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# NATIONAL ASSEMBLY

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FIRST SESSION

FORTY-FIRST LEGISLATURE

Bill 44

## **An Act to bolster tobacco control**

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### **Introduction**

**Introduced by**  
**Madam Lucie Charlebois**  
**Minister for Rehabilitation, Youth Protection and Public**  
**Health**

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## **EXPLANATORY NOTES**

*This bill amends the Tobacco Act to further restricts tobacco use both in enclosed spaces and outdoors. It prohibits smoking in motor vehicles in which a minor under 16 years of age is present and on terraces. It also prohibits smoking within a nine-metre radius from any door leading to enclosed spaces that are open to the public.*

*The bill extends the scope of the Act by considering electronic cigarettes to be tobacco and sets rules for tobacco use in certain places, in particular by determining standards for outdoor smoking shelters.*

*Standards applicable to the tobacco trade are tightened by, among other things, prohibiting the retail sale or distribution of tobacco products having a flavour or aroma other than that of tobacco and by prohibiting adults from purchasing tobacco for minors.*

*In addition, new penal provisions are enacted, the amounts of fines already prescribed by the Act are increased and certain other penal provisions are reinforced by making employers and the directors and officers of legal persons, partnerships and associations more accountable.*

*Lastly, the bill contains the amending, transitional and final provisions necessary to implement the Act.*

### **LEGISLATION AMENDED BY THIS BILL:**

- Tobacco Act (chapter T-0.01).

### **REGULATION AMENDED BY THIS BILL:**

- Regulation under the Tobacco Act (chapter T-0.01, r. 1).

# Bill 44

## AN ACT TO BOLSTER TOBACCO CONTROL

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

### TOBACCO ACT

**1.** The title of the Tobacco Act (chapter T-0.01) is replaced by the following title:

“Tobacco Control Act”.

**2.** Section 1 of the Act is amended by inserting “, electronic cigarettes and any other devices of that nature that are put to one’s mouth to inhale any substance that may or may not contain nicotine, including their components and accessories,” after “containing tobacco”.

**3.** Section 1.1 of the Act is replaced by the following section:

“**1.1.** For the purposes of this Act, unless the context indicates otherwise,

“smoking” also covers the use of an electronic cigarette or of any other device of that nature;

“tobacco” also includes the following accessories: cigarette tubes, rolling paper and filters, pipes, including their components, and cigarette holders.”

**4.** Section 2 of the Act is amended

(1) by replacing paragraph 2 by the following paragraph:

“(2) premises or buildings placed at the disposal of an educational institution;”;

(2) by striking out paragraph 3;

(3) by replacing “six” in paragraph 7 by “two”;

(4) by inserting the following paragraph after paragraph 10:

“(10.1) motor vehicles in which a minor under 16 years of age is present;”.

**5.** Section 2.1 of the Act is amended by replacing paragraph 3 by the following paragraphs:

“(3) on grounds placed at the disposal of an educational institution governed by the Education Act (chapter I-13.3), the Education Act for Cree, Inuit and Naskapi Native Persons (chapter I-14) or the Act respecting private education (chapter E-9.1) and providing preschool education services, elementary and secondary school instructional services, educational services in vocational training or educational services to adults in general education, during the hours when the institution is open to minor students;

“(4) on the grounds of a childcare centre or day care centre during the hours when the centre is open to children; and

“(5) on terraces and in other outdoor areas operated as part of a commercial activity and that are set up for rest, relaxation or the consumption of products.”

**6.** Section 2.2 of the Act is amended by replacing “paragraph 1, 3, 4 or 6 of section 2” in the first paragraph by “any of paragraphs 1 to 6.2, 7.2 to 9, 11 and 12 of section 2”.

**7.** Section 3 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

“**3.** The operator of a place referred to in paragraph 1, 7, 7.1 or 7.2 of section 2 may set up a closed smoking room in the place.”;

(2) by inserting “living or” after “persons” in the second paragraph.

**8.** The Act is amended by inserting the following section after section 3:

“**3.1.** The operator of a place referred to in section 2, except one referred to in paragraph 1 or 2 of that section, a childcare centre or a day care centre, may set up a smoking shelter on its grounds if

(1) it is used only for tobacco smoking;

(2) no other activities take place in it; and

(3) it is located outside a nine-metre radius from any door leading to a place referred to in this paragraph.

