

Tobacco Act

S.C. 1997, c. 13

Assented to 1997-04-25

An Act to regulate the manufacture, sale, labelling and promotion of tobacco products, to make consequential amendments to another Act and to repeal certain Acts

Her Majesty, by and with the advice and consent of the Senate and House of Commons of Canada, enacts as follows:

SHORT TITLE

Short title

1. This Act may be cited as the *Tobacco Act*.

INTERPRETATION

Definitions

2. The definitions in this section apply in this Act.

"accessory"
« *accessoire* »

"accessory" means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches.

"additive"
« *additif* »

"additive" means an ingredient other than tobacco leaves.

"analyst"
« *analyste* »

"analyst" means a person designated as an analyst under subsection 34(1).

"blunt wrap"
« *feuille d'enveloppe* »

"blunt wrap" means a sheet, including one that is rolled, that is composed of natural or reconstituted tobacco and that is ready to be filled.

"brand element"
« *élément de marque* »

"brand element" includes a brand name, trade-mark, trade-name, distinguishing guise, logo, graphic arrangement, design or slogan that is reasonably associated with, or that evokes, a product, a service or a brand of product or service, but does not include a colour.

"emission"
« *émission* »

"emission" means a substance that is produced when a tobacco product is used.

"entity"
« *entité* »

"entity" includes a corporation, firm, partnership, association, society, trust or other organization, whether incorporated or not.

"furnish"
« *fournir* »

"furnish" means to sell, lend, assign, give or send, with or without consideration, or to barter or deposit with another person for the performance of a service.

"ingredient"
« *ingrédient* »

"ingredient" means tobacco leaves and any substance used in the manufacture of a tobacco product or its components, including any substance used in the manufacture of that substance.

"inspector"
« *inspecteur* »

"inspector" means a person designated as an inspector under subsection 34(1).

"little cigar"
« *petit cigare* »

"little cigar" means a roll or tubular construction that

(a) is intended for smoking;

(b) contains a filler composed of natural or reconstituted tobacco;

(c) has a wrapper, or a binder and a wrapper, composed of natural or reconstituted tobacco; and

(d) has a cigarette filter or weighs no more than 1.4 g, excluding the weight of any mouthpiece or tip.

It includes any tobacco product that is prescribed to be a little cigar.

"manufacture"
« *fabriquer* »

"manufacture", in respect of tobacco products, includes the packaging, labelling, distributing and importing of tobacco products for sale in Canada.

"manufacturer"
« *fabricant* »

"manufacturer", in respect of tobacco products, 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.

"Minister"
« *ministre* »

"Minister" means the Minister of Health.

"package" [Repealed, 2009, c. 27, s. 2]

"prescribed"
Version anglaise seulement

"prescribed" means prescribed by regulation.

"retailer"
« *détaillant* »

"retailer" means a person who is engaged in a business that includes the sale of a tobacco product to consumers.

"sell"
« *vendre* »

"sell" includes offer for sale and expose for sale.

"tobacco product"
« *produit du tabac* »

"tobacco product" means a product composed in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves. It includes cigarette papers, tubes and filters but

does not include any food, drug or device that contains nicotine to which the *Food and Drugs Act* applies.

"young person"
« *jeune* »

"young person" means a person under eighteen years of age.

1997, c. 13, s. 2; 2009, c. 27, s. 2.
Previous Version

GOVERNOR IN COUNCIL'S POWERS

Regulations — little cigar

2.1 (1) The Governor in Council may make regulations prescribing any tobacco product to be a little cigar for the purpose of the definition "little cigar".

Order in council — little cigar

(2) The Governor in Council may, by order, amend the definition "little cigar" by replacing the weight set out in that definition by a weight that is not less than 1.4 g.

2009, c. 27, s. 3.

HER MAJESTY

Binding on Her Majesty

3. This Act is binding on Her Majesty in right of Canada or a province.

PURPOSE

Purpose of Act

4. The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and, in particular,

(a) to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases;

(b) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;

(c) to protect the health of young persons by restricting access to tobacco products; and

(d) to enhance public awareness of the health hazards of using tobacco products.

PART I

TOBACCO PRODUCTS

Product standards

5. No person shall manufacture a tobacco product that does not conform with the standards established by the regulations.

Prohibition — manufacture

5.1 (1) No person shall use an additive set out in column 1 of the schedule in the manufacture of a tobacco product set out in column 2.

Exception — trade-mark or marking

(2) Subsection (1) does not prohibit the use of a colouring agent to depict a trade-mark on a tobacco product or to display a marking required under this or any other Act of Parliament or of the legislature of a province or for any other prescribed purpose.

2009, c. 27, s. 4.

Prohibition — sale

5.2 (1) No person shall sell a tobacco product set out in column 2 of the schedule that contains an additive set out in column 1.

