

S-5 WILL OPEN THE VAPING MARKET TO POWERFUL AND IRRESPONSIBLE INDUSTRIES

Amendments to the bill are needed to protect young people and others from excessive advertising.

Big Tobacco is waiting for legislation like S-5 before marketing e-cigarettes in Canada. E-cigarettes and other vaping products currently occupy a legal grey zone, which is why Parliament has been asked to find a way to bring them into the regulated market. For the past few years they have technically been illegal, but have been tolerated by Health Canada which has done little to prevent the proliferation of small operators selling nicotine delivery systems.

As deplorable as it has been for this illegal activity to be tolerated for so long, there is a danger that legitimization of this market through S-5 could be more damaging to public health than the status quo. That's because the current legal uncertainty of nicotine systems has kept Big Tobacco out of the market. Today, with only small operators present, no one is aggressively marketing these addictive products.

Once Bill S-5 becomes law, that will change. Big Tobacco companies will enter the Canadian market with massive advertising and promotional budgets.

E-cigarettes may be safer than cigarettes, but they are addictive and can sustain smoking. Non-combustible nicotine products are widely acknowledged to be less hazardous than regular cigarettes on a product-to-product basis. But they are only better for public health if smokers, and only smokers, use them. Dual use of combustible and non-combustible nicotine, or use by former smokers or non-smokers could all worsen the problems of nicotine addiction. These circumstances could result in more, not less harm from these new vaping products.



BAT's Vype Pebble is marketed in ways similar to those that permitted under S-5
www.govype.com

The legislative challenge, then, is to create a legislative regime that will allow and even encourage their use for public health benefit, while minimizing the possibility of public health detriment that could result from these products.

S-5 gives e-cigarette makers very wide scope for promotions. Regrettably Bill S-5, as currently proposed, opens the door too wide to use of these products by non-smokers and the possibility of the public health harm that could result. Bill S-5 would allow advertising for vaping products in many media. It would allow advertisements on television, YouTube, internet, radio, billboards and other prominent places. Big Tobacco has the money to exploit these marketing opportunities in a way that those operating in the current grey market do not.

Vaping products will already enjoy a significant marketplace advantage. Unlike cigarettes, they are not taxed and the health information that appears on packages will be very different from the health information on tobacco packages. No reason exists to extend advantages even further into the realm of advertising.

Recommendation

It is recommended that Division 2 (Articles 30. 1 to 30. 8) of Bill S-5 concerning advertising and promotion of vaping products be revised to closely conform to the revised law governing advertising and promotion of tobacco products as proposed in Division 1 of Bill S-5 (Articles 25 to 36).

S-5 COULD BEGIN THE END FOR THE COMBUSTIBLE CIGARETTE.

A harm-reduction approach requires a commitment to reduce the harm.

With S-5, tobacco companies will be able to market less harmful forms of nicotine. So why will they be allowed to continue marketing the most harmful forms?

Bill S-5 is a legislative response to the potential benefits of e-cigarettes. It opens the door for a less harmful nicotine product. But it is an incomplete policy response, in that it does nothing to close the door on the most harmful tobacco products.

Bill S-5 offers no clear vision of the place of vaping products in the wider context of bringing the tobacco epidemic to an end. The bill reflects an implicit hope that the marketing of less hazardous vaping products might replace the market for conventional cigarettes. But without any other policy or legislative pieces in place, this is no more than a hope.

The reality is that sellers of vaping and tobacco products will all be obliged to maximize their sales of both kinds of products as part of their overarching legal responsibilities to their shareholders to maximize profits.

Parliament can require the companies to put their efforts where their public relations are going.

Each of the large tobacco companies is expanding its production into likely less harmful nicotine sources, like heat-not-burn or vapour products.

André Calantzopoulos, the Chief Executive Officer of Philip Morris International (which owns and runs Rothmans, Benson and Hedges) recently said that the company plans to replace combustible cigarettes with less harmful products.¹ He did not, however, provide a time frame for this transition.

During its review of S-5, the Senate could call for changes to S-5 and to federal policy which would ensure that the most harmful tobacco products are taken off the market as less harmful products become available.

In giving the tobacco industry the opportunity to sell e-cigarettes and heat-not-burn cigarettes, the Canadian government could and should oblige the tobacco industry to reduce the supply and demand for conventional cigarettes so that the conventional cigarette smoking prevalence is decreased to 5% or less by 2035. This would respond to an emerging consensus that the national tobacco strategy should aim for “less than 5 by 35” – i.e. smoking rates below 5% before 2035.

Recommendation

It is recommended that Senators urge the Government to use the legalization of vaping products as an opportunity to require a phase-out of conventional tobacco products, with an interim goal of fewer than 1 in 20 Canadians using tobacco by 2035.

Detailed proposals for amendments to Bill S-5 follow.

1 André Calantzopoulos “Our ambition is to lead a full-scale effort to ensure that non-combustible products ultimately replace cigarettes to the benefit of adult smokers.”
(http://www.pmi.com/eng/media_center/press_releases/Pages/201609230900.aspx#)

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

The good:

- Paving the way for plain packaging
- Making information more available to the public
- Creating conditions to end the black market in vaping products

Main concerns:

- Fails to provide legislative support to the Minister's stated goal of reducing smoking prevalence to less than 5% by 2035.
- Opens the door to the marketing of a new drug with abuse potential, without providing safeguard mechanisms.
- Adopts a harm reduction legislation, without the other elements of a harm reduction strategy in place.
- Takes a "fingers' crossed" position that the new nicotine market will be one in which vaping replaces smoking, but does not have any contingency for the scenario in which vaping leads to smoking:
 - Safeguard mechanisms could be: statutory review of impact, obligation on manufacturers to meet goals, coordination;
 - Government has not yet consulted on, let alone established, a communications strategy for harm, objectives for transfer to non-combustible products;
 - Elements that are missing from a more comprehensive harm reduction strategy included frequent monitoring, review, evaluation, ability to quickly make corrections based on learnings from evaluation.
- Continues to put onus on individuals to be informed, to make risk assessments, with some regulatory duties (i.e. packaging, sales to youth), but otherwise leaves manufacturers' without liability for any damage resulting from the use of their product.
- Is parallel legislation (vaping and tobacco), but not coordinated legislation (in which vaping replaces tobacco).
- Is not coordinated with new challenges of marijuana (i.e. banning blunts, vaping as likely less harmful use of marijuana, dual or triple use of tobacco, vaping products and/or marijuana).
- The restrictions on advertising flavoured vaping products is incomplete.

Fixable through amendments:

- Stronger statement of purpose and new measures to give effect to the stronger statement of purpose.
- Overly broad promotional scope for marketing vaping products (prizes, etc). Fix by making the restrictions more similar to those for tobacco products.
- Reversing the regulatory onus – i.e. information must be shared unless exempted, not shared only if and when regulations are passed.

