

## *Provincial and Territorial Smoke-Free Legislation*

# Ontario

Name of legislation	<ul style="list-style-type: none"> <li>• <i>Bill 174, An Act to enact the Cannabis Act, 2017, the Ontario Cannabis Retail Corporation Act, 2017 and the Smoke-Free Ontario Act, 2017, to repeal two Acts and to make amendments to the Highway Traffic Act respecting alcohol, drugs and other matters (Bill 174, repeals the Smoke-Free Ontario Act, 2006 and the Electronic Cigarettes Act, replacing them with the Smoke-Free Ontario Act, 2017)</i></li> <li>• <i>Smoke-Free Ontario Act (Amended)</i></li> <li>• <i>Smoke-Free Ontario Amendment Act, 2016, also known as Bill 178 (not yet in force)</i></li> <li>• <i>Making Healthier Choices Act, 2015, also known as Bill 45, 2015, An Act to enhance public health by enacting the Healthy Menu Choices Act, 2015 and the Electronic Cigarettes Act, 2015 and by amending the Smoke-Free Ontario Act</i></li> </ul>
Date in force	<ul style="list-style-type: none"> <li>• <i>Smoke-Free Ontario Act, 2017 not yet in force</i></li> </ul>
Workplaces	<ul style="list-style-type: none"> <li>• Smoking and vaping prohibited in virtually all enclosed workplaces</li> <li>• Smoking and vaping prohibited in private homes that operate a daycare, whether or not children are present</li> <li>• Smoking and vaping permitted in DSRs by in-patients or residents of group living facilities (includes long-term care and other residential care facilities)</li> <li>• Smoking and vaping permitted by registered guests and their invited guests in designated smoking hotel rooms</li> </ul>
Restaurants	<ul style="list-style-type: none"> <li>• Smoking and vaping prohibited</li> </ul>
Casinos, bingos, etc.	<ul style="list-style-type: none"> <li>• Smoking and vaping prohibited</li> </ul>
Bars	<ul style="list-style-type: none"> <li>• Smoking and vaping prohibited</li> </ul>
Public places	<ul style="list-style-type: none"> <li>• Smoking and vaping prohibited</li> </ul>

Outdoor provisions	<ul style="list-style-type: none"> <li>• Smoking and vaping prohibited on school grounds</li> <li>• Smoking and vaping prohibited on all public and private hospital grounds, including psychiatric facilities, as of January 1, 2018, as well as within 9 metres of the entrances and exits of these facilities</li> <li>• Smoking and vaping prohibited in reserved seating area of outdoor sports arenas and entertainment venues</li> <li>• Smoking and vaping prohibited on bar and restaurant patios (uncovered patios that were established by a branch of the Royal Canadian Legion – Ontario Provincial Command prior to November 18, 2013 are exempted)</li> <li>• Smoking and vaping prohibited on and within a 20 metre buffer zone of public sports fields and surfaces (owned by a municipality, the province or a postsecondary education institution)</li> <li>• Smoking and vaping prohibited on and within a 20 metre buffer zone of public playgrounds and playgrounds at hotels, motels and inns</li> </ul>
Private motor vehicles	<ul style="list-style-type: none"> <li>• <i>Smoke-Free Ontario Amendment Act, 2008</i>: Smoking prohibited in private vehicles with children under the age of 16 present - in force January 21, 2009</li> <li>• <i>Smoke-Free Ontario Act, 2017</i>: Smoking or vaping of cannabis prohibited in all vehicles – In force April 1, 2018</li> </ul>
Provision for municipalities	<ul style="list-style-type: none"> <li>• <i>The Smoke-Free Ontario Act</i> states that municipalities may pass bylaws that are more restrictive and the more restrictive prevail</li> </ul>
Summary	<ul style="list-style-type: none"> <li>• Since 2005, Ontario has been a <b>national and international leader in tobacco control</b></li> <li>• Legislation is <b>strong for both indoor and outdoor protection from secondhand smoke and secondhand vapour</b></li> <li>• <i>Bill 174</i> expands the reach of the 2006 <i>Smoke-Free Ontario Act</i> <b>beyond tobacco, to prohibit the smoking or vaping of cannabis in places where smoking of tobacco or use of electronic cigarettes is prohibited</b></li> <li>• In 2006 Ontario joined Newfoundland and Labrador (2005), Alberta (2007), the Yukon (2008), Nova Scotia (2015), New Brunswick (2015) and Quebec (2015) in <b>prohibiting smoking on patios</b></li> <li>• Ontario was the first province to prohibit smoking <b>on and within 20 metres of playgrounds and publicly owned sports fields</b> (followed by New Brunswick in 2015)</li> <li>• As a result of Ontario’s encouragement to municipalities to pass smoke-free bylaws, despite the strengthening of Ontario’s laws, there are <b>still 132 municipal bylaws in Ontario that exceed the <i>Smoke-Free Ontario Act, 2006</i></b></li> </ul>

## Notes

Ontario has had a long history of leadership in tobacco control legislation. The ground-breaking *Smoke-Free Ontario Act* was passed in 2006. Ontario (2008) was the 3<sup>rd</sup> Canadian province/territory to pass smoke-free vehicle legislation, in addition to Nova Scotia (2007), Yukon Territory (2008), British Columbia (2008), New Brunswick (2009), Prince Edward Island (2009), Manitoba (2009), Saskatchewan (2010), Newfoundland and Labrador (2011), Alberta (2012) and Quebec (2015). The Northwest Territories and Nunavut do not have such legislation.

