

PROVINCE OF BRITISH COLUMBIA

ORDER OF THE LIEUTENANT GOVERNOR IN COUNCIL

Order in Council No. 478, Approved and Ordered JUN 21 2007

[Signature]
Lieutenant Governor
Administrator

Executive Council Chambers, Victoria

On the recommendation of the undersigned, the Administrator, by and with the advice and consent of the Executive Council, orders that,

- (a) effective September 1, 2007, the Tobacco Sales (Preventing Youth Access to Tobacco) Amendment Act, 2006, S.B.C. 2006, c. 10, is brought into force,
(b) effective September 1, 2007, sections 1, 6 (b) and 10 of the Tobacco Sales (Banning Tobacco and Smoking in Public Places and Schools) Amendment Act, 2007, S.B.C. 2007, c. 12, are brought into force,
(c) effective September 1, 2007, the Tobacco Sales Regulation, B.C. Reg. 216/94, is repealed and the attached regulation is made,
(d) effective September 2, 2007, the following provisions of the Tobacco Sales (Banning Tobacco and Smoking in Public Places and Schools) Amendment Act, 2007 are brought into force:
(i) section 2;
(ii) section 3, insofar as it enacts section 2.2 of the Tobacco Control Act, R.S.B.C. 1996, c. 451;
(iii) section 5 (b);
(iv) section 11, and
(e) effective September 2, 2007, sections 6 (a), 7 and 9 of the Tobacco Sales (Banning Tobacco and Smoking in Public Places and Schools) Amendment Act, 2007, are repealed.

[Signature]
Minister of Health

[Signature]
Presiding Member of the Executive Council

(This part is for administrative purposes only and is not part of the Order.)

Authority under which Order is made:

Act and section:- Tobacco Sales (Preventing Youth Access to Tobacco) Amendment Act, 2006, S.B.C. 2006, c. 10, s. 21
Tobacco Sales (Banning Tobacco and Smoking in Public Places and Schools) Amendment Act, 2007, S.B.C. 2007, c. 12, ss. 12 and 13
Other (specify):- oic 889/94

# TOBACCO CONTROL REGULATION

## *Contents*

- 1 Definitions
- 2 Minimum age of 19 years
- 3 Prescribed forms of identification
- 4 Minimum package size
- 5 Warning signs
- 6 Prescribed provisions of the Act and regulation
- 7 Notice of administrative hearing
- 8 Form of hearing
- 9 Failure to appear
- 10 Adjournments
- 11 Information admissible in administrative hearings
- 12 Defence of due diligence
- 13 Factors to be considered in imposing administrative penalties
- 14 Monetary penalties
- 15 Prohibition periods
- 16 First, second and subsequent contraventions
- 17 Payment of monetary penalty
- 18 Administrative penalty notice
- 19 Signs indicating prohibition order

### **SCHEDULE 1 – WARNING NOTICES**

### **SCHEDULE 2 – MONETARY PENALTIES**

### **SCHEDULE 3 – PROHIBITION PERIODS**

### **SCHEDULE 4 – ADMINISTRATIVE PENALTY NOTICE**

### **SCHEDULE 5 – PROHIBITION ORDER – SELLING TO MINOR**

### **SCHEDULE 6 – GENERAL PROHIBITION ORDER**

#### **Definitions**

- 1 In this regulation,
  - “Act” means the *Tobacco Control Act*;
  - “dealer” means a dealer under section 1 of the *Tobacco Tax Act*;
  - “point of sale system” means a digital, electric, manual or mechanical system for calculating and recording sales transactions.

#### **Minimum age of 19 years**

- 2 The age for the purposes of section 2 (2) of the Act is 19 years.

#### **Prescribed forms of identification**

- 3 The following forms of identification are prescribed for the purposes of section 2 (2) (a) of the Act:
  - (a) a passport;

- (b) a driver's licence that displays a photograph and the date of birth of the holder;
- (c) an identification card, issued by a government agency, that displays a photograph and the date of birth of the holder.

#### Minimum package size

- 4 The minimum number of cigarettes that must be in a package if the package is to be sold, offered for sale, distributed, advertised or promoted to persons is 20.