Exception

(2) Subsection (1) does not prohibit the sale of a tobacco product by reason only that the product contains a colouring agent used for a purpose referred to in subsection 5.1(2).

2009, c. 27, s. 5.

Information required from manufacturer

6. (1) Every manufacturer shall submit to the Minister, in the prescribed manner and within the prescribed time, information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions, whether the tobacco products are for sale or not.

Requests for supplementary information

(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information.

1997, c. 13, s. 6; 2009, c. 27, s. 6.

Previous Version

Regulations

7. The Governor in Council may make regulations

(a) establishing standards for tobacco products, including prescribing the amounts of substances that may be contained in the product or its emissions;

(b) respecting test methods, including methods to assess conformity with the standards;

(c) prescribing information that manufacturers must submit to the Minister about tobacco products and their emissions, including sales data and information on market research, product composition, ingredients, health effects, hazardous properties and brand elements;

(c.1) prescribing information that manufacturers must submit to the Minister about research and development related to tobacco products and their emissions, including information on market research, product composition, ingredients, health effects, hazardous properties and brand elements;

(c.2) respecting requests for supplementary information under subsection 6(2);

(c.3) respecting the prohibition under section 6.1, including providing for the suspension of the manufacture or sale of a tobacco product;

(d) prescribing the means, including electronic means, by which the information referred to in paragraphs (c) to (c.2) may be submitted to the Minister;

(d.1) prescribing anything that by this Part is to be prescribed; and

(e) generally for carrying out the purposes of this Part.

1997, c. 13, s. 7; 2009, c. 27, s. 8.
Previous Version

Amendment of schedule

7.1 (1) The Governor in Council may, by order, amend the schedule by adding, amending or deleting

(a) the name or description of an additive or tobacco product; or

(b) a reference to all tobacco products, with or without exceptions.

Description

(2) An additive or tobacco product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.

2009, c. 27, s. 9.

PART II

ACCESS

Furnishing tobacco products

8. (1) No person shall furnish a tobacco product to a young person in a public place or in a place to which the public reasonably has access.

Defence

(2) A person shall not be found to have contravened subsection (1) if it is established that the person attempted to verify that the person was at least eighteen years of age by asking for and being shown documentation prescribed for the purposes of verifying age, and believed on reasonable grounds that the documentation was authentic.

Signs

9. Every retailer shall post, at retail, in the prescribed place and manner, signs in the prescribed form and with the prescribed content, that inform the public that the sale or giving of a tobacco product to a young person is prohibited by law, or that contain a prescribed health message, unless that retailer is exempted by the regulations from the requirement to post the signs.

Minimum number of products in package

10. (1) No person shall import for sale in Canada, package, distribute or sell cigarettes, little cigars or blunt wraps except in a package that contains at least 20 cigarettes, little cigars or blunt wraps or, if a higher number is prescribed, at least the prescribed number.

Other tobacco products

(2) No person shall import for sale in Canada, package, distribute or sell a tobacco product — other than cigarettes, little cigars or blunt wraps — that is prescribed for the purposes of this subsection, except in a package that contains at least the prescribed portions, number or quantity of the tobacco product.

1997, c. 13, s. 10; 2009, c. 27, s. 10.
Previous Version

Self-service display

11. No person, unless exempted by the regulations, shall sell a tobacco product by means of a display that permits a person to handle the tobacco product before paying for it.

Dispensing device

12. No person shall furnish or permit the furnishing of a tobacco product by means of a device that dispenses tobacco products except where the device is in

(a) a place to which the public does not reasonably have access; or

(b) a bar, tavern or beverage room and has a prescribed security mechanism.

Deliver or mail

13. (1) No person shall, for consideration, cause a tobacco product to be delivered from one province to another or to be sent by mail unless the delivery or mailing is between manufacturers or retailers or the person is otherwise exempted by the regulations.

Advertising an offer

(2) No person shall advertise an offer to deliver a tobacco product from one province to another or to mail a tobacco product.

Regulations

14. The Governor in Council may make regulations

- (a) prescribing the documentation that may be used to verify the age of a person for the purposes of subsection 8(2);
- (b) exempting persons from the application of sections 9, 11 and 13;
- (c) prescribing signs that are required by section 9 to be posted, including their form, size, content, number and placement;
- (d) prescribing tobacco products for the purposes of subsection 10(2);
- (e) respecting exemptions from the application of section 12;
- (f) prescribing anything that by this Part is to be prescribed; and
- (g) generally for carrying out the purposes of this Part.

PART III LABELLING

Information required on packages

15. (1) No manufacturer or retailer shall sell a tobacco product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions, and about the health hazards and health effects arising from the use of the product or from its emissions.

Information required on leaflet

(2) If required by the regulations, every manufacturer or retailer shall provide, in the prescribed form and manner, a leaflet that displays the information required by the regulations about a tobacco product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.

