

Legislative
Assembly
of Ontario



Assemblée
législative
de l'Ontario

2ND SESSION, 42ND LEGISLATURE, ONTARIO
71 ELIZABETH II, 2022

Bill 85

**An Act to amend the Smoke-Free Ontario Act, 2017
with respect to activities related to vapour products**

Ms F. Gélinas

Private Member's Bill

1st Reading February 23, 2022

2nd Reading

3rd Reading

Royal Assent



EXPLANATORY NOTE

The Bill makes various amendments to the *Smoke-Free Ontario Act, 2017*. Here are some highlights:

1. The Act is amended to prohibit the promotion of vapour products.
2. The Act is amended to provide that no person shall sell or supply a tobacco product, vapour product or prescribed product or substance to a person who is less than 21 years old.
3. Currently, the Act prohibits the sale at retail or the sale for the purposes of sale at retail of vapour products prescribed as a flavoured vapour product. The Act is amended to provide that this restriction applies with respect to flavoured vapour products generally, unless the flavour or flavouring agent contained in the vapour product is a tobacco flavour or tobacco flavouring agent. The Act is also amended to provide that this prohibition applies to vapour products that contain more than specified amounts of nicotine.
4. The Act is amended to provide that vapour products can only be sold in specialty vape stores or designated stores in remote or rural communities, as well as to provide that no person may operate a specialty vape store or sell vapour products at a designated store in a remote or rural community without the approval of the board of health of the area in which the store is to be located. Corresponding offences are added to the Act.
5. The Act is amended to provide that the Minister may direct that tax revenue generated from the sale of vapour products at specialty vape stores and at designated stores in remote and rural communities be used for the purpose of educating the public about the health risks associated with vaping, provided that the Legislature has appropriated funds for this purpose.
6. The Act, as amended, would require Ontario Health to prepare an annual report to the Minister respecting youth vaping that sets out information and recommendations to assist the Minister in developing policies to reduce youth vaping.

**An Act to amend the Smoke-Free Ontario Act, 2017
with respect to activities related to vapour products**

Her Majesty, by and with the advice and consent of the Legislative Assembly of the Province of Ontario, enacts as follows:

1 (1) Subsection 1 (1) of the *Smoke-Free Ontario Act, 2017* is amended by adding the following definition:

“board of health” has the same meaning as in the *Health Protection and Promotion Act*; (“conseil de santé”)

(2) The definition of “e-substance” in subsection 1 (1) of the Act is repealed.

(3) The definition of “vapour product” in subsection 1 (1) of the Act is repealed and the following substituted:

“vapour product” means a device that produces emissions in the form of an aerosol that are intended to be inhaled and any part, product or substance that is intended to be used with such a device and includes the package in which the product is sold. (“produit de vapotage”)

2 (1) Section 3 of the Act is amended by striking out “19” wherever it appears and substituting in each case “21”.

(2) The French version of subsection 3 (1) of the Act is amended by striking out “de 19 ans” and substituting “de moins de 21 ans” in the portion before paragraph 1.

3 Subsection 4.1 (2) of the Act is repealed and the following substituted:

Promotion

(2) No person shall promote vapour products in any manner.

4 Paragraph 2 of section 9 of the Act is repealed and the following substituted:

2. A vapour product that is represented as being flavoured, that contains a flavouring agent or that is presented by its packaging, by advertisement or otherwise as being flavoured, unless the flavour or flavouring agent is a tobacco flavour or tobacco flavouring agent.

2.1 A vapour product containing nicotine that,

- i. in the case of a vapour pod or a liquid, contains more than 20 milligrams of nicotine per millilitre, and
- ii. in the case of all other vapour products, contains more than the prescribed amount of nicotine.

5 The Act is amended by adding the following sections:

VAPOUR PRODUCTS

Meaning of specialty vape store

10.1 (1) A retail establishment is a specialty vape store for the purposes of section 10.2 if it meets all of the following requirements:

1. At least 85 per cent of the establishment’s total sales for the previous 12 months must be 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 consist of vapour products or at least 85 per cent of the total sales for the time it has been in existence consist of vapour products.
2. The remainder of the establishment’s total sales or inventory purchases during the applicable period in paragraph 1 must be 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.
3. Any requirements established by the board of health for the place where the retail establishment is located.
4. Any prescribed requirements.

Publication

(2) A board of health that establishes any requirements for the purposes of paragraph 3 of subsection (1) shall publish the requirements on its website.

Part III of the *Legislation Act, 2006*

(3) Part III (Regulations) of the *Legislation Act, 2006* does not apply to any requirements established by the board of health.