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
PART 1		
1997, c. 13		
Tobacco Act		
Amendments to the Act		
1 The long title of the <i>Tobacco Act</i> is replaced by the following:		
An Act to regulate the manufacture, sale, labelling and promotion of tobacco products <u>and vaping products</u>		
2 Section 1 of the Act is replaced by the following:		
Short title		
1 This Act may be cited as the <i>Tobacco <u>and Vaping Products Act</u></i> .		
2009, c. 27, s. 2(2)		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
<p>3 (1) The definitions <i>accessory, additive, emission, ingredient, manufacture, manufacturer, retailer, sell and tobacco product</i> in section 2 of the Act are replaced by the following:</p>		
<p><i>accessory</i> means a product that may be used in the consumption of a tobacco product, including a pipe, cigarette holder, cigar clip, lighter and matches, <u>and also means a water pipe.</u> (<i>accessoire</i>)</p>		
<p><i>additive, in respect of tobacco products,</i> means an ingredient other than tobacco leaves. (<i>additif</i>)</p>		
<p><i>emission</i> means a substance that is produced when a tobacco product or <u>vaping product</u> is used. (<i>émission</i>)</p>		
<p><i>ingredient</i> means any substance used in the manufacture of a tobacco product, <u>vaping product</u> or <u>their</u> components, including any substance used in the manufacture of that substance, <u>and, in respect of a tobacco product, also includes</u> tobacco leaves. (<i>ingrédient</i>)</p>		
<p><i>manufacture,</i> in respect of <u>a tobacco product or vaping product,</u> includes the <u>manufacture of a tobacco product or vaping product for export, as well as the packaging, labelling, distributing and importing of a tobacco or vaping product</u> for sale in Canada. (<i>fabriquer</i>)</p>		
<p><i>manufacturer,</i> in respect of <u>a tobacco product or vaping product,</u> includes any entity that is associated with a manufacturer, including an entity that controls or is controlled by the manufacturer or that is controlled by the same entity that controls the manufacturer. (<i>fabricant</i>)</p>		
<p><i>retailer</i> means a person who is engaged in a business that includes the sale of tobacco <u>products or vaping products</u> to consumers. (<i>détaillant</i>)</p>		
<p><i>sell</i> includes offer for sale, expose for sale <u>and sell for export.</u> (<i>vendre</i>)</p>		
<p><i>tobacco product</i> means a product <u>made</u> in whole or in part of tobacco <u>and</u> includes papers, tubes and filters <u>intended for use with that product, a device, other than a water pipe, that is necessary for the use of that product and the parts that may be used with the device.</u> (<i>produit du tabac</i>)</p>		
<p>2009, c. 27, s. 2(2)</p>		
<p>(2) The portion of the definition <i>little cigar</i> in section 2 of the English version of the Act after paragraph (d) is replaced by the following:</p>		
<p>It includes any tobacco product that is <u>designated by the regulations to be</u> a little cigar. (<i>petit cigare</i>)</p>		
<p>(3) Section 2 of the Act is amended by adding the following in alphabetical order:</p>		
<p><i>lifestyle advertising</i> means advertising that associates a product with, or evokes a positive or negative emotion about or image of, a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring. (<i>publicité de style de vie</i>)</p>		
<p><i>vaping product</i> means</p>		

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(a) a device that produces emissions in the form of an aerosol and is intended to be brought to the mouth for inhalation of the aerosol;		
(b) a device that is designated to be a vaping product by the regulations;		
(c) a part that may be used with those devices; and		
(d) a substance or mixture of substances, whether or not it contains nicotine, that is intended for use with those devices to produce emissions.		
It does not include devices and substances or mixtures of substances that are excluded by the regulations, tobacco products or their accessories. (<i>produit de vapotage</i>)		
2009, c. 27, s. 3		
4 Subsection 2.1(1) of the Act is replaced by the following:		
Regulations — little cigar and vaping product		
2.1 (1) The Governor in Council may make regulations		
(a) <u>designating</u> any tobacco product to be a little cigar for the purpose of the definition <i>little cigar</i> ;		
(b) designating any device to be a vaping product or not to be a vaping product for the purpose of the definition <i>vaping product</i> ; and		
(c) designating any substance or mixture of substances not to be a vaping product for the purpose of the definition <i>vaping product</i> .		
5 Section 4 of the Act is replaced by the following:		
Purpose of Act		
4 (1) The purpose of this Act is to provide a legislative response to a national public health problem of substantial and pressing concern and to protect the health of Canadians in light of conclusive evidence implicating tobacco use in the incidence of numerous debilitating and fatal diseases.		
Tobacco products		
(2) The purpose of this Act with respect to tobacco products is to support the objectives set out in subsection (1) and, in particular,		
(a) to protect young persons and others from inducements to use tobacco products and the consequent dependence on them;		
(b) to protect the health of young persons by restricting access to tobacco products;		
(c) to prevent the public from being deceived or misled with respect to the health hazards of using tobacco products; and		
(d) to enhance public awareness of <u>those</u> hazards.		
	(e) to reduce the burden of addiction, disease and death from tobacco use;	The government needs to accept responsibility for reducing addiction and disease, not just for aiming to influence behaviour. Doing so allows a broader range of measures under the act.

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	(f) to reduce the prevalence of the use of tobacco products every year to no more than 5% of the population by the year 2035.	Minister has stated that she wants to achieve this objective. This goal would be more achievable if the government had legislative authority to aim for it.
Vaping products		
(3) The purpose of this Act with respect to vaping products is to support the objectives set out in subsection (1), to prevent vaping product use from leading to the use of tobacco products by young persons and non-users of tobacco products and, in particular,		
(a) to protect young persons and non-users of tobacco products from inducements to use vaping products;		
(b) to protect the health of young persons and non-users of tobacco products from exposure to and dependence on nicotine that could result from the use of vaping products;		
(c) to protect the health of young persons by restricting access to vaping products;		
(d) to prevent the public from being deceived or misled with respect to the health hazards of using vaping products; and		
(e) to enhance public awareness of those hazards.		
	(f) to prevent addiction to nicotine.	Again, a results-focused objective is necessary in the law to reflect the duty of government to protect health and also to widen the scope of authorities in the act.
6 Section 5 of the Act is replaced by the following:		
Product standards		
5 No <u>manufacturer</u> shall manufacture <u>or sell</u> a tobacco product that does not conform with the standards established by the regulations.		
2009, c. 27, s. 4		
7 (1) Subsection 5.1(1) of the Act is replaced by the following:		
Prohibition — manufacture		
5.1 (1) No <u>manufacturer</u> shall use an additive set out in column 1 of the schedule in the manufacture of a tobacco product set out in column 2.		
2009, c. 27, s. 4		
(2) Subsection 5.1(2) of the Act is repealed.		
2009, c. 27, s. 5		
8 Section 5.2 of the Act is replaced by the following:		
Prohibition — sale		
5.2 No <u>manufacturer</u> shall sell a tobacco product set out in column 2 of <u>Schedule 1</u> that contains an additive set out in column 1.		
Marking		

