



The Tobacco Control Act

What Retailers Want to Know

The purpose of *The Tobacco Control Act* is to control the sale and use of tobacco and tobacco-related products in an effort to reduce tobacco use, especially among Saskatchewan young people, and to protect young people from exposure to second-hand smoke.

This is the sixth in a series of bulletins that will provide tobacco retailers with information about Saskatchewan's *Tobacco Control Act*.

In this bulletin we will provide answers to questions from retailers who participated in a distance learning workshop on "A Retailer Toolkit for Tobacco Sales", which was held on September 25, 2003. To view this program on the internet, visit our website at www.health.gov.sk.ca/tobaccosales and click on "Learn the Law". There you will find the link to the Retailer Training video.

Questions and answers have been organized into three topic areas:

- Photo ID
- Enforcement
- Penalties

The purpose of this bulletin is to help retailers understand the requirements of the Act. It is intended as a general guide and should not be used as a substitute for the legislation. The Act and Regulations should be consulted for all purposes of interpretation and application of the requirements of the law.

PHOTO ID

Q1: Temporary ID from SGI does not have a photo. Is it still acceptable?

A1: No. Only ID that is issued by a government that includes the person's photo, signature and date of birth is acceptable.

Q2: How do I train my staff about their judgement of age? For example, I look at a customer and think they are 23, but a staff member thinks they are 26, and therefore does not ask for ID. How do we get everyone on the same page?

A2: It is strongly recommended that, as a minimum, employees ask for ID from customers who look under 25. Some retailers ask for ID if the customer appears 30 years of age or younger.

Q3: Is a non-drivers licence, which includes photo, date of birth and signature, valid ID for the purchase of tobacco?

A3: A Saskatchewan photo non-driver's licence is valid ID.

Q4: Is ID required to purchase matches or lighters?

A4: ID is not required to purchase matches or lighters.

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- Q5: Sometimes customers come in to our store with very old, outdated treaty cards. Can we refuse the sale based on this alone?
- A5: If you are unsure that the treaty card matches up with the person presenting it, refuse the sale.
- Q6: Are the old photo driver's licences still acceptable?
- A6: ID must include a photo, date of birth and signature.
- Q7: We have a Point of Sale terminal that requires us to enter the birth date before the tobacco sale can continue. How can we easily ask the customer for their ID?
- A7: It is the responsibility of retailers to ensure that an individual is old enough prior to furnishing a tobacco product. Asking customers for appropriate ID and verifying age prior to the sale should become day-to-day routine for all employees.
- Q8: Is a health card or other ID from another province or country valid, if it has a photo and date of birth?
- A8: Any other form of identification that is issued by the federal government, a province or territory, or the government of a foreign country or state, provided the ID includes the person's photo, date of birth and signature, is acceptable.
- Q9: Is it necessary to ask for ID from a regular customer who is known to all staff?
- A9: "No person shall furnish a tobacco product to a young person in a public place..." The only way of preventing tobacco sales to minors is to ask for appropriate ID, and verify age prior to sale. Stores are encouraged to develop store policy advising employees when they are required to ask for ID.

ENFORCEMENT

- Q1: How does this legislation affect on-reserve stores that are under federal law only?
- A1: *The Tobacco Control Act* does apply on reserve. However, the province does recognize the unique jurisdictional relationship between reserves and the federal government. We encourage retail establishments on reserve to comply with the Act.
- Q2: How is it determined, or who determines, whether to charge a retailer under the federal tobacco law or the provincial law, especially since the fines vary significantly?
- A2: Health Canada Tobacco Inspectors enforce the federal *Tobacco Act* and have been designated by Saskatchewan Health to enforce the provincial *Tobacco Control Act*. Tobacco Inspectors will make a decision, based on the circumstances, under what Act the charge would be laid. Retailers will not be charged under both Acts for the same offence.
- Q3: Are lighters considered an age-restricted tobacco product?
- A3: Lighters are not considered a tobacco-related product. However, for safety reasons, you may wish to prohibit the sale of lighters and matches to minors.
- Q4: Does the government hire young teens under 18, who look a lot older than they are, to try to buy tobacco products?
- A4: Test shoppers hired by Health Canada are 15 to 17 years of age and are referred by high school teen wellness co-ordinators, health regions, schools and other agencies. The test shoppers are average youth under the age of 18.