#### Warning signs

- 5 (1) For tobacco sold or offered for sale other than by a vending machine, the dealer must ensure that each of the following decals issued by the minister is displayed:
  - (a) a 17 cm x 35 cm decal, as set out in Schedule 1, in plain view to the purchaser at the point and time of sale,
  - (b) a 10 cm x 10 cm decal, affixed to the side of each point of sale system facing purchasers being served at that point of sale system, stating  
**"IT IS ILLEGAL TO GIVE OR SELL TOBACCO TO ANYONE UNDER 19 YEARS OF AGE. VALID PHOTO ID MAY BE REQUIRED."**, and
  - (c) a 4 cm x 8 cm decal, containing the statement specified in paragraph (b) and affixed to each point of sale system so as to face the dealer or employee operating the system.
- (2) A dealer who operates a tobacco vending machine must ensure that the warning decal referred to in subsection (1) (a) is affixed to the front of the vending machine facing the purchaser.
- (3) The warning decals referred to in subsections (1) and (2) must not be obscured by a sign, notice or any other thing that could render the decal less than fully visible to any purchaser.

#### Prescribed provisions of the Act and regulation

- 6 (1) The following provisions of the Act are prescribed for the purposes of sections 6.1 (1) (a) [*administrative penalties*] and 6.5 [*liability of employees, officers, directors or agents of corporation*] of the Act:
  - (a) section 2 (2), (3) and (4) [*prohibitions*];
  - (b) section 6.4 (1) [*recovery of monetary penalty*];
  - (c) section 10.1 [*sign indicating prohibition orders*];
  - (d) section 10.3 [*removing tobacco from public display*].
- (2) The following provisions of this regulation are prescribed for the purposes of sections 6.1 (1) (a) and 6.5 of the Act:
  - (a) section 4 [*minimum package size*];
  - (b) section 5 [*posting warning signs*].

### **Notice of administrative hearing**

- 7 (1) The administrator must provide notice to a person that the administrator intends to conduct a hearing to determine whether the person has committed a contravention of the Act or regulations.
- (2) The notice under subsection (1) must be in writing and
- (a) describe the contravention alleged to have been committed,
  - (b) specify the date, place and time of the hearing, and
  - (c) advise the person that the administrator may proceed with the hearing and make an order imposing an administrative penalty if the person fails to appear or provide submissions, as applicable.
- (3) The notice must be delivered, at least 45 days before the time set for the hearing, by
- (a) personal delivery to the person alleged to have committed the contravention,
  - (b) registered mail to the person at that person's last known address,
  - (c) facsimile to the person, or
  - (d) personal service on another person working at the location where the contravention is alleged to have occurred.

### **Form of hearing**

- 8 (1) Subject to subsection (2), the administrator may hold any combination of written, electronic and oral hearings.
- (2) The administrator may conduct all or part of a hearing in writing only after taking into consideration the views of the person who is the subject of the hearing with respect to proceeding in writing.

### **Failure to appear**

- 9 If a person who has been served notice of an administrative hearing under section 7 fails to appear at a hearing or provide submissions, the administrator may proceed with the hearing and make an order imposing an administrative penalty on the person without further notice to that person.

### **Adjournments**

- 10 (1) The administrator may adjourn a hearing on the request of the person who is the subject of the hearing, if the person satisfies the administrator that the adjournment is required to permit an adequate hearing to be held.
- (2) In considering whether an adjournment should be granted, the administrator must have regard to the following:
- (a) the reason for the adjournment;
  - (b) whether the adjournment would cause unreasonable delay;
  - (c) the impact on the person of refusing the adjournment;
  - (d) the impact of the adjournment on the public interest.

### **Information admissible in administrative hearings**

- 11
- (1) Subject to subsections (3) and (4), the administrator may receive and accept at a hearing information that the administrator considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law.
  - (2) Despite subsection (1), the administrator may exclude anything unduly repetitious.
  - (3) Nothing is admissible before the administrator that is inadmissible in a court of law because of a privilege under the law of evidence.
  - (4) Nothing in subsection (1) overrides the provisions of any Act expressly limiting the extent or purposes for which any oral testimony, documents or things may be admitted or used in evidence.