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<p>5.3 (1) No person shall manufacture or sell a tobacco product that displays a marking, unless the marking is authorized by the regulations.</p>		
<p>Exception</p>		
<p>(2) A person who manufactures or sells a tobacco product that displays a marking does not contravene subsection (1) if the marking is required under an Act of the legislature of a province.</p>		
<p>Additive</p>		
<p>(3) Despite sections 5.1 and 5.2, a manufacturer may use a prescribed additive to display on a tobacco product a marking that is authorized by the regulations or that is required under an Act of the legislature of a province and may sell a tobacco product that displays such a marking.</p>		
<p>2009, c. 27, s. 6</p>		
<p>Reducing supply and demand for tobacco products</p>		
	<p>5.4. No manufacturer shall sell more than the prescribed quantity of tobacco products.</p>	<p>This gives the Minister the authority to control the supply of tobacco products. See proposed new regulatory authority under s. 7.</p>
	<p>5.5 Tobacco manufacturers shall assist the Minister generally in achieving the purposes of the act, and specifically in ensuring that prescribed annual targets for reductions in smoking prevalence, as measured in a prescribed manner, are met, as specified in section 2(f).</p>	<p>This places responsibility on tobacco manufacturers to help achieve the purposes of the Act.</p>
	<p>5.6 If, in the opinion of the Minister, a tobacco manufacturer has not met its obligations under section 5.5, the Minister shall increase the tobacco fee, as described in section 6.4 in the following year by a prescribed amount.</p>	<p>This amendment requires at least annual monitoring of trends in smoking prevalence and penalizes tobacco companies that fail to meet their obligations to assist the Minister to reduce the prevalence of tobacco use.</p>

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<p>6 (1) Every manufacturer shall submit to the Minister, in the prescribed <u>form and</u> manner and within the prescribed time, information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions, whether the tobacco products are for sale or not.</p>		
<p>Supplementary information</p>		
<p>(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information <u>in the form and manner and within the time specified by the Minister.</u></p>		
<p>Public disclosure by manufacturer</p>		
<p>6.1 Every manufacturer shall make available to the public, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about tobacco products and their emissions.</p>	<p>6.1 Every manufacturer shall make available to the public information that is required by the regulations about tobacco products and their emissions, unless exempted from doing so by the regulations.</p>	<p>Health Canada has a poor record for passing regulations in a timely manner. The amendment will make sure that disclosure of the information is not delayed as a result of slow regulation-making.</p>
<p>Public disclosure by Minister</p>		
<p>6.2 The Minister shall make available to the public, in the prescribed manner and within the prescribed time, information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions.</p>	<p>6.2 The Minister shall make available to the public the information that is required by the regulations about tobacco products, their emissions and any research and development related to tobacco products and their emissions unless exempted from doing so by the regulations.</p>	<p>Same reason as for 6.1</p>
<p>Non-application</p>		
<p>6.3 Sections 6.1 and 6.2 do not apply in respect of tobacco products that have never been for sale in Canada.</p>		
<p>10 The Act is amended by adding the following after section 6:</p>		
<p>Prohibition</p>		
<p>6.01 Subject to the regulations, no manufacturer shall sell a tobacco product unless the information required under subsection 6(1) with respect to that product is submitted to the Minister.</p>		
<p>2009, c. 27, s. 8(1)</p>		
<p></p>	<p>Tobacco Fee</p>	
<p></p>	<p>6.4 Subject to the regulations, tobacco manufacturers shall pay</p>	<p>In 1994, the government instituted a tobacco manufacturers surtax.</p>

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	<p>annually to the Minister the sum of \$200 million or other amount as may be prescribed, to be used to defray the costs of administration of the Minister's national and international tobacco control programs and policies. Each manufacturer shall pay a prescribed amount, approximately proportional to the manufacturer's share of the market for tobacco products in the previous year.</p>	<p>Initially it was called the Health Promotion Surtax. The money so raised paid for tobacco control programming for a period of three years. Tobacco manufacturers have found ways to avoid paying this surtax. It fell into disrepair. In the budget of March 22, 2017, eliminated this tax. Revenue to fund tobacco control programming has fallen precipitously in this century. This proposed tobacco fee would replace a previous source of funding, now lost, and oblige tobacco companies to pay at least some of the cost of fixing the problems they have caused.</p>
<p>11 (1) Paragraph 7(a) of the Act is replaced by the following:</p>		
<p>(a) <u>establishing standards respecting the characteristics of tobacco products and their emissions, including the sensory attributes — such as appearance and shape — of the products and their emissions, the dimensions, weight, components and performance of the products, and the amounts and concentrations of substances that may be contained in the products or their emissions;</u></p>		
<p>(2) Section 7 of the Act is amended by adding the following after paragraph (b):</p>		
<p>(b.1) respecting markings that may be displayed on tobacco products;</p>		
<p>2009, c. 27, s. 8(1)</p>		
	<p>Section 7 of the Act is amended by adding the following after paragraph (b.1):</p>	<p>.</p>
	<p>(b.2) establishing the quantity of tobacco products that may be sold, the time periods in which they may be sold, the form and manner in which they may be sold.</p>	<p>This gives the Minister the authority to impose supply controls, such as a sinking lid, cap-and-trade or other systems.</p>
	<p>(b.3) establishing how the Minister may determine if tobacco</p>	<p>This gives authority for evidence to gathered and analyzed to allow</p>

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	manufacturers have met their obligations under section 5.5, thereby requiring an increase in the tobacco fee to be paid.	the Minister to give an informed opinion on whether or not tobacco manufacturers have met their obligations.
(3) Paragraphs 7(c) and (c.1) of the Act are replaced by the following:		
(c) prescribing information that manufacturers must submit to the Minister about tobacco products and their emissions, including sales data and information on market research, product composition, ingredients, <u>materials</u> , health effects, hazardous properties and brand elements;		
(c.1) prescribing information that manufacturers must submit to the Minister about research and development related to tobacco products and their emissions, including information on market research, product composition, ingredients, <u>materials</u> , health effects, hazardous properties and brand elements;		
2009, c. 27, s. 8(1)		
(4) Paragraph 7(c.3) of the Act is repealed.		
(5) Section 7 of the Act is amended by adding the following after paragraph (c.2):		
(c.3) respecting the prohibition under section 6.01, including providing for the suspension of the sale of a tobacco product;		
(6) Section 7 of the Act is amended by adding the following after paragraph (d):		
(d.01) prescribing, for the purposes of section 6.1, information that manufacturers must make available to the public, including information referred to in paragraph (c);		
(d.02) prescribing, for the purposes of section 6.2, information that the Minister must make available to the public, including information referred to in paragraphs (c) and (c.1);		
	(d.03) establishing the form and manner in which market share is to be determined, how it is to be apportioned among tobacco manufacturers, the form and manner in which the tobacco fee is to be paid and the frequency and timing of payment of the tobacco fee.	This creates regulation-making power to give effect to the tobacco fee proposed in section 6.4.
12 The Act is amended by adding the following after section 7.1:		
PART I.1		
Vaping Products		
Product standards		
7.2 No manufacturer shall manufacture or sell a vaping product that does not conform with the standards established by the regulations.		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
Information required from manufacturer		
<p>7.3 (1) Every manufacturer shall submit to the Minister, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about vaping products, their emissions and any research and development related to vaping products and their emissions, whether the vaping products are for sale or not.</p>		
Supplementary information		
<p>(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information in the form and manner and within the time specified by the Minister.</p>		
Prohibition		
<p>7.4 Subject to the regulations, no manufacturer shall sell a vaping product unless the information required under subsection 7.3(1) with respect to that product is submitted to the Minister.</p>		
Public disclosure by manufacturer		
<p>7.5 Every manufacturer shall make available to the public, in the prescribed form and manner and within the prescribed time, information that is required by the regulations about vaping products and their emissions.</p>	<p>7.5 Every manufacturer shall make available to the public information that is required by the regulations about vaping products and their emissions, unless exempted from doing so by the regulations.</p>	<p>Health Canada has a poor record for passing regulations in a timely manner. The amendment will make sure that the information is not delayed as a result of slow regulation-making.</p>
Public disclosure by Minister		
<p>7.6 The Minister shall make available to the public, in the prescribed manner and within the prescribed time, information that is required by the regulations about vaping products, their emissions and any research and development related to vaping products and their emissions.</p>	<p>7.6 The Minister shall make available to the public information that is required by the regulations about vaping products, their emissions and any research and development related to vaping products and their emissions, unless exempted from doing so by the regulations.</p>	<p>As above re 7.5</p>
Non-application		
<p>7.7 Sections 7.5 and 7.6 do not apply in respect of vaping products that have never been for sale in Canada.</p>		
Regulations		
<p>7.8 The Governor in Council may make regulations</p>		
<p>(a) establishing standards respecting the characteristics of vaping products and their emissions, including the functions and the performance of the products, the sensory attributes — such as appearance and shape — of the products and their emissions, and the amounts and concentrations of substances that may be contained in the products or their emissions;</p>		

