



Smoke-Free Ontario Act

How the Act Affects: Tobacco Retailers

Fact Sheet # 12

(**Note:** This fact sheet was revised in May 2010 to include information related to the new restrictions on the sale of flavoured cigarillos and requirements with respect to cigarillo packaging.)

Background

- The *Smoke-Free Ontario Act* came into force on May 31, 2006. The Act:
 - Prohibits smoking in enclosed workplaces and enclosed public places in Ontario in order to protect workers and the public from the hazards of second-hand smoke.
 - Restricts how tobacco products are displayed and promoted at the point of sale.
 - Strengthens the restriction on selling tobacco products to young people.
- Tobacco retailers have a legal responsibility to ensure that they and their employees understand and comply with the requirements under the *Smoke-Free Ontario Act*.
- Tobacco products include:
 - Cigarettes
 - Cigars
 - Cigarillos
 - Pipe tobacco
 - Other specialty tobacco products, including chewing tobacco, snus, snuff, etc.

What's New

Restrictions on the sale of flavoured cigarillos and requirements with respect to cigarillo packaging.

Effective July 1, 2010 selling, offering to sell, distributing and offering to distribute flavoured cigarillos is prohibited.

Cigarillos that are flavoured with menthol can still continue to be sold.

All unflavoured cigarillos and menthol cigarillos can continue to be sold but must be sold in packages of 20.

A cigarillo includes any of the following products:

1. A tobacco product that,
 - i. weighs less than 1.4 grams, excluding the weight of any mouthpiece or tip,
 - ii. is in the form of a roll or tube, and
 - iii. has a wrapper that contains natural or reconstituted leaf tobacco.
2. A tobacco product that,
 - i. has cellulose acetate or other type of filter,
 - ii. is in the form of a roll or tube, and
 - iii. has a wrapper that contains natural or reconstituted leaf tobacco.

For more detail, please refer to section 5(3) and 6.1 of the *Smoke-Free Ontario Act*.

Display

- No tobacco products may be displayed in a retail store. This means:
 - Tobacco products must be stored in a way that prohibits consumers from seeing them before they are purchased. Customers are not allowed to handle cigarettes or other tobacco products before they purchase them.
 - Store owners must ensure that tobacco products are not displayed to a potential consumer while re-stocking, conducting inventory checks or any other process that may require the storage device to be opened and tobacco products viewed.
 - The brief time when a seller opens and closes the storage device and transfers the product to a customer is not considered a “display” under section 3.1(2) of the Act.
 - ***Important: Any intentional or unintentional action to display tobacco products in the storage device could be subject to a charge under the Act.***

Acceptable Storage

- Examples of **acceptable** tobacco product storage and dispensing systems include:
 - Overhead containers that ensure tobacco products are only visible to the clerk;
 - Below-the-counter drawers or cabinets that ensure tobacco products are only visible to the clerk;
 - Single package dispensing, gravity-fed devices;
 - Retrofit devices that cover shelves with a top-hinge “flip up” cover that close automatically or immediately by gravity. These must be no larger than 30.5 cm (or one foot) in height by 61 cm (2 feet) in length, and must open one at a time;
 - Slim drawers that open in sections and expose only the spine of cigarette packages;
 - On-the-counter devices and rotating trays of tobacco products only visible to the clerk.

Unacceptable Storage

- Examples of **unacceptable** tobacco product storage and dispensing systems include:
 - Garage door style covers which open to display the whole or a large portion of the stock of tobacco products
 - Large cupboards which open to permit the consumer to view the display of larger quantities of tobacco products
 - Retrofit devices that cover shelves with a bottom hinge “flip down” cover that does not close automatically and would remain open unless lifted back into a closed position
 - Curtains or blinds
 - Horizontal sliding doors such as closet doors
- Small tags are permitted on the outside of tobacco product storage devices in order to help a clerk locate the particular tobacco product(s) contained in each storage device. Price information is not permitted on these identification tags. The tags must:
 - Use black type on a white background
 - Use letters up to 14 point type size
 - Not use logos or colour
 - Not be larger than 2" x 1" (5 cm x 2.5 cm)