The operator of a tobacco retail outlet, within the meaning of subparagraph 1 of the second paragraph of section 14.1, may not set up a smoking shelter on

the grounds of the outlet or directly or indirectly contribute to or participate in its being set up.”

**9.** The Act is amended by inserting the following section before section 5:

“**4.1.** A tobacco product manufacturer that operates a research centre may set up a room where tobacco may be used for research purposes.

Only persons who are subjects in research may smoke in the room as part of the research.

The standards prescribed in the third paragraph of section 3 apply to the room.

The tobacco product manufacturer must inform the Minister before beginning to use the room.”

**10.** Section 5 of the Act is amended by inserting the following subparagraph after subparagraph 1 of the first paragraph:

“(1.1) for persons admitted by an institution operating a general and specialized hospital centre who may, for medical purposes, use a product considered to be tobacco, to the extent provided by government regulation;”.

**11.** The Act is amended by inserting the following section after section 8.1:

“**8.1.1.** The operator of a cigar room must post the certification notice issued by the Minister in the cigar room in a place accessible to all so that it is visible at all times.”

**12.** The Act is amended by inserting the following section after section 11:

“**11.1.** Sections 10 and 11 do not apply to a motor vehicle referred to in paragraph 10.1 of section 2.”

**13.** Section 12 of the Act is amended

(1) by inserting “, smoking shelters, rooms referred to in section 4.1 or 35” after “smoking rooms” in paragraph 1;

(2) by replacing paragraph 2 by the following paragraph:

“(2) the ventilation system in smoking rooms, rooms referred to in section 4.1 or 35 or cigar rooms; and”.

**14.** Section 13.1 of the Act is amended by replacing the second paragraph by the following paragraph:

“When required to provide proof of age, such a person must produce identification issued by a government, a government department or a public body or agency showing the person’s name and date of birth.”

**15.** The Act is amended by inserting the following section after section 13.1:

“**13.2.** Minors may not, in a tobacco retail outlet within the meaning of subparagraph 1 of the second paragraph of section 14.1, purchase a tobacco product for themselves or others or falsely represent themselves as being of full age in order to purchase tobacco.

The prohibition under the first paragraph does not apply to a minor acting as part of a test to ascertain compliance with section 13.”

**16.** The Act is amended by inserting the following section after section 14.3:

“**14.4.** It is prohibited for a person of full age to purchase tobacco for a minor.”

**17.** Section 17 of the Act is amended by replacing subparagraph 7 of the first paragraph by the following subparagraph:

“(7) in premises where the main business carried on is that of restaurateur within the meaning of the Food Products Act (chapter P-29).”

**18.** The Act is amended by inserting the following section after section 17.1:

“**17.2.** It is prohibited to rent out electronic cigarettes or any other devices of that nature or water pipes, including their components and accessories.”

**19.** Section 20.2 of the Act is amended by replacing “tobacco retail outlet” and “retail outlet” in the first and second paragraphs, respectively, by “business”.

**20.** The Act is amended by inserting the following section after section 20.3:

“**20.3.1.** The operator of a specialty tobacco retail outlet referred to in the second paragraph of section 20.3 must post the certification notice issued by the Minister in the retail outlet in a place accessible to all so that it is visible at all times.”

**21.** Section 24 of the Act is amended by inserting the following subparagraph after subparagraph 2 of the first paragraph:

“(2.1) concerns a tobacco product whose sale or distribution is prohibited by section 29.2;”.

**22.** Section 28 of the Act is amended by striking out the fourth paragraph.

**23.** Section 29 of the Act is amended by striking out the second sentence of the second paragraph.

**24.** The Act is amended by inserting the following sections after section 29.1:

**“29.2.** It is prohibited to sell, offer for sale or distribute a tobacco product that has a flavour or aroma other than that of tobacco, including a menthol, fruit, chocolate, vanilla, honey, candy, cocoa flavour or aroma, or whose packaging suggests it is such a product.