Rules respecting retail sale of vapour products

10.2 (1) No person shall sell or offer to sell vapour products at retail other than in a specialty vape store or a designated store in a remote or rural community.

Approval of local board of health, speciality vape stores

(2) No person shall operate a specialty vape store in a location without first obtaining the approval of the board of health for the place where the store is to be located.

Approval of local board of health, designated stores in remote and rural communities

(3) No person shall sell or offer to sell vapour products at retail in a designated store in a remote or rural community without first obtaining the approval of the board of health for the place where the store is to be located.

Criteria for approval

(4) In determining whether to approve the operation of a specialty vape store or the sale or offer for sale of vapour products at retail at a designated store in a remote or rural community, the board of health shall consider the impact of the store on public health, in addition to the store's proximity to a school within the meaning of the *Education Act* or any of the other places listed in subsection 6 (1) and any prescribed considerations.

Conditions

(5) A board of health may impose conditions on any approval to operate a specialty vape store or a designated store in a remote or rural community.

Standard condition: persons under 21 years of age

(6) Every approval issued under this section is subject to the following conditions:

1. Persons who are less than 21 years old are not permitted inside of the specialty vape store.
2. Persons who appear to be less than 25 years old are not permitted inside of the specialty vape store unless the person has provided satisfactory identification lawfully issued to him or her indicating that the person is at least 21 years old.

Revocation

(7) A board of health may, after providing the notice required by the regulations, revoke an approval to operate a specialty vape store or a designated store in a remote or rural community if,

- (a) any conditions on the approval have been contravened; or
- (b) any other provision of this Act respecting vapour products has been contravened.

Same, speciality vape stores

(8) If the approval of a specialty vape store is revoked, the operator of the store shall cease operating it on or before the day on which the revocation is effective.

Same, designated stores in remote and rural communities

(9) If the approval of a designated store in a remote or rural community is revoked, the operator of the store shall cease storing and selling vapour products at that location on or before the day on which the revocation is effective.

Regulations

(10) The regulations may,

- (a) prescribe procedures for obtaining a board of health's approval to operate a specialty vape store or to sell or offer to sell vapour products at retail at a designated store in a remote or rural community and the revocation of such an approval by the board of health;
- (b) provide for inspections of a specialty vape store or a designated store in a remote or rural community by an agent of a board of health; and
- (c) provide for reviews of decisions of the board of health, including procedures for such reviews.

Transition

(11) Subsection (2) does not apply to a specialty vape store that is operating on the day section 5 of the *Smoke-Free Ontario Amendment Act (Vaping is not for Kids), 2022* comes into force for a period of 12 months beginning on that day.

Use of revenue

10.3 (1) The Minister may direct that tax revenue generated from the sale of vapour products at specialty vape stores and at designated stores in remote and rural communities be used for the purpose of educating the public about the health risks associated with vaping.

Appropriation required

(2) Subsection (1) only applies to the extent that the Legislature has appropriated funds for the purposes of that subsection.

Annual report on vapour products

10.4 Ontario Health shall prepare an annual report to the Minister respecting youth vaping setting out any information or recommendations that may assist the Minister in developing policies to reduce youth vaping.

6 Section 12 of the Act is amended by adding the following subsection:

Sampling of vapour products

(3) Despite paragraph 1 of subsection (2) and if prescribed by regulation, sampling may be permitted in a specialty vape store, but only a maximum of two persons may sample a vapour product at any given time.

7 Subsection 19 (2) of the Act is amended by striking out “19” and substituting “21”.

8 (1) Section 21 of the Act is amended by adding the following subsection:

Continuing offence, specialty vape stores and designated stores in remote and rural communities

(5.1) A person who contravenes subsection 10.2 (2) or (3) is guilty of an offence and on conviction is liable, for each day or part of a day on which the offence occurs or continues, to a fine of not more than \$5,000.

(2) **Tables 1 and 2 to section 21 of the Act are each amended by adding “10.2 (1)” before “14 (1) (c)” wherever it appears in Column 1.**

9 Section 24 of the Act is amended by adding the following subsection:

Restriction on exemptions

(3) Despite clause (1) (g), the regulations may not provide for an exemption from this Act that would permit any of the activities referred to in section 9 as they relate to vapour products referred to in paragraph 2 or 2.1 of that section.

Commencement

10 This Act comes into force 120 days after it receives Royal Assent.

Short title

11 The short title of this Act is the *Smoke-Free Ontario Amendment Act (Vaping is not for Kids), 2022.*