



Bill S-5, an Act to amend the Tobacco Act and the Non-smokers' Health Act and to make consequential amendments to other Acts: An Overview

Bill S-5 was introduced in Parliament in November 2016. The Bill proposes to amend the *Tobacco Act*, the *Non-smokers' Health Act* and other related Acts, in order to:

- Further protect youth from nicotine addiction and inducement to tobacco use
- Allow adults, in particular adult smokers, to legally access vaping products as a less harmful alternative to tobacco
- Preserve a path to market for vaping products marketed for a therapeutic purpose
- Provide a mechanism to address risks to human health and safety for vaping products that are not marketed for a therapeutic purpose.

Among the proposed amendments, the *Tobacco Act* would change to “Tobacco and Vaping Products Act.”

Definitions

The term “vaping products” includes both vaping devices (also commonly known as e-cigarettes) and vaping liquids. Vaping devices vary in design – some look very similar to conventional cigarettes. Most such devices consist of a battery, a heating element, a reservoir and a mouthpiece. They function by heating vaping liquid to form an aerosol that is inhaled by the user.

The Bill would define vaping products (with and without nicotine) as a separate set of products. It proposes to:

- Cover a full range of vaping devices (e.g. electronic or pressurized devices) and substances (e.g. liquids)
- Allow for broadening or narrowing the scope of the definition in response to future innovation.

Protecting youth

The Bill would:

- Add vaping products to the existing ban on tobacco sales to persons under 18
- Allow regulators to prescribe how many vaping devices or how much vaping liquid can be contained in a package
- Strengthen measures that prevent youth access to both vaping and conventional tobacco products, including
 - a ban on sales via vending machines
 - age verification at point of delivery with regard to “distance sales” (e.g. online).

Flavours and ingredients

The Bill would:

- Ban the use of certain ingredients in the manufacture of vaping products that suggest health benefits (e.g. vitamins) and vitality (e.g. caffeine)
- Ban the promotion of a vaping product where specific ingredients or flavour category descriptors are used (e.g. confectionery and soft drink flavours) or where an indication or illustration relating to a flavour could otherwise be appealing to young persons (e.g. “unicorn puke” flavour)
- Allow for the banning of additional ingredients and flavour category descriptors in response to emerging data and industry innovation.

Promotion and advertising

Provisions specific to vaping products would restrict certain types of promotion to:

- Protect young persons and non-users of tobacco from inducements to take up vaping products
- Prevent the public from being deceived or misled with respect to the health hazards of using vaping products.

The following would not be permitted:

- Promotion by means of advertising that is appealing to youth
- Lifestyle advertising (i.e. associated with an exciting way of life), except in limited situations where it only reaches adults (e.g. in bars)
- The offering of free vaping products (subject to exceptions, specified in regulations, where it is deemed in the public interest to do so)
- Promotions suggesting that health benefits may be derived from using vaping products or making comparisons with the health effects of using tobacco products (subject to exceptions specified in regulations) [Note: this would not apply to vaping products authorized for sale under the *Food and Drugs Act*.]
- Promotion of vaping products by using tobacco brands.

The following would be permitted:

- Brand-preference (e.g. brand name and price) and information advertising (e.g. ingredients), as long as it complies with other applicable restrictions
- Using approved statements, established by regulations, regarding the relative health risks of vaping products in comparison with tobacco products, in compliance with the applicable conditions set out in regulations for using such statements.

These measures, which are similar to, but not as restrictive as those applied to tobacco products, reflect and balance the scientific evidence suggesting that vaping products are harmful, but less harmful than tobacco products.

Labelling

Regulations made under the Act would require that vaping product packages or the product itself clearly display such consumer awareness information as health warnings, nicotine concentration, and a list of ingredients.

Reporting and public disclosure

Regulations made under the Act would require:

- Manufacturers of vaping products to regularly submit to the Minister of Health information on ingredients, sales, promotion and research activities
- Both the Minister and manufacturers to make public certain information on tobacco and vaping products.

Alternatives to tobacco products and smoking cessation

The Bill would allow vaping products that are not marketed for a therapeutic purpose (e.g. “this product will help you quit smoking”) to be legally sold to adults. Products marketed for a therapeutic purpose would continue to require authorization under the *Food and Drugs Act* prior to sale.

Health and safety

The Bill would amend the *Canada Consumer Product Safety Act* in order for its provisions to address the hazards, such as electrical, mechanical, and toxicological hazards, posed by those vaping products not marketed for a therapeutic purpose. Hazards from products marketed for a therapeutic purpose would continue to be addressed under the *Food and Drugs Act*. Either piece of legislation could be used to take action (product recalls or stop sale) where needed, for example, when a product presents a risk of injury.

Strengthened compliance and enforcement authorities

Compliance and enforcement authorities found in the proposed Tobacco and Vaping Products Act would be harmonized with those found in other modern statutes, including the *Canada Consumer Product Safety Act*. These authorities, applicable to both vaping and tobacco products, would include:

- Inspectors using telewarrants in carrying out an inspection
- Inspectors entering or passing through private property (other than a dwelling house) in carrying out an inspection
- Inspectors being accompanied by any person necessary to conduct the inspection (e.g. a scientific expert)
- Requiring manufacturers to keep records
- Stopping or moving a means of transportation for the purpose of inspection
- Recovering costs for the storage or destruction of seized goods.

Plain and standardized tobacco packaging

The Bill would support the implementation of comprehensive plain and standardized packaging requirements for tobacco products and their packages. It would also clarify that complying with the proposed Tobacco and Vaping Products Act would not result in the invalidation of a registered trade-mark under the *Trade-marks Act*.

Non-smokers' Health Act

In order to protect individuals in federally-regulated workplaces (e.g. banks, commercial aircraft, federal government offices) from the potential harms of second-hand vapour, an amendment to the *Non-smokers' Health Act* would subject vaping products use to the same prohibitions as tobacco use.