Attribution

(3) The information referred to in subsections (1) and (2) may be attributed to a prescribed person or body if the attribution is made in the prescribed manner.

Existing obligations saved

16. This Part does not affect any obligation of a manufacturer or retailer at law or under an Act of Parliament or of a provincial legislature to warn consumers of the health hazards and health effects arising from the use of tobacco products or from their emissions.

Regulations

17. The Governor in Council may make regulations

- (a) respecting the information that must appear on packages and in leaflets about tobacco products and their emissions and the health hazards and health effects arising from the use of the products and from their emissions;

(b) prescribing anything that by this Part is to be prescribed; and

(c) generally for carrying out the purposes of this Part.

PART IV PROMOTION

Definition of "promotion"

18. (1) In this Part, "promotion" means a representation about a product or service by any means, whether directly or indirectly, including any communication of information about a product or service and its price and distribution, that is likely to influence and shape attitudes, beliefs and behaviours about the product or service.

Application

(2) This Part does not apply to

(a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a tobacco product or tobacco product-related brand element, whatever the mode or form of its expression, if no consideration is given directly or indirectly for that use or depiction in the work, production or performance;

(b) a report, commentary or opinion in respect of a tobacco product or a brand of tobacco product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the tobacco product or brand in that report, commentary or opinion; or

(c) a promotion by a tobacco grower or a manufacturer that is directed at tobacco growers, manufacturers, persons who distribute tobacco products or retailers but not, either directly or indirectly, at consumers.

Prohibition

19. No person shall promote a tobacco product or a tobacco product-related brand element except as authorized by this Act or the regulations.

False promotion

20. No person shall promote a tobacco product by any means, including by means of the packaging, that are false, misleading or deceptive or that are likely to create an erroneous impression about the characteristics, health effects or health hazards of the tobacco product or its emissions.

Testimonials or endorsements

21. (1) No person shall promote a tobacco product by means of a testimonial or an endorsement, however displayed or communicated.

Depiction of person

(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.

Exception

(3) This section does not apply to a trade-mark that appeared on a tobacco product for sale in Canada on December 2, 1996.

Advertising

22. (1) Subject to this section, no person shall promote a tobacco product by means of an advertisement that depicts, in whole or in part, a tobacco product, its package or a brand element of one or that evokes a tobacco product or a brand element.

Exception

(2) Subject to the regulations, a person may advertise a tobacco product by means of information advertising or brand-preference advertising that is in

(a) a publication that is provided by mail and addressed to an adult who is identified by name; or

(b) [Repealed, 2009, c. 27, s. 11]

(c) signs in a place where young persons are not permitted by law.

Lifestyle advertising

(3) Subsection (2) does not apply to lifestyle advertising or advertising that could be construed on reasonable grounds to be appealing to young persons.

Definitions

(4) The definitions in this subsection apply in this section.

"brand-preference advertising"
« *publicité préférentielle* »

"brand-preference advertising" means advertising that promotes a tobacco product by means of its brand characteristics.

"information advertising"
« *publicité informative* »

"information advertising" means advertising that provides factual information to the consumer about

(a) a product and its characteristics; or

(b) the availability or price of a product or brand of product.

"lifestyle advertising"
« *publicité de style de vie* »

“lifestyle advertising” means advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

1997, c. 13, s. 22; 2009, c. 27, s. 11.
Previous Version

Packaging

23. No person shall package a tobacco product in a manner that is contrary to this Act or the regulations.

Prohibited additives — packaging

23.1 (1) No person shall package a tobacco product set out in column 2 of the schedule in a manner that suggests, including through illustrations, that it contains an additive set out in column 1.

Prohibition — sale

(2) No person shall sell a tobacco product set out in column 2 of the schedule that is packaged in a manner prohibited by subsection (1).

2009, c. 27, s. 12.
Previous Version

Prohibition — sponsorship promotion

24. No person may display a tobacco product-related brand element or the name of a tobacco manufacturer in a promotion that is used, directly or indirectly, in the sponsorship of a person, entity, event, activity or permanent facility.

1997, c. 13, s. 24; 1998, c. 38, s. 1.
Previous Version

Prohibition — name of facility

25. No person may display a tobacco product-related brand element or the name of a tobacco manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the tobacco product-related brand element or name is thereby associated with a sports or cultural event or activity.

1997, c. 13, s. 25; 1998, c. 38, s. 2.

Accessories

26. (1) Subject to the regulations, a manufacturer or retailer may sell an accessory that displays a tobacco product-related brand element.

Promotion

(2) No person shall promote an accessory that displays a tobacco product-related brand element except in the prescribed manner and form and in a publication or place described in paragraphs 22(2)(a) and (c).