**“29.3.** Section 29.2 does not apply to electronic cigarettes or any other devices of that nature or to their components or accessories. The Government may, to the extent provided by regulation, render the provisions of that section applicable to electronic cigarettes or such devices.

Nor does it apply to tobacco products that are manufactured in Québec and intended only for export.”

**25.** The heading of Chapter VII of the Act is replaced by the following heading:

“INSPECTION, SEIZURE AND INVESTIGATION”.

**26.** Section 34 of the Act is amended

(1) by replacing “13, 14.1 to 14.3 and 16 to 19” in paragraph 11 by “14.1 to 14.4 and 19, subparagraph 2 of the first paragraph of section 21 and section 29.2 in a tobacco retail outlet and with sections 13, 16 to 18 and subparagraphs 1 and 3 of the first paragraph of section 21 in any place to which those provisions apply;”;

(2) by adding the following after paragraph 11:

“(12) require any person present in a tobacco retail outlet or leaving an outlet to provide proof of age by producing the identification referred to in the second paragraph of section 13.1.

Before requiring proof of age from a person referred to in subparagraph 12 of the first paragraph, an inspector must be reasonably convinced that the person purchased a tobacco product.”

**27.** Section 35 of the Act is amended by adding the following paragraphs at the end:

“The Minister may authorize an analyst to set up a room where tobacco may be used to conduct the analysis or examination requested.

Only the persons identified by the analyst may smoke in the room as part of the analysis or examination.

The standards prescribed in the third paragraph of section 3 apply to the room.”

**28.** The Act is amended by inserting the following section after section 38:

“**38.0.1.** The Minister may designate a person to investigate any matter relating to the application of this Act.

An investigator must, on request, provide identification and produce a certificate of authority signed by the Minister.”

**29.** Section 38.1 of the Act is amended by replacing “or analyst” by “, analyst or investigator”.

**30.** The Act is amended by inserting the following section after section 38.1:

“**38.2.** A member of a police force governed by the Police Act (chapter P-13.1) may enforce paragraph 10.1 of section 2 throughout the territory in which that member provides police services and, for that purpose, may stop a motor vehicle if the member has reasonable grounds to believe that a person is smoking in the vehicle while a minor under 16 years of age is present in it.”

**31.** Section 42 of the Act is amended by replacing “\$50 to \$300 and, for a subsequent offence, to a fine of \$100 to \$600” by “\$250 to \$750 and, for a subsequent offence, to a fine of \$500 to \$1,500”.

**32.** Section 43 of the Act is replaced by the following section:

“**43.** The operator of a place or business referred to in Chapter II who contravenes the use, installation, construction or layout standards prescribed in sections 3 to 8.2 or the provisions of a regulation made under paragraph 1 or 2 of section 12 the violation of which constitutes an offence is liable to a fine of \$1,000 to \$50,000 and, for a subsequent offence, to a fine of \$2,000 to \$100,000.”

**33.** Section 43.1 of the Act is amended by replacing “\$500 to \$2,000 and, for a subsequent offence, to a fine of \$1,000 to \$6,000” by “\$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000”.

**34.** The Act is amended by inserting the following section after section 43.1:

“**43.1.1.** The operator of a place or business described in Chapter II who

(1) neglects to post the notice required under section 10 or contravenes the provisions of a regulation made under paragraph 3 of section 12 the violation of which constitutes an offence; or

(2) contravenes section 11



is liable to a fine of \$500 to \$25,000 and, for a subsequent offence, to a fine of \$1,000 to \$50,000.”

**35.** Section 43.2 of the Act is amended

(1) by replacing “\$500 to \$2,000 and, for a subsequent offence, to a fine of \$1,000 to \$6,000” in the first paragraph by “\$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000”;

(2) by replacing “\$100 to \$300 and, for a subsequent offence, to a fine of \$200 to \$600” in the second paragraph by “\$500 to \$1,500 and, for a subsequent offence, to a fine of \$1,000 to \$3,000”.

**36.** The Act is amended by inserting the following section after section 43.2:

**“43.2.1.** A minor who contravenes section 13.2 is guilty of an offence and is liable to a fine of \$100.

In proceedings under this section, the burden is on the defendant to prove that he or she was of full age at the time.”