### **Defence of due diligence**

- 12
- A person must not be found to have contravened a provision of the Act or regulations prescribed under section 6 if the person demonstrates to the satisfaction of the administrator that the person exercised due diligence to prevent the contravention.

### **Factors to be considered in imposing administrative penalties**

- 13
- (1) In imposing an administrative penalty on a person for a contravention of a prescribed provision of the Act or regulations, the administrator must consider the following factors:
    - (a) whether an enforcement officer has given the person a prior written warning concerning the conduct that is the subject matter of the penalty;
    - (b) whether the person has an ownership interest in the business carried on at the location where the contravention occurred;
    - (c) in respect of a breach of section 2 (2) or 2 (3) of the Act or section 4 of this regulation,
      - (i) whether the person is an employee or agent of the owner, and
      - (ii) if the person is an employee, whether and to what extent the owner or a person retained by the owner to operate the business provides training and monitoring of the person with respect to tobacco sales;
    - (d) in respect of a breach of section 2 (4), 10.1 or 10.3 of the Act, whether the person has knowledge of the prohibition order;
    - (e) any other matter the administrator considers relevant to the imposition of a penalty.
  - (2) In determining, under section 6.1 (2) (b) (ii) of the Act, if it is in the public interest to prohibit a person from selling tobacco at retail from a location other than the location at which the contravention occurred, the administrator must consider all of the following:
    - (a) previous enforcement actions for contraventions of a similar nature by the person;
    - (b) whether the contravention was repeated or continuous;
    - (c) whether the contravention was deliberate;

- (d) the person's efforts to correct the contravention;
  - (e) any other matter the administrator considers relevant to the public interest.
- (3) If a person who commits a contravention is a franchisee, the administrator must not impose a prohibition order on another location operated independently at arm's length from the person by another franchisee of the same franchisor.

#### **Monetary penalties**

- 14 For a contravention of a provision referred to in Column 2 of Schedule 2, the range of monetary penalties set out opposite that provision in Column 3 may be imposed.

#### **Prohibition periods**

- 15 For a contravention of a provision referred to in Column 2 of Schedule 3, the range of prohibition periods set out opposite that provision in Column 3 may be imposed.

#### **First, second and subsequent contraventions**

- 16 For the purposes of Schedules 2 and 3,
- (a) a contravention is of the same type as another contravention if each contravention is described by the same item of the Schedule, and
  - (b) a contravention by a person is
    - (i) a first contravention if the contravention was committed at or in respect of a location and the person has not committed a contravention of the same type at or in respect of that location within the 60 month period preceding the commission of the contravention,
    - (ii) a second contravention if the contravention was committed at or in respect of a location and the person committed one contravention of the same type at or in respect of that location within the 60 month period preceding the commission of the contravention, and
    - (iii) a subsequent contravention if the contravention was committed at or in respect of a location and the person has committed a second contravention of the same type at or in respect of that location within the 60 month period preceding the commission of the contravention.

#### **Payment of monetary penalty**

- 17 A person who is required by an order made under section 6.1 (2) of the Act to pay a monetary penalty must pay the penalty by cheque or money order, payable to the Minister of Finance, mailed to the administrator at the address indicated in the administrative penalty notice.

#### **Administrative penalty notice**

- 18 If the administrator, after providing a person the opportunity to be heard, makes an order imposing an administrative penalty on the person, then the administrator must, no later than 45 days after the date of the hearing, deliver an administrative penalty notice to the person in the form set out in Schedule 4 by
- (a) registered mail or facsimile,
  - (b) personal delivery to the person, or

- (c) personal delivery of a copy of the notice to another person working at the location where the contravention occurred.