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(b) respecting test methods, including methods to assess conformity with the standards;		
(c) prescribing information that manufacturers must submit to the Minister about vaping products and their emissions, including sales data and information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;		
(d) prescribing information that manufacturers must submit to the Minister about research and development related to vaping products and their emissions, including information on market research, product composition, ingredients, materials, health effects, hazardous properties and brand elements;		
(e) respecting requests for supplementary information under subsection 7.3(2);		
(f) respecting the prohibition under section 7.4, including providing for the suspension of the sale of a vaping product;		
(g) prescribing the means, including electronic means, by which the information referred to in paragraphs (c) to (e) may be submitted to the Minister;		
(h) prescribing, for the purposes of section 7.5, information that manufacturers must make available to the public, including information referred to in paragraph (c);		
(i) prescribing, for the purposes of section 7.6, information that the Minister must make available to the public, including information referred to in paragraphs (c) and (d);		
(j) prescribing anything that by this Part is to be prescribed; and		
(k) generally for carrying out the purposes of this Part.		
13 The Act is amended by adding the following after section 7.2:		
Prohibition — manufacture		
7.21 No manufacturer shall use an ingredient set out in column 1 of Schedule 2 in the manufacture of a vaping product set out in column 2.		
Prohibition — sale		
7.22 No manufacturer shall sell a vaping product set out in column 2 of Schedule 2 that contains an ingredient set out in column 1.		
Amendment of Schedule 2		
7.23 (1) The Governor in Council may, by order, amend Schedule 2 by adding, amending or deleting		
(a) the name or description of an ingredient or vaping product; or		
(b) a reference to all vaping products, with or without exceptions.		
Description		
(2) An ingredient or vaping product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.		
Operation of amendments suspended		
(3) An order made under subsection (1) may provide that the operation of the amendments to Schedule 2 is suspended with		

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respect to retailers for a period of 30 days after the day on which the order comes into force.		
Consequences of suspension		
(4) During the period in which the operation of the amendments is suspended with respect to retailers,		
(a) Schedule 2, as it read immediately before the coming into force of the order, continues to apply with respect to retailers; and		
(b) no other amendment to Schedule 2 is to come into force.		
14 (1) Subsection 8(1) of the Act is replaced by the following:		
Furnishing products to young persons		
8 (1) No person shall furnish a tobacco product <u>or vaping product</u> to a young person in a public place or in a place to which the public has access.		
(2) Subsection 8(2) of the Act is replaced by the following:		
Defence		
(2) A person shall not be found <u>guilty of having</u> contravened subsection (1) if it is established that <u>they</u> attempted to verify, <u>in accordance with the regulations</u> , that the person was at least 18 years of age.		
15 (1) Section 9 of the Act is replaced by the following:		
Sending and delivering to young persons		
9 (1) No person shall send or deliver a tobacco product or vaping product to a young person.		
Defence — sender		
(2) A person shall not be found guilty of having contravened subsection (1) for having sent a tobacco product or vaping product to a young person if it is established that the person		
(a) informed the person delivering the product of its nature and of the prohibition on its delivery to a young person; and		
(b) instructed the person delivering the product to verify that the person taking delivery of it was at least 18 years of age by asking for and examining a piece of identification issued by a federal or provincial authority or a foreign government and containing that person’s name, photograph, date of birth and signature.		
Defence — person making delivery		
(3) A person shall not be found guilty of having contravened subsection (1) for having delivered a tobacco product or vaping product to a young person if it is established that the person		
(a) verified that the person taking delivery of the product was at least 18 years of age by asking for and examining a piece of identification issued by a federal or provincial authority or a foreign government and containing that person’s name, photograph, date of birth and signature; and		
(b) believed on reasonable grounds that the piece of identification was authentic.		
Tobacco products — interprovincial sending and delivering		
9.1 (1) No person shall, for consideration, send or deliver a tobacco product from one province to another unless the sending or delivery is between manufacturers or retailers or is		