1997, c. 13, s. 26; 2009, c. 27, s. 13.
Previous Version

Non-tobacco product displaying tobacco brand element

27. No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or is used with a service, if the non-tobacco product or service

(a) is associated with young persons or could be construed on reasonable grounds to be appealing to young persons; or

(b) is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.

Exception — tobacco product

28. (1) Subject to the regulations, a person may sell a tobacco product, or advertise a tobacco product in accordance with section 22, if any of its brand elements is displayed on a non-tobacco product, other than an accessory, or used with a service, if the non-tobacco product or service does not fall within the criteria described in paragraphs 27(a) and (b).

Exception — non-tobacco product

(2) Subject to the regulations, a person may promote a non-tobacco product, other than an accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, to which section 27 does not apply.

Sales promotions

29. No manufacturer or retailer shall

(a) offer or provide any consideration, direct or indirect, for the purchase of a tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest;

(b) furnish a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service; or

(c) furnish an accessory that bears a tobacco product-related brand element without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.

Retail display of tobacco products

30. (1) Subject to the regulations, any person may display, at retail, a tobacco product or an accessory that displays a tobacco product-related brand element.

Signs

(2) A retailer of tobacco products may post, in accordance with the regulations, signs at retail that indicate the availability of tobacco products and their price.

Communication media

31. (1) No person shall, on behalf of another person, with or without consideration, publish, broadcast or otherwise disseminate any promotion that is prohibited by this Part.

Exception

(2) Subsection (1) does not apply to the distribution for sale of an imported publication or the retransmission of radio or television broadcasts that originate outside Canada.

Foreign media

(3) No person in Canada shall, by means of a publication that is published outside Canada, a broadcast that originates outside Canada or any communication other than a publication or broadcast that originates outside Canada, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains a tobacco product-related brand element in a way that is contrary to this Part.

Report to Minister

32. Every manufacturer shall provide the Minister, in the prescribed manner and within the prescribed time, with the prescribed information about any promotion under this Part.

REGULATIONS

Regulations

33. The Governor in Council may make regulations

(a) respecting the promotion of tobacco products and tobacco product-related brand elements and the packaging of tobacco products, including the form, manner and conditions of the promotion and packaging, and the promotion of services and non-tobacco products for the purposes of section 28;

(b) respecting the advertisement of tobacco products for the purposes of subsection 22(2);

(c) and (d) [Repealed, 1998, c. 38, s. 3]

(e) respecting, for the purposes of subsection 26(1), the manner in which a tobacco product-related brand element may appear on an accessory;

(f) respecting the display of tobacco products and accessories at retail;

(g) respecting signs that a retailer may post under subsection 30(2), including the placement of the signs and their number, size and content;

(h) requiring manufacturers to disclose the particulars of their tobacco product-related brand elements and promotional activities;

(i) prescribing anything that by this Part is to be prescribed; and

(j) generally for carrying out the purposes of this Part.

PART V
ENFORCEMENT

INSPECTION

Designation of inspectors and analysts

34. (1) The Minister may designate any person or class of persons as an inspector or analyst for the purposes of this Act and must provide every inspector and analyst with a certificate of designation, in the form determined by the Minister.

Certificate must be produced

(2) An inspector entering a place under this Act must, on request, show the certificate to the person in charge of the place.

Places inspectors may enter

35. (1) For the purpose of ensuring compliance with this Act, an inspector may, subject to section 36, at any reasonable time, enter any place, other than a means of transportation, in which the inspector believes on reasonable grounds

(a) a tobacco product is manufactured, tested, stored, packaged, labelled or sold;

(b) there is anything used in the manufacture, testing, packaging, labelling, promotion or sale of a tobacco product; or

(c) there is any information relating to the manufacture, testing, packaging, labelling, promotion or sale of a tobacco product.

Powers of inspector

(2) In carrying out an inspection, an inspector may

(a) examine a tobacco product or thing referred to in paragraph (1)(b);

(b) require any person in the place to produce for inspection, in the manner and form requested by the inspector, the tobacco product or thing;

(c) open or require any person in the place to open any container or package found in the place that the inspector believes on reasonable grounds contains the tobacco product or thing;

(d) take or require any person in the place to produce a sample of the tobacco product or thing;

(e) conduct any test or analysis or take any measurements; or

(f) require any person found in the place to produce for inspection or copying any written or electronic information that is relevant to the administration or enforcement of this Act.

Use of computers and copying equipment

(3) In carrying out an inspection, an inspector may

(a) use or cause to be used any computer system in the place to examine data contained in or available to the computer system that is relevant to the administration or enforcement of this Act;

(b) reproduce the data in the form of a print-out or other intelligible output and take it for examination or copying; and

(c) use or cause to be used any copying equipment in the place to make copies of any data, record or document.

Entry of dwelling-place

36. (1) An inspector may not enter a dwelling-place except with the consent of the occupant or under the authority of a warrant issued under subsection (2).