There have been several changes to legislation regulating smoking in public places in Ontario over the last few years. The *Making Healthier Choices Act, 2015*, also known as *Bill 45, 2015, An Act to enhance public health by enacting the Healthy Menu Choices Act, 2015 and the Electronic Cigarettes Act, 2015 and by amending the Smoke-Free Ontario Act* has been repealed, as has been the *Smoke-Free Ontario Act, 2006*. They have been replaced by the *Smoke-Free Ontario Act, 2017*, which was to come into force April 1, 2018.

The 2017 *SFOA* (not yet in force as of March 31, 2018) is an amalgamation of the 2006 *SFOA* and the *Electronic Cigarettes Act* that was only ever partially proclaimed. Details of the new *Smoke-Free Ontario Act, 2017* include:

- Subject to any exemptions that may be provided for in the regulations, no person shall do any of the following in a place mentioned in subsection (2):
  - Smoke or hold lighted tobacco;
  - Smoke or hold lighted medical cannabis;
  - Use an electronic cigarette;
  - Consume a prescribed product or substance, in a prescribed manner.
- The following are the places for the purposes of subsection (1):
  1. An enclosed public place.
  2. An enclosed workplace.
  3. A school within the meaning of the *Education Act*.
  4. A building or the grounds surrounding the building of a private school within the meaning of the *Education Act*, where the private school is the only occupant of the premises, or the grounds annexed to a private school, where the private school is not the only occupant of the premises.
  5. Any indoor common area in a condominium, apartment building or university or college residence, including, without being limited to, elevators, hallways, parking garages, party or entertainment rooms, laundry facilities, lobbies and exercise areas.
  6. A child care centre within the meaning of the *Child Care and Early Years Act, 2014*.
  7. A place where home child care is provided within the meaning of the *Child Care and Early Years Act, 2014*, whether or not children are present.
  8. A place where an early years program or service is provided within the meaning of the *Child Care and Early Years Act, 2014*.
  9. The reserved seating area of a sports arena or entertainment venue.
  10. A prescribed place or area, or a place or area that belongs to a prescribed class.

- Exemptions include:
  - Smoking or holding lighted tobacco, smoking or holding lighted medical cannabis or using medical cannabis through an electronic cigarette in a designated smoking/e-cigarette room in a long-term care facility, a retirement home that provides care, and other types of supportive housing residences;
  - Smoking or holding lighted tobacco, smoking or holding lighted medical cannabis or using medical cannabis through an electronic cigarette in a designated smoking/e-cigarette room in a hotel, motel or inn;
  - Smoking or holding lighted medical cannabis or using medical cannabis through an electronic cigarette in a designated smoking/e-cigarette room in a hospice.
  
- Every home health-care worker has a right to request a person not to smoke or hold lighted tobacco, smoke or hold lighted medical cannabis, use an e-cigarette or consume a prescribed product or substance, in their presence while they are providing health care services.
  
- Subject to the regulations, no person shall do any of the following in a motor vehicle:
  - Smoke tobacco or have lighted tobacco while another person who is less than 16 years old is present in the vehicle.
  - Use an electronic cigarette or have an activated electronic cigarette while another person who is less than 16 years old is present in the vehicle.
  - Smoke medical cannabis, have lighted medical cannabis, use an electronic cigarette containing medical cannabis or have an activated electronic cigarette containing medical cannabis.
  - Consume a prescribed product or substance, in a prescribed manner, or have a prescribed product or substance.

Bill 174 also created the *Cannabis Act, 2017*. Highlights include:

- No person under 19 years of age shall possess, consume, attempt to purchase, purchase or distribute cannabis;
- No person shall consume cannabis in a public place, a workplace, a vehicle or boat, or any prescribed place;
- A medical cannabis user may consume cannabis for medical purposes in a place referred to in subsection (1), subject to any prohibitions or restrictions set out in the regulations or under the *Smoke-Free Ontario Act, 2017*

Despite the expansion of the *SFOA*, the 2017 version is not perfect. The definition of “smoke or hold lighted tobacco” does not capture the consumption of heated tobacco products. If the new *SFOA, 2017* is to prohibit the consumption of these products in public places and workplaces, they would need to be prescribed by regulation. This is problematic, as it could take months before regulations are passed.

It is also of great concern that the smoking of cannabis will be restricted to private spaces. Ontarians who live in homes with gardens and outdoor spaces can step outside to smoke on their private property. However, for the millions of people (approximately one in four Ontarians) who live in multi-unit housing, stepping outside to smoke on their building property, often considered a public place, will be illegal. This will likely lead to increased

smoking indoors, and increased exposure to second-hand smoke for unit occupants as well as those in neighbouring units. There has been a major concerted effort over the past twenty years by governments and non-government organizations to educate the public about the risks of exposure to second-hand smoke and to implement laws and policies to dramatically reduce this exposure. A provision that basically limits people to smoking cannabis indoors where others will be exposed is a major step backwards in the protection of the public.

It is also of concern that restrictions on consumption of recreational cannabis in public places will be enforced by police officers. In contrast, the prohibition on the public consumption of medical cannabis and tobacco under the *Smoke-Free Ontario Act, 2017*, will be enforced by tobacco enforcement officers. Given the fact that almost one-third (31%) of cannabis smokers report mixing tobacco with their cannabis, and given the extensive training and experience of tobacco enforcement officers in enforcement of smoking bans, it only makes sense to also confer enforcement powers on tobacco enforcement officers to enforce the ban on use of recreational cannabis in public places. This would offer a seamless enforcement approach under both the *Cannabis Act, 2017*, and the *Smoke-Free Ontario Act, 2017*, as what is being smoked in a public place would not have to be proven or the police summoned before charges could be laid.

With the new *Smoke-Free Ontario Act, 2017* in place, despite its deficits, Ontario is still at the forefront of legislative reform to protect people from second-hand smoke and second-hand vapour. This legislation will also help prepare Ontario for the federal legalization of marijuana.