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exempted from the application of this section by the regulations.		
Advertising an offer		
(2) No person shall advertise an offer to send or deliver a tobacco product from one province to another.		
(2) Paragraph 9(2)(b) of the Act is replaced by the following:		
(b) instructed the person delivering the product to verify, in accordance with the regulations, that the person taking delivery of it is at least 18 years of age.		
(3) Subsection 9(3) of the Act is replaced by the following:		
Defence — person making delivery		
(3) A person shall not be found guilty of having contravened subsection (1) for having delivered a tobacco product or vaping product to a young person if it is established that the person verified, in accordance with the regulations, that the person taking delivery of the product was at least 18 years of age.		
16 Section 10 of the Act is amended by adding the following after subsection (2):		
Vaping products		
(3) No person shall import for sale in Canada, package, distribute or sell a vaping product that is prescribed for the purposes of this subsection, except in a package that contains a number or quantity of the vaping product that meets the prescribed requirements.		
17 Section 12 of the Act is replaced by the following:		
Dispensing device		
12 <u>Subject to the regulations</u> , no person shall furnish or permit the furnishing of a tobacco product <u>or vaping product</u> by means of a <u>dispensing</u> device.		
18 Section 13 of the Act is replaced by the following:		
Prescription vaping products		
13 (1) Subsections 8(1), 9(1) and 10(3) do not apply in respect of		
(a) a prescription vaping product; or		
(b) a <i>device</i> , within the meaning of section 2 of the <i>Food and Drugs Act</i> , that is the subject of an authorization issued under that Act authorizing its sale for use with a prescription vaping product.		
Definition of <i>prescription</i>		
(2) In this section, <i>prescription</i> , in respect of a vaping product, means that the product		
(a) contains a drug that is set out in the prescription drug list, as amended from time to time, established under subsection 29.1(1) of the <i>Food and Drugs Act</i> , or a drug that is part of a class of drugs that is set out in that list; and		
(b) is the subject of an authorization issued under that Act authorizing its sale.		
19 (1) Paragraph 14(a) of the Act is replaced by the following:		
(a) respecting the verifications referred to in subsection 8(2), paragraph 9(2)(b) and subsection 9(3);		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
(2) Paragraphs 14(b) to (d) of the Act are replaced by the following:		
(a.1) respecting exemptions to the prohibition under subsection 9.1(1);		
(b) prescribing tobacco products for the purposes of subsection 10(2) <u>and prescribing vaping products for the purposes of subsection 10(3)</u> ;		
(c) respecting, for the purposes of subsection 10(3), the number or quantity of a vaping product that a package must contain, including minimum and maximum numbers or quantities;		
(d) exempting persons from the application of <u>section 11</u> ;		
(3) Paragraph 14(e) of the Act is replaced by the following:		
(e) respecting exceptions to the prohibition under section 12;		
20 (1) Subsection 15(1) of the Act is replaced by the following:		
Information — sale of tobacco products		
15 (1) No manufacturer or retailer shall sell a tobacco product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions, and about the health hazards and health effects arising from the use of the product <u>and</u> from its emissions.		
(2) Section 15 of the Act is amended by adding the following after subsection (1):		
Information — packaging of tobacco products		
(1.1) No manufacturer shall package a tobacco product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
(3) Subsections 15(2) and (3) of the Act are replaced by the following:		
Information — leaflet		
(2) If required by the regulations, every manufacturer or retailer shall provide <u>with a tobacco product</u> , in the prescribed form and manner, a leaflet that displays the information required by the regulations about <u>the</u> product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
21 Section 16 of the Act is replaced by the following:		
Information — sale of vaping products		
15.1 (1) No manufacturer or retailer shall sell a vaping product unless the product and the package containing it display, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Information — manufacture of vaping products		
(2) No person shall manufacture a vaping product unless the product displays, in the prescribed form and manner, the		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Information — packaging of vaping products		
(3) No person shall package a vaping product unless the package containing it displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Information — leaflet or tag		
(4) If required by the regulations, every manufacturer or retailer shall provide with a vaping product, in the prescribed form and manner, a leaflet or tag that displays the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Attribution		
15.2 The information referred to in sections 15 and 15.1 may be attributed to a person or body designated by the regulations if the attribution is made in the prescribed form and manner.		
Display of information — tobacco product package		
15.3 (1) No manufacturer or retailer shall sell a tobacco product if the package displays information in a manner that is contrary to the regulations.		
Provision of information — other		
(2) No manufacturer or retailer shall provide, in a manner that is contrary to the regulations, written information with a tobacco product.		
For greater certainty		
16 <u>For greater certainty</u> , this Part does not affect any obligation of a manufacturer or retailer at law or under an Act of Parliament or of <u>the legislature of a province</u> to warn consumers of the health hazards and health effects arising from the use of tobacco products <u>or vaping products and from their emissions</u> .		
22 Paragraph 17(a) of the Act is replaced by the following:		
(a) respecting the information that must appear on <u>tobacco product</u> packages and in leaflets about tobacco products and their emissions and <u>about</u> the health hazards and health effects arising from the use of the products and from their emissions;		
(a.1) respecting the information that must appear on vaping products or on vaping product packages and in leaflets or on tags about vaping products and their emissions and about the health hazards and health effects arising from the use of the products and from their emissions;		
(a.2) respecting, for the purposes of section 15.3, the manner of displaying or providing information, including the form and placement of the information;		
23 (1) The portion of subsection 18(2) of the Act before paragraph (a) is replaced by the following:		
Application of Division 1		
(2) <u>Division 1</u> of this Part does not apply to		

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(2) Paragraph 18(2)(a) of the English version of the Act is replaced by the following:		
(a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a tobacco product or tobacco product-related brand element, whatever the mode or form of its expression, if no consideration is given <u>by a manufacturer or retailer</u> , directly or indirectly, for that use or depiction in the work, production or performance;	Defeat this clause	This widens the loophole that allows smoking to be portrayed in movies and other cultural products. The government has given no explanation of why this is necessary.
(3) Section 18 of the Act is amended by adding the following after subsection (2):		
Application of Division 2		
(3) Division 2 of this Part does not apply to		
(a) a literary, dramatic, musical, cinematographic, scientific, educational or artistic work, production or performance that uses or depicts a vaping product or vaping product-related brand element, whatever the mode or form of its expression, if no consideration is given by a manufacturer or retailer, directly or indirectly, for that use or depiction in the work, production or performance;		
(b) a report, commentary or opinion in respect of a vaping product or a brand of vaping product if no consideration is given by a manufacturer or retailer, directly or indirectly, for the reference to the vaping product or brand in that report, commentary or opinion; or		
(c) a promotion by a manufacturer that is directed at manufacturers, persons who distribute vaping products or retailers but not, either directly or indirectly, at consumers.		
24 The Act is amended by adding the following after section 18:		
DIVISION 1		
Tobacco Products		
25 Section 19 of the Act is replaced by the following:		
Prohibition		
19 No person shall promote a tobacco product or a tobacco product-related brand element, <u>including by means of the packaging</u> , except as authorized by <u>the provisions of</u> this Act or <u>of</u> the regulations.		
26 Section 20 of the Act is replaced by the following:		
False promotion		
20 (1) No person shall promote a tobacco product, including by means of the packaging, <u>in a manner</u> that <u>is</u> false, misleading or deceptive <u>with respect to</u> , or that <u>is</u> likely to create an erroneous impression about, the characteristics, health effects or health hazards of the tobacco product or its emissions.		
Considerations		
(2) The general impression conveyed by a promotion and the literal meaning of any statement contained in a promotion shall be taken into account in determining whether a promotion is made in a manner that is misleading or deceptive with respect to, or is likely to create an erroneous impression about, the		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
characteristics, health effects or health hazards of the tobacco product or its emissions.		
27 The Act is amended by adding the following after section 20:		
Comparison and prohibited elements		
20.1 No person shall promote a tobacco product, including by means of the packaging,		
(a) in a manner that could cause a person to believe that the product or its emissions are less harmful than other tobacco products or their emissions; or		
(b) by using terms, expressions, logos, symbols or illustrations that are prohibited by the regulations.		
28 (1) Subsection 21(1) of the Act is replaced by the following:		
Testimonials or endorsements		
21 (1) No person shall promote a tobacco product <u>through</u> a testimonial or an endorsement, however displayed or communicated, <u>including by means of the packaging</u> .		
(2) Subsection 21(3) of the Act is repealed.		
29 (1) Subsection 22(1) of the Act is replaced by the following:		
Advertising		
22 (1) Subject to this section, no person shall promote a tobacco product by means of <u>advertising</u> that depicts, in whole or in part, a tobacco product, its package or a <u>tobacco product-related</u> brand element or that evokes a tobacco product or a <u>tobacco product-related</u> brand element.		
(2) Paragraph 22(2)(a) of the Act is replaced by the following:		
(a) a publication that is addressed and <u>sent</u> to an adult who is identified by name; or	Defeat	The current provision requires publications that are provided by mail. S-5 proposes to increase the ability to promote tobacco products through social media. Publications have been interpreted as messages like e-mails, texts, etc.
(3) Subsection 22(3) of the Act is replaced by the following:		
Lifestyle advertising		
(3) Subsection (2) does not apply to lifestyle advertising or advertising for which <u>there</u> are reasonable grounds to <u>believe</u> that <u>it could</u> be appealing to young persons.	(3) Subsection (2) does not apply to lifestyle advertising or advertising for which <u>there</u> are reasonable grounds, <u>in the opinion of the Minister</u> , to <u>believe</u> that <u>it could</u> be appealing to young persons	The length of time that it will take to put any product or definition of `reasonable grounds` of appeal to young persons will risk exposing young persons to inappropriate advertising. The proposed amendment would shift the burden