Authority to issue warrant

(2) On *ex parte* application, a justice, as defined in section 2 of the *Criminal Code*, may issue a warrant authorizing the inspector named in the warrant to enter and inspect a dwelling-place, subject to any conditions specified in the warrant, if the justice is satisfied by information on oath

(a) that the dwelling-place is a place referred to in subsection 35(1);

(b) that entry to the dwelling-place is necessary for the administration or enforcement of this Act; and

(c) that the occupant does not consent to the entry, or that entry has been refused or there are reasonable grounds for believing that it will be refused.

Use of force

(3) An inspector executing the warrant shall not use force unless the inspector is accompanied by a peace officer and the use of force is specifically authorized in the warrant.

Certificate of analysis

37. An analyst who has analysed or examined a thing under this Act, or a sample of it, may issue a certificate or report setting out the results of the analysis or examination.

Assistance to inspectors

38. (1) The owner of a place inspected by an inspector under this Act, the person in charge of the place and every person found in the place shall

(a) provide all reasonable assistance to enable the inspector to carry out the inspector's duties under this Act; and

(b) furnish the inspector with the information that the inspector reasonably requires for that purpose.

Obstruction

(2) No person shall obstruct or hinder, or knowingly make a false or misleading statement to, an inspector who is carrying out duties under this Act.

SEIZURE AND RESTORATION

Seizure

39. (1) During an inspection under this Act, an inspector may seize any tobacco product or other thing by means of which or in relation to which the inspector believes on reasonable grounds that this Act has been contravened.

Storage and removal

(2) The inspector may direct that any tobacco product or thing seized be kept or stored in the place where it was seized or that it be removed to another place.

Interference

(3) Unless authorized by an inspector, no person shall remove, alter or interfere in any way with any tobacco product or other thing seized.

Application for restoration

40. (1) Any person from whom a tobacco product or thing was seized may, within sixty days after the date of seizure, apply to a provincial court judge within whose jurisdiction the seizure was made for an order of restoration, if the person sends a notice containing the prescribed information to the Minister within the prescribed time and in the prescribed manner.

Order of restoration

(2) The provincial court judge may order that the tobacco product or thing be restored immediately to the applicant if, on hearing the application, the judge is satisfied

(a) that the applicant is entitled to possession of the tobacco product or thing seized; and

(b) that the tobacco product or thing seized is not and will not be required as evidence in any proceedings in respect of an offence under this Act.

Order of later restoration

(3) Where, on hearing an application made under subsection (1), the provincial court judge is satisfied that the applicant is entitled to possession of the tobacco product or thing seized but is not satisfied with respect to the matters mentioned in paragraph (2)(b), the judge may order that the product or thing seized be restored to the applicant

(a) on the expiration of one hundred and eighty days after the date of the seizure if no proceedings in respect of an offence under this Act have been commenced before that time; or

(b) on the final conclusion of any such proceedings, in any other case.

No restoration where forfeiture by consent

(4) The provincial court judge may not make an order under this section for restoration of a tobacco product or thing if it has been forfeited by consent under subsection 41(3).

Forfeiture

41. (1) Where no application has been made under subsection 40(1) for the restoration of a tobacco product or thing seized under this Act within sixty days after the date of the seizure, or an application has been made but on the hearing of the application no order of restoration is made, the product or thing is forfeited to Her Majesty and may be disposed of as the Minister directs.

Forfeiture on conviction

(2) Where a person has been convicted of an offence under this Act, any tobacco product or thing seized under this Act by means of or in respect of which the offence was committed is forfeited to Her Majesty and may be disposed of as the Minister directs.

Forfeiture with consent

(3) Where an inspector has seized a tobacco product or thing and the owner or the person in whose possession it was at the time of seizure consents in writing to its forfeiture, the product or thing is forfeited to Her Majesty and may be destroyed or disposed of as the Minister directs.

REGULATIONS

Regulations

42. The Governor in Council may make regulations

(a) respecting the powers and duties of inspectors and analysts;

(b) respecting the taking of samples;

(c) prescribing anything that by this Part is to be prescribed; and

(d) generally for carrying out the purposes of this Part.

PART V.1
LAYING OF PROPOSED REGULATIONS

Laying of proposed regulations

42.1 (1) The Governor in Council may not make a regulation under section 7, 14, 17, 33 or 42 unless the Minister has first laid the proposed regulation before the House of Commons.

Report by committee

(2) A proposed regulation that is laid before the House of Commons is deemed to be automatically referred to the appropriate committee of the House, as determined by the rules of the House, and the committee may conduct inquiries or public hearings with respect to the proposed regulation and report its findings to the House.

Making of regulations

(3) The Governor in Council may make a regulation under section 7, 14, 17, 33 or 42 only if

(a) the House of Commons has not concurred in any report from a committee respecting the proposed regulation within the thirty sitting days following the day on which the proposed regulation was laid before the House, in which case the regulation may only be made in the form laid; or

(b) the House of Commons has concurred in a report from a committee approving the proposed regulation or an amended version of it, in which case the Governor in Council may only make the regulation in the form concurred in.