Restrictions on the Promotion of Cigarettes and Other Tobacco Products

- Any kind of promotional material that reflects a particular brand of tobacco product is **prohibited**.
Examples of prohibited displays are:
 - Decorative panels and backdrops that feature particular brands of tobacco products
 - Backlit or illuminated panels
 - Promotional lighting
 - Three-dimensional exhibits
- Signs referring to the sale of tobacco products are permitted only to inform customers that a retailer sells tobacco products and the product price. Further:
 - The size of the sign cannot exceed 968 square centimeters
 - Signs must use black text against a white background
 - The text of a sign must not be visible from outside the retail establishment
 - A retailer may post a maximum of three signs referring to tobacco products and/or tobacco product accessories
 - Signs must not identify a brand of tobacco or tobacco-related product.
- The display of tobacco product accessories such as humidors, pipes, cigarette holders, cigar clips and matches is permissible as long as there is no association with tobacco products and/or brands of tobacco products.

Required Signs

All retailers must post *No Smoking* signs at all entrances, exits, washrooms and other appropriate locations in order to ensure that everyone knows that smoking is prohibited.

All retailers of cigarettes and tobacco products must post where it is clearly visible to the consumer at the point of sale:

- Government I.D. signs
- Age Restriction and Health Warning signs

For information on acquiring required signage, please contact your local public health unit.

Responsibilities of the Retailer

Apparent Age

Before selling tobacco to any person who appears to be less than 25 years old, a retailer must request identification and be satisfied that the person is at least 19 years old. Acceptable identification must include a photograph of the person accompanied by the person's date of birth and it must reasonably appear to have been issued by a government. Some examples are:

- Ontario driver's licence
- Canadian passport
- Canadian citizenship card
- Canadian Armed Forces identification card
- Liquor Control Board of Ontario photo card

While retailers may not request a health card, it can be accepted as identification if it is offered by the consumer and if it includes a picture and date of birth.

Vicarious Liability

Section 3(4) of the Act means that in addition to being responsible for their own actions, owners are responsible for the actions of their employees.

100% Smoke-Free

Proprietors have a responsibility to ensure that the entire premises are smoke-free at all times.

Enforcement

Local public health units will conduct inspections and investigate complaints regarding retail stores in order to enforce the Act.

Penalties

There are several penalties that a retailer could face under the Act. Retailers are advised to review the *Smoke-Free Ontario Act* to understand the specific offences that apply to them. Some convictions may result in an automatic prohibition.

Tobacco Sales Offences and Automatic Prohibitions: No Selling, Storing or Accepting Delivery of Tobacco Products

Certain activities prohibited under the *Smoke-Free Ontario Act* are categorized as "tobacco sales offences". These include: selling or supplying tobacco to someone under the age of 19; failing to request identification from someone appearing to be less than 25; failing to post the mandatory government ID and health warning signs; selling tobacco without the appropriate health warnings; some activities relating to selling unmarked cigarettes under the Tobacco Tax Act.

If there are two or more convictions for tobacco sales offences in a specific location within a 5 year period, that location may be temporarily subject to an "automatic prohibition". A location subject to an automatic prohibition may not sell or store any tobacco and no wholesaler or distributor may deliver tobacco to that location. An automatic prohibition lasts for six to 12 months, depending on the number of convictions for tobacco sales offences.

Retailers are advised to review section 16 of the *Smoke-Free Ontario Act* to understand more about this penalty.

Fines

A corporation could be subject to a maximum fine of \$10,000 for a first offence and \$150,000 for three or more offences. An individual could be subject to a maximum fine of \$4,000 for a first offence and \$100,000 for three offences or more.

This fact sheet is intended as a quick reference only. For more information, please contact your local public health unit at:

FOR INFORMATION ON THE SMOKE-FREE ONTARIO ACT AND ONTARIO REGULATION 48/06 ASSOCIATED WITH THE SMOKE-FREE ONTARIO ACT, CONTACT:

WEBSITE

www.healthunit.org



E-MAIL

SFOA@healthunit.org