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		of proof in ways that protect health.
(4) The definition <i>lifestyle advertising</i> in subsection 22(4) of the Act is repealed.		
30 Section 23 of the Act is replaced by the following:		
Packaging		
23 (1) No person shall package a tobacco product in a manner that is contrary to <u>the provisions of</u> this Act or <u>of</u> the regulations.		
Prohibition — sale		
(2) No person shall sell a tobacco product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.		
2009, c. 27, s. 12(1)		
31 Subsection 23.1(1) of the Act is replaced by the following:		
Prohibited additives — packaging		
23.1 (1) No person shall package a tobacco product set out in column 2 of <u>Schedule 1</u> in a manner, including <u>by means of a brand element, that could cause a person to believe</u> that it contains an additive set out in column 1.		
32 The Act is amended by adding the following after section 23.1:		
Prohibition — vaping product-related brand element		
23.2 (1) No person shall display a vaping product-related brand element on the package of a tobacco product.		
Prohibition — sale		
(2) No person shall sell a tobacco product if a vaping product-related brand element is displayed on its package.		
1998, c. 38, ss. 1 and 2(1)		
33 Sections 24 and 25 of the Act are replaced by the following:		
Sponsorship promotion		
24 (1) No person shall promote a tobacco product-related brand element or the name of a tobacco product manufacturer in a manner that is likely to create an association between the brand element or the name and a person, entity, event, activity or permanent facility.		
Promotional material		
(2) No person <u>shall use</u> , directly or indirectly, a tobacco product-related brand element or the name of a tobacco <u>product manufacturer in the promotional material related to</u> a person, entity, event, activity or permanent facility.		
Name of facility		
25 No person <u>shall</u> display a tobacco product-related brand element or the name of a tobacco <u>product manufacturer</u> on a permanent facility, as part of the name of the facility or otherwise, if the <u>facility is used for</u> a sports or cultural event or activity.		
34 Sections 27 and 28 of the Act are replaced by the following:		
Brand element — thing or service		

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<p>27 No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a <u>thing</u>, other than a <u>tobacco product</u> or an accessory, or is used with a service, <u>and</u></p>	defeat	<p>The expands the scope for tobacco advertising to include `things` that are not `non-tobacco` products or services.</p> <p>Given that some of the `things` might be related to other forms of drug use (and encourage co-use of marijuana and tobacco, vaping and tobacco, etc), this expands an already dangerous loophole.</p>
<p>(a) the <u>thing</u> or service is associated with young persons;</p>	defeat	Reasons above
<p>(b) <u>there are</u> reasonable grounds to <u>believe that the thing or service</u> could be appealing to young persons; or</p>	defeat	Reasons above
<p>(c) <u>the thing or service</u> is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.</p>	defeat	Reasons above
<p>Other things and services</p>	defeat	Reasons above
<p>28 (1) Subject to the regulations, a person may sell a tobacco product, or advertise a tobacco product in accordance with section 22, if any of its brand elements is displayed on a <u>thing</u>, other than a <u>tobacco product</u> or an accessory, or <u>is</u> used with a service, <u>and</u> the <u>thing</u> or service does not fall within the criteria described in paragraphs 27(a) to (c).</p>	defeat	Reasons above
<p>Promotion</p>		
<p>(2) Subject to the regulations, a person may promote a <u>thing</u>, other than a <u>tobacco product</u> or an accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, <u>if the thing or service does not fall within the criteria described in paragraphs 27(a) to (c).</u></p>	defeat	Reasons above
<p>35 (1) The portion of section 29 of the French version of the Act before paragraph (a) is replaced by the following:</p>		
<p>Promotion des ventes</p>		
<p>29 Il est interdit au fabricant et au détaillant <u>de faire ou d'offrir de faire l'une des actions suivantes :</u></p>		
<p>(2) Paragraphs 29(a) to (c) of the Act are replaced by the following:</p>		
<p>(a) provide <u>or offer to provide</u> any consideration, for the purchase of a tobacco product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, <u>draw</u>, lottery or contest;</p>		
<p>(b) furnish <u>or offer to furnish</u> a tobacco product without monetary consideration or in consideration of the purchase of a product or service or the performance of a service; or</p>		
<p>(c) furnish <u>or offer to furnish</u> an accessory that <u>displays</u> a tobacco product-related brand element without monetary consideration or in consideration of the purchase of a product or service or the performance of a service.</p>		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
36 Section 30 of the Act is replaced by the following:		
Point of sale display of tobacco products		
30 (1) Subject to the regulations, a person may display, at <u>the point of sale</u> , a tobacco product or an accessory that displays a tobacco product-related brand element.	Defeat	The current act refers to retail. The change proposed in S-5 would allow for promotion on web-sites.
Signs		
(2) A retailer of tobacco products may post, <u>subject to</u> the regulations, signs at <u>the point of sale</u> that indicate the availability of tobacco products and their price.	Defeat	As above
For greater certainty		
(3) For greater certainty, subsection (1) does not authorize the display of a tobacco product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.		
DIVISION 2		
Vaping Products		
Advertising appealing to young persons		
30.1 No person shall promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of advertising if there are reasonable grounds to believe that the advertising could be appealing to young persons.	30.1 No person shall promote a vaping product or a vaping product-related brand element except as authorized by this Act or the regulations.	Creates a stronger basis to control vaping promotions. Without this, S-5 will permit vaping advertising on television, radio, billboards, etc.
Lifestyle advertising		
30.2 (1) No person shall promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of lifestyle advertising.		
Exception		
(2) Subject to the regulations, a person may promote a vaping product, a vaping product-related brand element or a thing that displays a vaping product-related brand element by means of lifestyle advertising that is in	(2) Subject to the regulations, a person may advertise a tobacco product by means of information advertising or brand-preference advertising that is in	Aligns vaping promotions with those for tobacco. Remove's S-5's permissions for lifestyle advertising of vaping products in bars and magazines.
(a) a publication that is addressed and sent to an adult who is identified by name; or	(a) a publication that is provided by mail and addressed to an adult who is identified by name; or	Aligns definition of publication with that currently in the Tobacco Act – does not pave the way for lifestyle advertising in text-messaging and other social media promotions
(b) places where young persons are not permitted by law.	(c) signs in a place where young persons are not permitted by law.	Restricts promotions to signs in bars, and prevents vaping companies from redecorating bars as vaping-branded places.
Sponsorship promotion		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
<p>30.3 (1) No person shall promote a vaping product-related brand element or the name of a vaping product manufacturer in a manner that is likely to create an association between the brand element or the name and a person, entity, event, activity or permanent facility.</p>		
<p>Promotional material</p>		
<p>(2) No person shall use, directly or indirectly, a vaping product-related brand element or the name of a vaping product manufacturer in the promotional material related to a person, entity, event, activity or permanent facility.</p>		
<p>Name of facility</p>		
<p>30.4 No person shall display a vaping product-related brand element or the name of a vaping product manufacturer on a permanent facility, as part of the name of the facility or otherwise, if the facility is used for a sports or cultural event or activity.</p>		
<p>Giving or offering to give</p>		
<p>30.5 No manufacturer or retailer shall give or offer to give a vaping product.</p>		
<p>Sales promotions — offering consideration</p>		
<p>30.6 (1) No manufacturer or retailer shall, in a place to which young persons have access,</p>	<p>30.6 (1) No manufacturer or retailer shall,</p>	<p>Unless the words `to which a young person have access` are deleted, vaping companies will be able to engage bar promotions (free food or drinks with purchase of vaping product), or use a modern form of cigarette girls. Bars are a particularly inappropriate place to allow companies to promote, as drinking will interfere with risk assessment and judgment, and will and to encourage trial to an addictive drug.</p>
<p>(a) offer to provide any consideration, for the purchase of a vaping product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest; or</p>		
<p>(b) offer to furnish a vaping product in consideration of the purchase of a product or service or the performance of a service.</p>		
<p>Sales promotions — providing consideration</p>		
<p>(2) No manufacturer or retailer shall, in a place other than a retail establishment where vaping products are ordinarily sold,</p>	<p>(2) No manufacturer or retailer shall,</p>	<p>Unless the words “other than a retail establishment where vaping products are ordinarily sold” is deleted, S-5 will permit</p>

