

SMOKE-FREE ONTARIO ACT, 2017 LEGAL NOTICES: TOBACCO AND VAPOUR PRODUCT RETAILERS

Automatic Prohibition for the Sale, Storage, and Delivery of Tobacco (Tobacco Retailers only) for Six, Nine, or Twelve Months

A premises with two or more tobacco sales convictions against any owner (past or present) at that address within a five-year period is subject to a Notice of Prohibition Against the Sale, Storage, and Delivery of Tobacco Products (known as an automatic prohibition or “AP”). This makes it illegal to sell, store, and take delivery of tobacco products at the business. The AP may be for six, nine, or twelve months, depending on the number of convictions during that five-year period. It bans tobacco wholesalers or distributors from delivering tobacco products to the business for the time period shown on the AP. The retailer is required to post a sign provided by the Simcoe Muskoka District Health Unit (SMDHU) to inform the public entering the business about the AP. The sign must stay up until the AP time period is finished. For the purpose of an AP, tobacco sales offences are subsections 3 (1) or (2), section 7 or 8, or subsections 10 (1) or 22 (4) of the Smoke-Free Ontario Act, 2017 (SFOA, 2017), and section 8 or 29 of the Tobacco Tax Act.

Initials: _____

Simcoe Muskoka District Health Unit Test Shopping Program (Tobacco and Vapour Products)

To ensure compliance with the SFOA, 2017, SMDHU tobacco enforcement officers (TEOs) administer an enforcement program which includes the use of trained youth test shoppers. The test shoppers, who are between 15 and 18 years of age, will come into your business at any time of day and ask to buy tobacco and/or vapour products. They will not pressure you or your employees to sell to them or to break the law in any way. The law requires you to check the age of all young people who appear to be less than 25 years old by looking at their government-issued identification (ID) and refusing to sell to them if they are under 19 years of age. In certain circumstances, the test shopper of a specialty vape store or tobacconist will be under the age of 25 but older than 18.

As the result of an inspection, employees and business owners can be charged for:

- sell or supply any tobacco and/or vapour products to anyone under 19 years of age.
- not asking for and checking the identification of any customer who looks to be younger than 25 years old.

Initials: _____

RECEIVED/REVIEWED BY:

PRINT NAME

SIGNATURE

POSITION

DATE

Simcoe Muskoka District Health Unit Public Disclosure of Smoke-Free Ontario Act, 2017 Convictions

When a tobacco or vapour product retailer, including a specialty vape store or tobacconist, is charged with a sales offence and a conviction is obtained, the conviction information is posted on the following SMDHU webpage:

<https://www.simcoemuskokahealth.org/Topics/Tobacco/Retail-Sales-Under-the-Smoke-Free-Ontario-Act-2017/Retail-Convictions>

Convictions are listed for a period of five years from the conviction date. Prospective buyers of a tobacco retail dealer premises, including a tobacconist, are strongly encouraged to contact SMDHU to confirm premises conviction history.

For the purposes of public disclosure, the following offences under the SFOA, 2017 are reported:

- Subsection 3 (1) or (2)
- Section 7
- Section 8
- Subsection 10 (1)
- Subsection 22 (4)

For the purposes of public disclosure, the following offences under the Tobacco Tax Act are reported (when the board of health is aware of such convictions):

- Section 8
- Section 29

Initials: _____

Due Diligence and Your Business

In Ontario, the courts have provided guidance on what constitutes due diligence by tobacco and vapour product retailers: "What is required is a reasonable effort to implement a system and to do so in such a way as to reasonably assure the system is supervised and effective."¹ "The message to vendors is a simple one. You must be scrupulously vigilant in ensuring that you do not sell tobacco products to minors."²

SMDHU provides the SFOA, 2017 education binder with sign-off sheet to all tobacco and vapour product retailers for management and staff to sign monthly as well as a retailer quiz for all persons who sell tobacco or vapour products to complete monthly. If your business is not requiring regular sign-off of the education binder and not requiring regular completion of the retailer quiz, then your business may be found guilty if your staff sell tobacco or vapour products to a minor or a person under the age of 19.

Initials: _____

RECEIVED/REVIEWED BY:

PRINT NAME

SIGNATURE

POSITION

DATE

¹ R. v. Sobeys Inc. (2000), 181 N.S.R.(2d) 263 (SC)

² R. v. Seaway Gas & Fuel Ltd. (2000), 142 C.C.C. (3d) 213 (Ont. C.A.)