**37.** Section 43.3 of the Act is amended by replacing “\$2,000 to \$25,000 and, for a subsequent offence, to a fine of \$4,000 to \$50,000” by “\$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000”.

**38.** Section 43.4 of the Act is amended by replacing “\$500 to \$2,000 and, for a subsequent offence, to a fine of \$1,000 to \$6,000” by “\$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000”.

**39.** Section 43.5 of the Act is amended

(1) by replacing the first paragraph by the following paragraph:

**“43.5.** The operator of a tobacco retail outlet who, in contravention of section 14.3, sells tobacco to a person of full age when the operator knows or ought to have known the person is purchasing the tobacco for a minor is liable to a fine of \$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000.”;

(2) by replacing “\$100 to \$300 and, for a subsequent offence, to a fine of \$200 to \$600” in the second paragraph by “\$500 to \$1,500 and, for a subsequent offence, to a fine of \$1,000 to \$3,000”.

**40.** The Act is amended by inserting the following section after section 43.5:

**“43.6.** A person of full age who contravenes section 14.4 is liable to a fine of \$500 to \$1,500 and, for a subsequent offence, to a fine of \$1,000 to \$3,000.”

**41.** Section 44 of the Act is replaced by the following section:

“**44.** The operator of a tobacco retail outlet who contravenes the first paragraph of section 15 or section 17.2 is liable to a fine of \$1,000 to \$50,000 and, for a subsequent offence, to a fine of \$2,000 to \$100,000.”

**42.** Section 45 of the Act is amended by replacing “\$100 to \$1,000 and, for a subsequent offence, to a fine of \$200 to \$3,000” by “\$500 to \$1,500 and, for a subsequent offence, to a fine of \$1,000 to \$3,000”.

**43.** Section 46 of the Act is amended by replacing “\$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000” by “\$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000”.

**44.** Section 48 of the Act is amended by replacing “\$2,000 to \$25,000 and, for a subsequent offence, to a fine of \$4,000 to \$50,000” by “\$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000”.

**45.** Section 48.1 of the Act is amended by replacing “\$100 to \$300 and, for a subsequent offence, to a fine of \$200 to \$600” by “\$500 to \$1,500 and, for a subsequent offence, to a fine of \$1,000 to \$3,000”.

**46.** Section 49 of the Act is amended by replacing “\$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000” by “\$1,000 to \$50,000 and, for a subsequent offence, to a fine of \$2,000 to \$100,000”.

**47.** Section 49.1 of the Act is repealed.

**48.** Section 49.2 of the Act is amended by replacing “\$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000” by “\$1,000 to \$50,000 and, for a subsequent offence, to a fine of \$2,000 to \$100,000”.

**49.** Section 49.3 of the Act is replaced by the following section:

“**49.3.** The operator of a tobacco retail outlet who contravenes the provisions of section 8.1.1, 20.3.1, 20.4 or 20.5 or of a regulation made under section 20.7 the violation of which constitutes an offence is liable to a fine of \$1,000 to \$50,000 and, for a subsequent offence, to a fine of \$2,000 to \$100,000.”

**50.** Section 50 of the Act is amended

(1) by replacing “\$500 to \$3,000 and, for a subsequent offence, to a fine of \$1,000 to \$8,000” in the first paragraph by “\$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000”;

(2) by replacing “\$2,000 to \$300,000 and, for a subsequent offence, to a fine of \$5,000 to \$600,000” in the second paragraph by “\$5,000 to \$500,000 and, for a subsequent offence, to a fine of \$10,000 to \$1,000,000”.

**51.** Section 51 of the Act is amended by replacing “\$2,000 to \$300,000 and, for a subsequent offence, to a fine of \$5,000 to \$600,000” by “\$5,000 to \$500,000 and, for a subsequent offence, to a fine of \$10,000 to \$1,000,000”.

**52.** Section 52 of the Act is amended by replacing “\$1,000 to \$200,000 and, for a subsequent offence, to a fine of \$2,000 to \$400,000” by “\$5,000 to \$500,000 and, for a subsequent offence, to a fine of \$10,000 to \$1,000,000”.

