s registration certificate under section 7 of the *Tobacco Tax Act*.

(2) For the purposes of this section, a manufacturer includes any entity that is associated with a manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer.

(3) A manufacturer of tobacco products is exempt from subsections 4 (1) and (2) of the Act in respect of a place where tobacco products are manufactured, fabricated or produced by the manufacturer, subject to the following conditions:

1. The place must be registered with the Ministry for the purposes of the exemption.
2. The manufacturer shall not permit a person who is less than 19 years old to enter the place other than an employee of the manufacturer or a support person accompanying a

person with a disability who is at least 19 years old. For the purposes of this paragraph, a person who appears to be less than 25 years old is deemed to be less than 19 years old unless the manufacturer has required the person to provide identification and is satisfied that the person is at least 19 years old.

3. Promotional material, tobacco products and tobacco product accessories associated with a brand of tobacco product must not be visible from outside the place at any time of day.
4. Customers must be able to enter the place only from the outdoors or from the areas of an enclosed shopping mall that are,
 - i. open to the public,
 - ii. common to most of the retail establishments or other businesses within the mall, and
 - iii. not part of a retail establishment or other business within the mall.
5. The place must not be a thoroughfare.

5. Paragraph 2 of section 29 of the Regulation is revoked and the following substituted:

2. The area in the hospice where the smoking of cannabis or the use of electronic cigarettes is taking place meets the requirements of paragraphs 2, 3, 4 and 5 of subsection 13 (1) of the Act and the requirements of section 26 of this Regulation.

6. Section 30 of the Regulation is revoked.

7. Section 32 of the Regulation is revoked and the following substituted:

Testing, sampling, etc.

32. (1) Subsection 12 (1) of the Act does not apply to the holding of an activated electronic cigarette if the following conditions are met:

1. The activated electronic cigarette is held for the purpose of testing the electronic cigarette or demonstrating to customers how the electronic cigarette can be activated.
2. No vapour is inhaled or exhaled from the activated electronic cigarette.
3. The activated electronic cigarette is held in a tobacconist or specialty vape store that meets the following conditions:

- i. The retailer of the tobacconist or specialty vape store shall not permit a person who is less than 19 years old to enter the place of business of the tobacconist or specialty vape store other than the owner or occupier of the place, one of their employees or a support person accompanying a person with a disability who is at least 19 years old. For the purposes of this subparagraph, a person who appears to be less than 25 years old is deemed to be less than 19 years old unless the retailer has required that person to provide identification and is satisfied that the person is at least 19 years old.
- ii. The place of business of the tobacconist or specialty vape store must be a building or must be located within a building.
- iii. Customers must be able to enter the place of business of the tobacconist or specialty vape store only from the outdoors or from the areas of an enclosed shopping mall that are,
 - A. open to the public,
 - B. common to most of the retail establishments or other businesses within the mall, and
 - C. not part of a retail establishment or other business within the mall.
- iv. The place of business of the tobacconist or specialty vape store must not be a thoroughfare.

(2) Subsection 12 (1) of the Act does not apply to the use of an electronic cigarette if the following conditions are met:

1. The electronic cigarette is used for the purpose of sampling a vapour product.
2. The electronic cigarette is used in a specialty vape store that meets the following conditions,
 - i. The retailer of the specialty vape store shall not permit a person who is less than 19 years old to enter the place of business of the specialty vape store, other than the owner or occupier of the specialty vape store, one of their employees or a support person accompanying a person with a disability who is at least 19 years old. For the purposes of this subparagraph, a person who appears to be less than 25 years old is deemed to be less than 19 years old unless the retailer has required that person to provide identification and is satisfied that the person is at least 19 years old.

- ii. The place of business of the specialty vape store must be a building or must be located within a building.
 - iii. Customers must be able to enter the place of business of the specialty vape store only from the outdoors or from the areas of an enclosed shopping mall that are,
 - A. open to the public,
 - B. common to most of the retail establishments or other businesses within the mall, and
 - C. not part of a retail establishment or other business within the mall.
 - iv. The place of business of the specialty vape store must not be a thoroughfare.
3. No more than two persons may sample a vapour product by using an electronic cigarette in the specialty vape store at the same time.
 4. The electronic cigarette must be the personal possession of the person holding it, or, if it is supplied by the specialty vape store, a fresh one-time disposable mouthpiece must be used for the sampling.
 5. The electronic cigarette must not contain cannabis, tobacco or a controlled substance as defined in the *Controlled Drugs and Substances Act* (Canada).

8. Section 33 of the Regulation is amended by adding the following paragraph:

3. Homes that are part of the program of the Ministry known as the “Community Homes for Opportunity” program.

9. Section 34 of the Regulation is revoked and the following substituted:

Evidence and cannabis

34. A court may, in the absence of evidence to the contrary, infer that any substance in question is cannabis from the fact that a witness describes it as cannabis or by a name that is commonly applied to cannabis.

10. Section 37 of the Regulation is revoked and the following substituted:

Exemptions, 17.1

37. (1) Clause 17.1 (1) (b) of the Act does not apply to the consumption of medical cannabis in a manner other than by smoking or through the use of an electronic cigarette by a medical cannabis user.

(2) Section 17.1 of the Act does not apply to the following:

1. A motor vehicle as defined in the *Highway Traffic Act* that is equipped with permanent sleeping accommodations and permanent cooking facilities, while it is parked in a place that is not a highway or a King's Highway within the meaning of that Act and is being used as a residence.
2. A boat with permanent sleeping accommodations and permanent cooking and sanitary facilities, other than a boat used to carry passengers for hire, while the boat is at anchor or is secured to a dock or land and is being used as a residence.

(3) If a boat referred to in paragraph 2 of subsection (2) is secured to a dock or land to which the public is not ordinarily invited or permitted access, the exemption in that subsection is extended to the portion of the dock or land that is immediately adjacent to the boat, except at any time when the public is invited or permitted access to that portion of dock or land.

(4) Section 17.1 of the Act does not apply to the following:

1. A drug containing cannabis to which the *Cannabis Regulations* (Canada) apply.
2. Cannabis that is a natural health product to which the *Natural Health Product Regulations* (Canada) apply.
3. Industrial hemp within the meaning of the *Industrial Hemp Regulations* (Canada).
4. A derivative or a product made from a derivative that is exempt from the application of the *Cannabis Act* (Canada) under the *Industrial Hemp Regulations* (Canada).

Commencement
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