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
		inducements like lotteries to encourage trial, or provide vaping products bundled for trial use with other goods.
(a) provide any consideration, for the purchase of a vaping product, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, draw, lottery or contest; or		
(b) furnish a vaping product in consideration of the purchase of a product or service or the performance of a service.		
Advertising — required information		
30.7 No person shall promote a vaping product or a vaping product-related brand element by means of advertising unless it conveys, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards and health effects arising from the use of the product and from its emissions.		
Point of sale promotion		
30.8 No person shall promote, at the point of sale, a vaping product or a vaping product-related brand element, including by means of the packaging, in a manner that is contrary to the regulations.		
DIVISION 3		
Miscellaneous Provisions		
37 The Act is amended by adding the following after section 30.2:		
Testimonials or endorsements		
30.21 (1) No person shall promote a vaping product through a testimonial or an endorsement, however displayed or communicated, including by means of the packaging.		
Depiction of person		
(2) For the purposes of subsection (1), the depiction of a person, character or animal, whether real or fictional, is considered to be a testimonial for, or an endorsement of, the product.		
38 The Act is amended by adding the following after section 30.4:		
Functions and sensory attributes		
30.41 No person shall promote or sell a vaping product that has an appearance, shape or other sensory attribute or a function for which there are reasonable grounds to believe that it could make the product appealing to young persons.	30.41 No person shall promote or sell a vaping product that has an appearance, shape or other sensory attribute or a function for which, <u>in the opinion of the Minister</u> , there are reasonable grounds to believe that it could make the product appealing to young persons	The length of time that it will take to put any product or definition of `reasonable grounds` of appeal to young persons will risk exposing young persons to inappropriate advertising. The proposed amendment would shift the burden of proof in ways that protect health.