Definition of "sitting day"

(4) For the purpose of this section, "sitting day" means a day on which the House of Commons sits.

PART VI
OFFENCES AND PUNISHMENT

Packaging and promotion offences

43. Every person who contravenes section 5 or 19 is guilty of an offence and liable

(a) on summary conviction, to a fine not exceeding \$100,000 or to imprisonment for a term not exceeding one year, or to both; or

(b) on conviction on indictment, to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.

Prohibited additives — manufacturer

43.1 Every manufacturer who contravenes subsection 5.1(1), 5.2(1) or 23.1(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.

2009, c. 27, s. 14.
Previous Version

Prohibited additives — retailer

43.2 Every retailer who contravenes subsection 5.2(1) or 23.1(2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.

2009, c. 27, s. 14.

Summary offence

44. Every person who contravenes subsection 6(1) or (2), 10(1) or (2), 26(1) or (2) or 31(1) or (3), section 32 or subsection 38(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both.

1997, c. 13, s. 44; 2009, c. 27, s. 15.
Previous Version

Sales to youth, promotions

45. Every person who contravenes section 8, 9, 11 or 12, or any retailer who contravenes section 29, is guilty of an offence and liable on summary conviction

(a) for a first offence, to a fine not exceeding \$3,000; and

(b) for a subsequent offence, to a fine not exceeding \$50,000.

Offence by retailer

46. (1) Every retailer who contravenes subsection 15(1) or (2) is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000.

Offence by manufacturer

(2) Every manufacturer who contravenes subsection 15(1) or (2) or section 29 is guilty of an offence and liable on summary conviction to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.

General offence

47. Every person who contravenes subsection 13(1) or (2), section 20, subsection 21(1) or 22(1) or section 23 or 27 is guilty of an offence and liable on summary conviction to a fine not exceeding \$300,000 or to imprisonment for a term not exceeding two years, or to both.

Where no other penalty

48. Every person who contravenes a provision of this Act or the regulations for which no other penalty is provided in this Act is guilty of an offence and liable on summary conviction to a fine not exceeding \$25,000.

Continuing offence

49. A person who commits or continues an offence under this Act on more than one day is liable to be convicted for a separate offence for each day on which the offence is committed or continued.

Offence by director or officer of corporation

50. Where a corporation commits an offence under this Act, any director or officer of the corporation who authorized or acquiesced in the offence is guilty of an offence and liable on conviction to the penalty provided for by this Act in respect of the offence committed by the corporation, whether or not the corporation has been prosecuted.

Limitation period

51. No prosecution for a summary conviction offence under this Act may be instituted after two years after the time when the subject-matter of the proceedings arose.

Venue

52. A prosecution for an offence under this Act may be instituted, heard, tried and determined by a court in any jurisdiction in which the accused carries on business, regardless of where the subject-matter of the prosecution arose.

Exception need not be pleaded

53. (1) No exception, exemption, excuse or qualification prescribed by law is required to be set out or negated, as the case may be, in an information or indictment for an offence under this Act or under section 463, 464 or 465 of the *Criminal Code* in respect of an offence under this Act.

Proof of exemption

(2) In a prosecution for an offence referred to in subsection (1), the burden of proving that an exception, exemption, excuse or qualification prescribed by law operates in favour of the accused is on the accused and the prosecutor is not required, except by way of rebuttal, to prove that it does not operate in favour of the accused, whether or not it is set out in the information or indictment.

Offence by employee or agent

54. In a prosecution for an offence under this Act, it is sufficient proof of the offence to establish that it was committed by an employee or agent of the accused, whether or not the employee or agent is identified or has been prosecuted for the offence, unless the accused establishes that the offence was committed without the knowledge or consent of the accused and that the accused exercised all due diligence to prevent its commission.

Certified copies and extracts

55. In a prosecution for an offence under this Act, a copy of any written or electronic information obtained during an inspection under this Act and certified by the inspector to be a

true copy is admissible in evidence and is, in the absence of evidence to the contrary, proof of its contents.

Certificate or report of analyst as proof

56. (1) Subject to subsections (2) and (3), a certificate or report purporting to be signed by an analyst stating that the analyst has analysed anything to which this Act applies and stating the results of the analysis, is admissible in evidence in any prosecution for an offence under this Act without proof of the signature or official character of the person appearing to have signed the certificate or report.

Notice

(2) The certificate or report may not be received in evidence unless the party intending to produce it has, before the trial, given the party against whom it is intended to be produced reasonable notice of that intention together with a copy of the certificate or report.

Attendance of analyst

(3) The party against whom the certificate or report is produced may, with leave of the court, require the attendance of the analyst for the purpose of cross-examination.