**Signs indicating prohibition order**

- 19
- (1) Each dealer on whom a prohibition order has been imposed under section 6.1 (2) (b) of the Act must ensure that a sign described in subsection (2) and issued by the minister is posted at
    - (a) each place where tobacco was displayed for sale at the location identified in the order, or
    - (b) each entrance to the location identified in the order.
  - (2) Each sign referred to in subsection (1) must
    - (a) contain the following:
      - (i) the address of the location;
      - (ii) the dates on which the prohibition period commences and expires;
      - (iii) if the prohibition is based on at least one contravention of section 2 (2) of the Act, the message  
**“NOTICE: WE CANNOT SELL TOBACCO BECAUSE WE HAVE SOLD TOBACCO TO A MINOR IN CONTRAVENTION OF THE *TOBACCO CONTROL ACT*.”;**
      - (iv) if paragraph (iii) does not apply, the message  
**“NOTICE: WE CANNOT SELL TOBACCO BECAUSE WE HAVE CONTRAVENED THE *TOBACCO CONTROL ACT*.”;**
    - (b) measure 17 cm x 35 cm and be in the form set out in Schedule 5 or 6, as applicable, and
    - (c) not be obscured by a sign, notice or any other thing that could render a sign referred to in subsection (1) less than fully visible to any person.

## SCHEDULE 1





**IT IS ILLEGAL  
TO GIVE OR SELL  
TOBACCO TO ANYONE  
UNDER 19  
YEARS OF AGE**

**VALID PHOTO ID  
MAY BE REQUIRED**

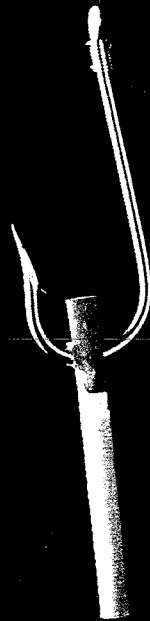
↑ Peel decals from backing and apply to clean surface.