**53.** Section 53 of the Act is amended

(1) by replacing “\$1,000 to \$300,000 and, for a subsequent offence, to a fine of \$5,000 to \$600,000” in the first paragraph by “\$5,000 to \$500,000 and, for a subsequent offence, to a fine of \$10,000 to \$1,000,000”;

(2) by replacing “to a fine of \$1,000 to \$5,000 and, for a subsequent offence, to a fine of \$2,000 to \$10,000” in the second paragraph by “to the fines prescribed in the first paragraph”.

**54.** The Act is amended by inserting the following section after section 53:

“**53.1.** Whoever contravenes section 29.2 is liable to a fine of \$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000.”

**55.** Section 54 of the Act is amended by replacing “\$1,000 to \$5,000 and, for a subsequent offence, to a fine of \$2,000 to \$15,000” by “\$1,000 to \$100,000 and, for a subsequent offence, to a fine of \$2,000 to \$200,000”.

**56.** Section 54.1 of the Act is amended

(1) by replacing “\$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000” in the first paragraph by “\$500 to \$25,000 and, for a subsequent offence, to a fine of \$1,000 to \$50,000”;

(2) by replacing “\$1,000 to \$5,000 and, for a subsequent offence, to a fine of \$2,000 to \$15,000” in the second paragraph by “\$1,000 to \$50,000 and, for a subsequent offence, to a fine of \$2,000 to \$100,000”.

**57.** Section 55 of the Act is amended

(1) by replacing “\$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000” by “\$2,500 to \$125,000 and, for a subsequent offence, to a fine of \$5,000 to \$250,000”;

(2) by adding the following paragraph at the end:

“However, a manufacturer or distributor of tobacco products is liable to a fine of \$5,000 to \$500,000 and, for a subsequent offence, to a fine of \$10,000 to \$1,000,000.”

**58.** Section 57.1 of the Act is replaced by the following sections:

**“57.1.** In any penal proceedings relating to an offence under this Act or its regulations, proof that the offence was committed by an agent, a mandatory or an employee of any party is sufficient to establish that it was committed by that party, unless the party establishes, subject to section 14, that it exercised due diligence and took all the necessary precautions to prevent its commission.

**“57.1.1.** If a legal person or an agent, a mandatory or an employee of a legal person, a partnership or an association without legal personality commits an offence under this Act or the regulations, its director or officer is presumed to have committed the offence unless the director or officer establishes that he or she exercised due diligence and took all necessary precautions to prevent its commission.

For the purposes of this section, in the case of a partnership, all partners, except special partners, are presumed to be directors of the partnership unless there is evidence to the contrary appointing one or more of them, or a third person, to manage the affairs of the partnership.”

**59.** Section 77 of the Act is amended by replacing the first paragraph by the following paragraph:

**“77.** The Minister must, not later than (*insert the date occurring five years after the date of assent to this Act*), report to the Government on the implementation of this Act, and subsequently every five years, report to the Government on the carrying out of this Act.”

#### REGULATION UNDER THE TOBACCO ACT

**60.** The Regulation under the Tobacco Act (chapter T-0.01, r. 1) is amended by inserting the following section after section 1:

**“1.1.** An institution operating a general and specialized hospital centre may identify rooms where persons admitted may, for medical purposes, use marihuana, to the extent that those persons hold a medical document provided by a physician allowing them to legally obtain dried marihuana from an authorized producer.”

#### TRANSITIONAL AND FINAL PROVISIONS

**61.** Despite section 29.2 of the Tobacco Control Act, enacted by section 24, the operator of a tobacco retail outlet may, until (*insert the date occurring nine months after the date of assent to this Act*), continue to sell or offer for sale tobacco products having a flavour or aroma other than that of tobacco.

**62.** Despite section 29.2 of the Tobacco Control Act, enacted by section 24, a distributor of tobacco products may, until (*insert the date occurring six months after the date of assent to this Act*), continue to distribute tobacco products having a flavour or aroma other than that of tobacco.

**63.** The provisions of this Act come into force on (*insert the date of assent to this Act*), except

(1) sections 4 and 5, which come into force on (*insert the date occurring six months after the date of assent to this Act*); and

(2) sections 6 and 16, which come into force on (*insert the date occurring one year after the date of assent to this Act*).