Evidentiary presumptions

57. In a prosecution for a contravention of this Act,

(a) information on a package indicating that it contains a tobacco product is, in the absence of evidence to the contrary, proof that the package contains a tobacco product; and

(b) a name or address on a package purporting to be the name or address of the person by whom the tobacco product was manufactured is, in the absence of evidence to the contrary, proof that it was manufactured by that person.

Additional fine

58. If an offender has been convicted of an offence under this Act and the court is satisfied that as a result of the commission of the offence the offender acquired any monetary benefits or that monetary benefits accrued to the offender, the court may order the offender to pay, despite the maximum amount of any fine that may otherwise be imposed under this Act, an additional fine in an amount equal to the court's estimation of the amount of those monetary benefits.

Orders of court

59. When the court is sentencing an offender who has been convicted of an offence under this Act, in addition to any other punishment that may be imposed, the court may, having regard to the nature of the offence and the circumstances surrounding its commission, make an order having any or all of the following effects:

(a) prohibiting the offender from doing any act or engaging in any activity that is likely to result in the continuation or repetition of the offence;

(b) prohibiting the offender from selling tobacco products for a period of not more than one year, in the case of a subsequent offence under section 8, 9, 11, 12 or 29;

(c) directing the offender to publish, in the manner directed by the court, the facts relating to the commission of the offence;

(d) directing the offender to post any bond or pay any amount of money into court that will ensure compliance with an order made pursuant to this section;

(e) directing the offender to compensate the Minister, in whole or in part, for the cost of any remedial or preventive action taken by or caused to be taken on behalf of the Minister as a result of the act or omission that constituted the offence; and

(f) directing the offender to pay an amount for the purposes of conducting research into any matters relating to tobacco products that the court considers appropriate.

PART VII AGREEMENTS

Administrative agreements

60. (1) The Minister may enter into agreements with provinces or other bodies respecting the administration and enforcement of this Act, including the designation of provincial or other officials and bodies as inspectors under this Act and the appointment of federal officials as inspectors under provincial legislation in respect of tobacco.

Equivalency agreements

(2) The Minister may enter into equivalency agreements with a province where there are in force, under the laws of that province, provisions that are equivalent to the provisions of this Act.

Order

(3) The Governor in Council may, on the recommendation of the Minister, by order, declare that certain provisions of this Act or the regulations, other than those creating an absolute prohibition, do not apply within a province in which an equivalency agreement is in force.

Table in Parliament

(4) A copy of an equivalency agreement in respect of which an order is made under subsection (3) must be tabled in Parliament within fifteen days after the order is made.

PART VIII CONSEQUENTIAL AMENDMENTS, REPEALS AND COMING INTO FORCE

CONSEQUENTIAL AMENDMENTS

61. to 63. [Amendments]

REPEALS

64. and 65. [Repeals]

COMING INTO FORCE

Subsections 24(2) and (3)

*66. (1) Subsections 24(2) and (3) come into force on October 1, 1998 or on any earlier day that the Governor in Council may fix by order.

[Note: Subsections 24(2) and (3) in force October 1, 1998.]

Application delayed — sponsorship before April 25, 1997

(2) If a tobacco product-related brand element was displayed, at any time between January 25, 1996 and April 25, 1997, in promotional material that was used in the sponsorship of an event or activity that took place in Canada, subsections 24(2) and (3) do not apply until

(a) October 1, 2000 in relation to the display of a tobacco product-related brand element in promotional material that is used in the sponsorship of that event or activity or of a person or entity participating in that event or activity; and

(b) October 1, 2003 in relation to the display referred to in paragraph (a) on the site of the event or activity for the duration of the event or activity or for any other period that may be prescribed.

Promotional material

(3) Subsections 24(2) and (3) apply beginning on October 1, 2000 and ending on September 30, 2003 to prohibit the furnishing to the public, on the site of an event or activity to which paragraph (2)(b) applies, of promotional material that displays a tobacco product-related brand element otherwise than in conformity with subsection 24(2).

1997, c. 13, s. 66; 1998, c. 38, s. 4.