Peel decals back here →

**IT IS ILLEGAL  
TO GIVE OR SELL TOBACCO TO ANYONE  
UNDER 19 YEARS OF AGE**

**VALID PHOTO ID MAY BE REQUIRED**

**WARNING**



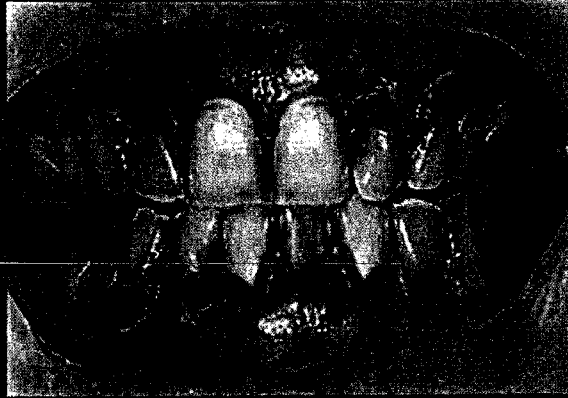
**IT IS ILLEGAL TO GIVE  
OR SELL TOBACCO  
TO ANYONE UNDER 19**



CLICK OR CALL  
**quitnow.ca**  
1-877-455-2233

Hooked Warning Sign

**HEALTH  
WARNING**



**TOBACCO**  
can change your  
**SMILE**



CLICK OR CALL  
**quitnow.ca**  
1-877-455-2233

Bad Teeth Warning Sign

**HEALTH  
WARNING**

**POISON**



**TOBACCO  
SMOKE  
CONTAINS  
FORMALDEHYDE**




CLICK OR CALL  
**quitnow.ca**  
1-877-455-2233

Poison Warning Sign

**HEALTH  
WARNING**



**you're not  
the only one  
smoking  
this cigarette**

  
**BRITISH  
COLUMBIA**  
The Best Place on Earth

CLICK OR CALL  
**quitnow.ca**  
1-877-455-2233

Mother and Child Warning Sign

# HEALTH WARNING



**your smoking  
aggravates  
her asthma**



CLICK OR CALL  
**quitnow.ca**  
1-877-455-2233

Little Girl #2 Warning Sign

# HEALTH WARNING



**my asthma  
+ your smoke  
= hospital visit**



CLICK OR CALL  
**quitnow.ca**  
1-877-455-2233

Little Girl #1 Warning Sign

## SCHEDULE 2 – MONETARY PENALTIES

Column 1	Column 2	Column 3		
Item	Contravention	Monetary Penalty		
		First Contravention	Second Contravention	Subsequent Contravention
	<b>Minors</b>			
1	Breach of section 2 (2) <i>[selling or offering to sell tobacco to an individual who is under 19 years of age]</i> of the Act	\$0 - \$1 000	\$0 - \$3 000	\$0 - \$5 000 -
	<b>Cigarette packages</b>			
2	Breach of section 2 (3) <i>[selling or offering to sell cigarettes from opened package]</i> of the Act	\$0 - \$1 000	\$0 - \$3 000	\$0 - \$5 000
3	Breach of section 4 <i>[failure to comply with minimum package size of 20 cigarettes]</i> of this regulation	\$0 - \$3 000	\$1 000 - \$4 000	\$4 000 - \$5 000
	<b>Selling from prohibited location</b>			
4	Breach of section 2 (4) <i>[selling or offering to sell tobacco from location to which prohibition order applies]</i> of the Act	\$0 - \$1 000	\$0 - \$3 000	\$0 - \$5 000
	<b>Posting signs</b>			
5	Breach of section 10.1 <i>[failure to post sign indicating prohibition order]</i> of the Act	\$0 - \$3 000	\$1 000 - \$4 000	\$4 000 - \$5 000
6	Breach of section 5 <i>[failure to post warning signs]</i> of this regulation	\$0 - \$1 000	\$1 000 - \$3 000	\$3 000 - \$4 000



### SCHEDULE 3 – PROHIBITION PERIODS

Column 1	Column 2	Column 3		
Item	Contravention	Prohibition Period (days)		
		First Contravention	Second Contravention	Subsequent Contravention
	<b>Minors</b>			
1	Breach of section 2 (2) <i>[selling or offering to sell tobacco to an individual who is under 19 years of age]</i> of the Act	0 - 30	0 - 90	0 - 180
	<b>Cigarette packages</b>			
2	Breach of section 2 (3) <i>[selling or offering to sell cigarettes from opened package]</i> of the Act	0 - 30	0 - 90	0 - 180
3	Breach of section 4 <i>[failure to comply with minimum package size of 20 cigarettes]</i> of this regulation	0 - 30	30 - 90	90 - 180
	<b>Selling from prohibited location</b>			
4	Breach of section 2 (4) <i>[selling or offering to sell tobacco from location to which prohibition order applies]</i> of the Act	0 - 30	0 - 90	0 - 180
	<b>Failure to pay monetary penalty</b>			
5	Breach of section 6.4 (1) <i>[failure to pay monetary penalty within 30 days]</i> of the Act	0 - 30	0 - 90	0 - 180
	<b>Posting signs</b>			
6	Breach of section 10.1 <i>[failure to post sign indicating prohibition order]</i> of the Act	0 - 30	30 - 90	90 - 180
7	Breach of section 5 <i>[failure to post warning signs]</i> of this regulation	0 - 30	30 - 90	90 - 180

**SCHEDULE 4**

***Tobacco Control Act***  
**ADMINISTRATIVE PENALTY NOTICE**

To: *[name and address of person who is subject of the notice]*

On .....*[Date]*....., I conducted a hearing and determined that you have contravened the following provisions of the *Tobacco Control Act* or the Tobacco Control Regulation:

1. *[cite provisions and provide particulars]*
2. *etc.*
- 3.

Pursuant to section 6.1 of the *Tobacco Control Act*, I hereby order that: *[indicate monetary penalty, prohibition order, or both, as applicable]*

- (1) You must pay a monetary penalty in the amount of \$....., no later than 30 days after the date of this order. You may pay this by cheque or money order, payable to the Minister of Finance, mailed to the administrator at the following address:

*[address]*

- (2) You must not sell or offer to sell tobacco at retail at the following location for the period from .....*[Date]*..... to .....*[Date]*.....

*[address of prohibited location]*

Dated.....

.....

Signature of Administrator

**SCHEDULE 5**

# NOTICE

**WE CANNOT  
SELL TOBACCO  
BECAUSE WE HAVE  
SOLD TOBACCO  
TO A MINOR  
IN CONTRAVENTION OF THE  
*TOBACCO CONTROL ACT***

\_\_\_\_\_  
STORE ADDRESS

\_\_\_\_\_  
PROHIBITION PERIOD



**SCHEDULE 6**

# NOTICE

**WE CANNOT  
SELL TOBACCO  
BECAUSE WE HAVE  
CONTRAVENED THE  
TOBACCO  
CONTROL ACT**

\_\_\_\_\_  
STORE ADDRESS

\_\_\_\_\_  
PROHIBITION PERIOD