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- Q5: How diligent do we have to be on selling tobacco to someone (with proper ID) who is purchasing tobacco for someone we have refused?
- A5: If you know for a fact that this person is purchasing tobacco for a minor, you should refuse the sale.
- Q6: If it is illegal to sell tobacco to minors, why aren't underage youth charged with possession of tobacco products?
- A6: Neither *The Tobacco Control Act* nor *Tobacco Act* include penalties for youth possession of tobacco. There is little evidence to suggest that it is effective in preventing youth from using tobacco.
- Q7: Why is it considered breaking the law to take tobacco products off the shelf before asking for ID?
- A7: The definition under the Act of sell includes "offer for sale and expose for sale". It is unlikely that a retailer would be prosecuted for taking the tobacco product off the shelf prior to a sale, provided appropriate government ID is requested and age is verified prior to the completion of the sale.
- Q8: How often does a test shopper visit my stores? What is the basis for these visits?
- A8: If Health Canada receives a complaint or suspects that sales are occurring from a certain establishment, this would cause them to take action to conduct a test shop to confirm that this is taking place. As part of Health Canada's ongoing compliance program, test shops are conducted approximately three to four times per year.
- Q9: I use test shoppers in my own store. I know government test shoppers are under 18 years of age. How old should my test shoppers be?
- A9: It is recommended that retailers use test shoppers 18 years of age or over to test their businesses for compliance.
- Q10: Will the laws be changed to include charges to minors for possession of tobacco?
- A10: There are no plans to amend the tobacco legislation to included charges to minors for possession of tobacco.
- Q11: Retailers in rural Saskatchewan know their customers' brand. Can we refuse them based on a suspicion that they are purchasing another brand for a minor? Are we liable if we suspect this?
- A11: Health Canada and Saskatchewan Health do not expect retailers to guess who tobacco products are for. However, if the retailer knows that a customer is purchasing tobacco products for a minor, the sale should be refused.
- Q12: In order to monitor employees on videotape, what specific documentation is required? Should we keep a written record of the employee's name, and the date and time being reviewed? Does the employer have to record this level of detail?
- A12: Keep a record when you reviewed the store video. Record the date and time of the video, and the findings of the review. Reward the staff person if they followed store policies and procedures. If the staff person did not follow policies and procedures, follow up with the employee and keep records of any follow-up action taken.

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PENALTIES

- Q1: Is it illegal for minors employed by a retailer to sell tobacco products?
A1: It is not illegal for clerks who are under 18 years of age to sell tobacco products.
- Q2: Can clerks, as well as owners, be fined for selling tobacco to someone under 18?
A2: Yes. Both employees and store owners can be ticketed, charged and fined up to \$50,000 if employees sell tobacco to minors.
- Q3: If an underage person tries to purchase tobacco and we ask for ID, can they be charged with attempting to purchase tobacco?
A3: The legislation does not include a penalty for attempting to purchase a tobacco product.
- Q4: If an owner has taken over a location, are the previous owner's offences under tobacco law on the new owner's record?
A4: Under the provincial *Tobacco Control Act*, previous convictions are attached to the location, as well as the owner. If you are considering purchasing a retail outlet, contact Health Canada or Saskatchewan Health to get the issue of past convictions clarified. As well, consult with your own legal counsel regarding the purchase of the establishment.
- Q5: Is it illegal to give a 40-year old a cigarette?
A5: No. However, it is illegal to sell single cigarettes.
- Q6: Do the offences expire after a certain length of time?
A6: If you are asking if a retailer's previous convictions can be taken off the record after a certain period of time, allowing the retailer to start again with a clean record, the answer is no. If you are asking how long a Tobacco Enforcement Officer has to lay a charge after witnessing an offence, the answer is six months.
- Q7: Why are parents not held responsible for allowing their children to smoke or for buying tobacco for them?
A7: It is illegal for anyone to provide tobacco products to a minor. This includes parents, relatives, friends or strangers. However, this does not apply in the privacy of their own home.
- Q8: If you know a parent is purchasing tobacco products for their child, can you be fined for selling to them?
A8: It is illegal for anyone to provide tobacco to a minor. If a parent is giving tobacco to their own child in their own home, this falls outside the legislation. You will not be penalized for selling tobacco to the adult.
- Q9: Can a clerk sell tobacco to a fellow employee who is under 18?
A9: It is illegal for clerks to sell tobacco to themselves if they are under 18, and for them to sell tobacco to fellow employees who are under the age of 18. Employees can be ticketed, charged and fined up to \$50,000 for selling tobacco to fellow employees under the age of 18.

For more information, call Saskatchewan Health at (306) 787-3084.

A copy of *The Tobacco Control Act* and *The Tobacco Control Regulations* can be accessed from the Saskatchewan Government, Queen's Printers Web Site at www.qp.gov.sk.ca.