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
False promotion		
30.42 (1) No person shall promote a vaping product, including by means of the packaging,		
(a) in a manner that is false, misleading or deceptive with respect to, or that is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the vaping product or its emissions;		
(b) by using terms, expressions, logos, symbols or illustrations that are prohibited by the regulations; or		
(c) by using, in a manner that is contrary to the regulations, prescribed terms, expressions, logos, symbols or illustrations.		
Considerations		
(2) The general impression conveyed by a promotion and the literal meaning of any statement contained in a promotion shall be taken into account in determining whether a promotion is made in a manner that is misleading or deceptive with respect to, or is likely to create an erroneous impression about, the characteristics, health effects or health hazards of the vaping product or its emissions.		
Health benefits		
30.43 (1) No person shall promote a vaping product, including by means of the packaging, in a manner that could cause a person to believe that health benefits may be derived from the use of the product or from its emissions.		
Comparisons		
(2) No person shall promote a vaping product, including by means of the packaging, by comparing the health effects arising from the use of the product or from its emissions with those arising from the use of a tobacco product or from its emissions.		
Exception		
(3) Subsections (1) and (2) do not apply in respect of a vaping product that is the subject of an authorization, including a licence, issued under the <i>Food and Drugs Act</i> authorizing its sale.		
Discouraging tobacco cessation		
30.44 No person shall promote a vaping product, including by means of the packaging, if there are reasonable grounds to believe that the promotion could discourage tobacco cessation or encourage the resumed use of tobacco products.	30.44 No person shall promote a vaping product, including by means of the packaging, if, <u>in the opinion of the Minister</u> , there are reasonable grounds to believe that the promotion could discourage tobacco cessation or encourage the resumed use of tobacco products.	The length of time that it will take to put any product or definition of `reasonable grounds` will risk lengthy inappropriate advertising. The proposed amendment would shift the burden of proof in ways that protect health.
Packaging		
30.45 (1) No person shall package a vaping product in a manner that is contrary to the provisions of this Act or of the regulations.		
Prohibition — sale		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
<p>(2) No person shall sell a vaping product that is packaged in a manner that is contrary to the provisions of this Act or of the regulations.</p>		
<p>Indication or illustration</p>		
<p>30.46 (1) No person shall display on a vaping product or on its package an indication or illustration, including a brand element, that could cause a person to believe that the product is flavoured if there are reasonable grounds to believe that the indication or illustration could be appealing to young persons.</p>	<p>30.46 (1) No person shall display on a vaping product or on its package an indication or illustration, including a brand element, that could cause a person to believe that the product is flavoured if, <u>in the opinion of the Minister,</u> there are reasonable grounds to believe that the indication or illustration could be appealing to young persons</p>	<p>The length of time that it will take to put any product or definition of `reasonable grounds` of appeal to young persons will risk exposing young persons to inappropriate advertising. The proposed amendment would shift the burden of proof in ways that protect health.</p>
<p>Prohibition — sale</p>		
<p>(2) No person shall sell a vaping product if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.</p>		
<p>Prohibited ingredients</p>		
<p>30.47 (1) No person shall promote a vaping product set out in column 2 of Schedule 2, including by means of the packaging, through an indication or illustration, including a brand element, that could cause a person to believe that the product contains an ingredient set out in column 1.</p>	<p>[see Schedule 3]</p>	<p>Flavours listed in column 1 do not meet implicit goal of not being attractive to young people. Other flavours likely to be as attractive to youth are: Fruit (i.e. grape, cherry), foods (i.e. peanut butter and jam) and floral or herbal (i.e. mint, rosewater, jasmine, anise, etc)</p>
<p>Prohibition — sale</p>		
<p>(2) No person shall sell a vaping product set out in column 2 of Schedule 2 if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.</p>		
<p>Flavours</p>		
<p>30.48 (1) No person shall promote a vaping product set out in column 2 of Schedule 3, including by means of the packaging, through an indication or illustration, including a brand element, that could cause a person to believe that the product has a flavour set out in column 1.</p>		
<p>Prohibition — sale</p>		
<p>(2) No person shall sell a vaping product set out in column 2 of Schedule 3 if an indication or illustration referred to in subsection (1) is displayed on the product or on its package.</p>		
<p>Amendment of Schedule 3</p>		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
30.49 (1) The Governor in Council may, by order, amend Schedule 3 by adding, amending or deleting		
(a) the name or description of a flavour or vaping product; or		
(b) a reference to all vaping products, with or without exceptions.		
Description		
(2) A flavour or vaping product may be described by reference to a document produced by a body or person other than the Minister, either as the document exists on a particular date or as it is amended from time to time.		
Operation of amendments suspended		
(3) An order made under subsection (1) may provide that the operation of the amendments to Schedule 3 is suspended with respect to retailers for a period of 30 days after the day on which the order comes into force.		
Consequences of suspension		
(4) During the period in which the operation of the amendments is suspended with respect to retailers,		
(a) Schedule 3, as it read immediately before the coming into force of the order, continues to apply with respect to retailers; and		
(b) no other amendment to Schedule 3 is to come into force.		
39 Subsection 30.43(1) of the Act is replaced by the following:		This section repeats a similarly worded section with the same number on page 24 of Bill S-5. Perhaps there is a drafting error.
Health benefits		
30.43 (1) No person shall promote a vaping product, including by means of the packaging, in a manner that could cause a person to believe that <i>health benefits</i> , within the meaning of the regulations, may be derived from the use of the product or from its emissions.		
40 The Act is amended by adding the following after section 30.7:		
Tobacco product-related brand element		
30.71 No person shall furnish or promote a vaping product if a tobacco product-related brand element is displayed on the vaping product, on its package or in the advertising of the vaping product.		
41 Subsection 31(3) of the Act is replaced by the following:		
Foreign media		
(3) No person in Canada shall, by means of a publication that is published outside Canada, a broadcast that originates outside Canada or any communication other than a publication or broadcast that originates outside Canada, promote any product the promotion of which is regulated under this Part, or disseminate promotional material that contains a tobacco product-related brand element <u>or a vaping product-related brand element</u> in a <u>manner</u> that is contrary to this Part.		
42 Section 32 of the Act is replaced by the following:		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
Report to Minister	Reporting	We are proposing that this section now requires reporting to and by the Minister
<p>32 (1) Every manufacturer shall <u>submit to</u> the Minister, in the prescribed <u>form and</u> manner and within the prescribed time, information <u>that is required by the regulations about any promotion referred to in paragraph 18(2)(c) or (3)(c) and about any promotion referred to in Division 1 or 2.</u></p>		
Supplementary information		
<p>(2) The Minister may, subject to the regulations, request supplementary information relating to the information referred to in subsection (1), and every manufacturer shall submit the requested information in the form and manner and within the time specified by the Minister.</p>		
	<p>(3) The Minister shall report to Parliament from time to time and no less than once a year on progress made with respect to achieving the purposes of the Act, and to recommend to Parliament additional measures to achieve these purposes.</p>	<p>The introduction of a new product category will likely result in significant changes in the nicotine market. This section encourages the Minister to make known the implementation challenges and ways to improve the Act's impact, and increases the accountability of government for public health administration.</p>
43 The heading before section 33 of the Act is repealed.		
44 (1) Paragraph 33(a) of the Act is replaced by the following:		
<p>(a) respecting the promotion of tobacco products, <u>the use and promotion of</u> tobacco product-related brand elements and the packaging of tobacco products, including the form, manner and conditions of the promotion and packaging, and the promotion of services and <u>things</u> for the purposes of section 28;</p>		
<p>(2) Section 33 of the Act is amended by adding the following after paragraph (a):</p>		
<p>(a.1) for the purposes of paragraph 20.1(b), prohibiting the use of terms, expressions, logos, symbols or illustrations in order to prevent the public from being deceived or misled with respect to the health effects or health hazards of tobacco products or their emissions;</p>		
<p>(3) Paragraph 33(b) of the English version of the Act is replaced by the following:</p>		
<p>(b) respecting the <u>advertising</u> of tobacco products for the purposes of subsection 22(2);</p>		
<p>(4) Paragraphs 33(e) to (j) of the Act are replaced by the following:</p>		
<p>(c) respecting, for the purposes of subsection 26(1), the manner in which a tobacco product-related brand element may appear on an accessory;</p>		

TEXT AT FIRST READING	PROPOSED AMENDMENTS	RATIONALE FOR AMENDMENT
(d) respecting the display of tobacco products and accessories at <u>the point of sale</u> ;		
(e) respecting signs that a retailer may post under subsection 30(2), including the placement of the signs and their number, size and content;		
(f) respecting, for the purposes of subsection 30.2(2), the promotion of vaping products and vaping product-related brand elements;		
(g) respecting, for the purposes of section 30.7, the information about vaping products and their emissions and about the health hazards and health effects arising from the use of the products and from their emissions that must be conveyed in advertising;		
(h) respecting, for the purposes of section 30.8, the promotion, at the point of sale, of vaping products and vaping product-related brand elements, including their display;		
(i) requiring manufacturers to disclose the particulars of their tobacco product-related <u>and vaping product-related</u> brand elements and promotional activities;		
(j) respecting requests for supplementary information under subsection 32(2);		
(k) prescribing anything that by this Part is to be prescribed; and		
(l) generally for carrying out the purposes of this Part.		
(5) Section 33 of the Act is amended by adding the following after paragraph (f):		
(f.1) for the purposes of section 30.42, prohibiting or respecting the use of terms, expressions, logos, symbols or illustrations in order to prevent the public from being deceived or misled with respect to the health effects or health hazards of vaping products or their emissions;		
(f.2) respecting, for the purposes of section 30.45, the packaging of vaping products, including by prohibiting the display of terms, expressions, logos, symbols or illustrations on the package that could be appealing to young persons;		
(6) Section 33 of the Act is amended by adding the following after paragraph (f.1):		
(f.11) respecting, for the purposes of subsection 30.43(1), what constitutes a health benefit;		
45 The headings before section 34 and sections 34 to 36 of the Act are replaced by the following:		

[no changes proposed to sections 46 to 85]

Text at first reading			Suggested Amendment		
SCHEDULE 3 (Sections 30.48 and 30.49)					
FLAVOURS					
Item	Column 1 Flavour	Column 2 Vaping Product	Item	Column 1 Flavour	Column 2 Vaping Product
1	Confectionery	Vaping products, except prescription vaping products	2	Fruit	Vaping products, except prescription vaping products
			3	Foods	Vaping products, except prescription vaping products
			4	Herbal	Vaping products, except prescription vaping products
			5	Floral	Vaping products, except prescription vaping products
2	Dessert	Vaping products, except prescription vaping products			
3	Cannabis	Vaping products			
4	Soft drink	Vaping products			
5	Energy drink	Vaping products			

Note: In column 2, *prescription* has the same meaning as in subsection 13(2).