SCHEDULE

(Sections 5.1, 5.2, 7.1 and 23.1)

PROHIBITED ADDITIVES

Column 1	Column 2
Item Additive	Tobacco Product
1. Additives that have flavouring properties or that enhance flavour, including — additives identified as flavouring agents by the Joint FAO/WHO Expert Committee on Food Additives in the Committee's evaluations, as published from time to time in the WHO Technical Report Series —	Cigarettes, little cigars and blunt wraps

Item	Column 1	Column 2
	<p data-bbox="261 286 352 313">Additive</p> <p data-bbox="261 349 1150 456">additives identified as flavouring substances by the Flavor and Extract Manufacturers Association (FEMA) Expert Panel in its lists of GRAS (Generally Recognized as Safe) flavouring substances referred to as "GRAS 3" to "GRAS 24" and subsequent GRAS lists, as published from time to time, if any</p> <p data-bbox="261 472 687 499">The following additives are excluded:</p> <ul style="list-style-type: none"> <li data-bbox="261 517 724 566">– benzoic acid (CAS 65-85-0) and its salts <li data-bbox="261 591 746 618">– butylated hydroxytoluene (CAS 128-37-0) <li data-bbox="261 645 751 672">– carboxy methyl cellulose (CAS 9000-11-7) <li data-bbox="261 698 695 725">– citric acid (CAS 77-92-9) and its salts <li data-bbox="261 752 523 779">– ethanol (CAS 64-17-5) <li data-bbox="261 806 852 833">– ethoxylated sorbitan monolaurate (CAS 9005-64-5) <li data-bbox="261 860 592 887">– fumaric acid (CAS 110-17-8) <li data-bbox="261 913 528 940">– glycerol (CAS 56-81-5) <li data-bbox="261 967 576 994">– guar gum (CAS 9000-30-0) <li data-bbox="261 1021 531 1048">– menthol (CAS 89-78-1) <li data-bbox="261 1075 576 1102">– <i>l</i>-menthol (CAS 2216-51-5) <li data-bbox="261 1128 612 1155">– <i>l</i>-menthone (CAS 14073-97-3) <li data-bbox="261 1182 639 1209">– <i>n</i>-propyl acetate (CAS 109-60-4) <li data-bbox="261 1236 608 1263">– paraffin wax (CAS 8002-74-2) <li data-bbox="261 1290 624 1317">– propylene glycol (CAS 57-55-6) <li data-bbox="261 1344 687 1370">– rosin glycerol ester (CAS 8050-31-5) <li data-bbox="261 1397 756 1424">– sodium acetate anhydrous (CAS 127-09-3) <li data-bbox="261 1451 647 1478">– sodium alginate (CAS 9005-38-3) <li data-bbox="261 1505 719 1532">– sorbic acid (CAS 110-44-1) and its salts <li data-bbox="261 1559 544 1585">– triacetin (CAS 102-76-1) <li data-bbox="261 1612 667 1639">– tributyl acetylcitrate (CAS 77-90-7) 	Tobacco Product
2.	Amino acids	Cigarettes, little cigars and blunt wraps
3.	Caffeine	Cigarettes, little cigars and blunt wraps
4.	Colouring agents, excluding those used to whiten paper or the filter or to imitate a cork pattern on tipping paper	Cigarettes

Item	Column 1	Column 2
	Additive	Tobacco Product
4.1	Colouring agents, excluding those used to whiten plug wrap paper, to render tipping paper brown or bronze or to imitate a cork pattern on tipping paper	Little cigars
4.2	Colouring agents	Blunt wraps
5.	Essential fatty acids	Cigarettes, little cigars and blunt wraps
6.	Fruits, vegetables or any product obtained from the processing of a fruit or vegetable, excluding activated charcoal and starch	Cigarettes, little cigars and blunt wraps
7.	Glucuronolactone	Cigarettes, little cigars and blunt wraps
8.	Probiotics	Cigarettes, little cigars and blunt wraps
9.	Spices, seasonings and herbs	Cigarettes, little cigars and blunt wraps
10.	Sugars and sweeteners, excluding starch	Cigarettes, little cigars and blunt wraps
11.	Taurine	Cigarettes, little cigars and blunt wraps
12.	Vitamins	Cigarettes, little cigars and blunt wraps
13.	Mineral nutrients, excluding those necessary to manufacture the tobacco product	Cigarettes, little cigars and blunt wraps

Note:

In column 1, "FAO" means Food and Agriculture Organization of the United Nations; "WHO" means World Health Organization; "CAS" means Chemical Abstracts Service registry number.

2009, c. 27, s. 17.

RELATED PROVISIONS

— 1998, c. 38, s. 2(2)

(2) Section 25 of the Act, as it read immediately before the coming into force of subsection (1), continues to apply until October 1, 2003 in relation to the display, on a permanent facility, of a tobacco product-related brand element that appeared on the facility on the day on which this Act comes into force.

AMENDMENTS NOT IN FORCE

— 2009, c. 27, s. 7

7. The Act is amended by adding the following after section 6:

Prohibition

6.1 Subject to the regulations, no manufacturer shall manufacture or sell a tobacco product unless all of the information required under section 6 that relates to the product's composition and ingredients is submitted to the Minister.

— 2009, c. 27, s. 16

16. The Act is amended by adding the following after section 44:

Prohibited manufacture or sale

44.1 Every manufacturer who contravenes section 6.1 is guilty of an offence and liable on summary conviction to a fine not exceeding \$50,000 or to imprisonment for a term not exceeding six months, or to both.