



NATIONAL ASSEMBLY

FIRST SESSION

THIRTY-SEVENTH LEGISLATURE

Bill 112
(2005, chapter 29)

An Act to amend the Tobacco Act and other legislative provisions

Introduced 10 May 2005
Passage in principle 1 June 2005
Passage 16 June 2005
Assented to 17 June 2005

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EXPLANATORY NOTES

This bill amends the Tobacco Act to prohibit smoking in places where smoking was not, until now, prohibited under the Act and to further restrict smoking in the enclosed spaces where it is currently permitted under the Act.

More specifically, the bill provides that smoking is prohibited in enclosed spaces used by private clubs and reserved for members and their guests, in enclosed spaces where the activities held are reserved for persons invited or authorized to attend by the host and in tents, under big tops and in other similar facilities that are open to the public. It also prohibits smoking at certain hours on school grounds and the grounds of childcare centres, and within nine metres from any exterior door leading to a facility of a health and social services institution, to a building of a general and vocational college or a university or to a facility of a childcare centre. Smoking will no longer be permitted in pubs, taverns, bars and bingo halls, nor will it any longer be possible for smoking areas to be designated in such places as restaurants, the common areas of shopping centres, the gaming areas of state-owned casinos, amusement halls, marine passenger terminals, bus stations and railway passenger stations. The bill restricts the use of smoking rooms to the people lodged in certain places.

The bill also amends the rules applying to the sale of tobacco. The prohibition to sell tobacco to a minor, formerly applicable only to the operator of a business, will now apply to everyone. The bill specifies that the retail sale of tobacco must take place in a tobacco retail outlet. It strictly prohibits the operator of a place or business from having a tobacco vending machine installed, or leaving or keeping a tobacco vending machine in the place or business. It prohibits the operation of a tobacco retail outlet in such places as the grounds and buildings of a general and vocational college or a university, premises and buildings intended mainly for the presentation of sports, recreational, cultural or artistic activities, and pubs, taverns and bars. The bill furthermore makes it illegal to supply tobacco to a minor on school grounds and within school premises and buildings.

Moreover, the bill provides that the retail sale of tobacco is an activity that must be declared in the register kept in accordance with the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons.

The bill prohibits the operator of a retail tobacco outlet from displaying tobacco in public view and specifies where the notice prohibiting the sale of tobacco to minors and the warning concerning the harmful effects of tobacco on health must be posted.

The bill increases the severity of penal provisions, especially those relating to selling tobacco to a minor, and lengthens the period of time for which the sale of tobacco is prohibited at a tobacco retail outlet when the retail outlet operator has been convicted of an offence under such a penal provision.

Lastly, the bill makes a number of consequential amendments to the Tobacco Tax Act and to the Act respecting the Société des loteries du Québec, and amends the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons to provide that a registrant's declaration of registration must include any activity carried on in an establishment owned by the registrant that is required by law to be declared.

LEGISLATION AMENDED BY THIS BILL:

- Tobacco Tax Act (R.S.Q., chapter I-2);
- Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., chapter P-45);
- Act respecting the Société des loteries du Québec (R.S.Q., chapter S-13.1);
- Tobacco Act (R.S.Q., chapter T-0.01).

Bill 112

AN ACT TO AMEND THE TOBACCO ACT AND OTHER LEGISLATIVE PROVISIONS

THE PARLIAMENT OF QUÉBEC ENACTS AS FOLLOWS:

TOBACCO ACT

1. Section 1 of the Tobacco Act (R.S.Q., chapter T-0.01) is amended by adding the following at the end of the first paragraph: “and any other product or class of product considered to be tobacco under a government regulation”.

2. The Act is amended by inserting the following section after section 1:

“1.1. For the purposes of this Act, unless the context indicates otherwise, “tobacco” also includes the following accessories: cigarette tubes, rolling paper and filters, pipes and cigarette holders.”

3. 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 a school established under the Education Act (chapter I-13.3) or the Education Act for Cree, Inuit and Naskapi Native Persons (chapter I-14), and those placed at the disposal of a private educational institution governed by the Act respecting private education (chapter E-9.1) that dispenses services specified in paragraphs 1 to 3 of section 1 of that Act;”;

(2) by inserting “or buildings placed at the disposal of a vocational training centre or adult education centre established under the Education Act, those placed at the disposal of a private educational institution dispensing services specified in paragraphs 4 to 9 of section 1 of the Act respecting private education, and those” after “premises” in the first line of paragraph 3;

(3) by adding “, except if the activities are held in a dwelling” at the end of paragraph 6;

(4) by inserting the following paragraphs after paragraph 6:

“(6.1) enclosed spaces where the activities held may be attended only by persons explicitly or implicitly invited or authorized by the host, whether or

not an admission fee is charged and regardless of the purpose of the activities, except if the activities are held in a dwelling;

“(6.2) enclosed spaces used by a non-profit legal person or by an association, circle or club, whether a legal person or not, to which only members and their guests have access, except if the enclosed spaces are situated in a dwelling;”;

(5) by replacing paragraph 7 by the following paragraph:

“(7) the common areas of residential buildings comprising six or more dwellings, whether or not the buildings are held in co-ownership;”;

(6) by inserting the following paragraphs after paragraph 7:

“(7.1) the common areas of residences for the elderly within the meaning of the second paragraph of section 346.0.1 of the Act respecting health services and social services;

“(7.2) enclosed spaces where prevention, assistance and support services, including temporary lodging services, are offered to persons in distress or persons in need of assistance, except if the services are offered in a dwelling;”;

(7) by replacing “, except a room used by a natural person to hold a private reception for personal purposes” at the end of paragraph 8 by “and the buildings of outfitting operations within the meaning of the Act respecting the conservation and development of wildlife (chapter C-61.1) or the Act respecting hunting and fishing rights in the James Bay and New Québec territories (chapter D-13.1)”;

(8) by striking out “, except rooms used by a natural person to hold a private reception for personal purposes” at the end of paragraph 8.1;

(9) by inserting the following paragraphs after paragraph 8.1:

“(8.2) establishments operating under a public house, tavern or bar permit within the meaning of the Act respecting liquor permits (chapter P-9.1);

“(8.3) bingo halls;”;

(10) by replacing paragraph 10 by the following paragraph:

“(10) means of public transportation, taxis and other vehicles carrying two or more persons that must be used in the course of employment;”.

4. The Act is amended by inserting the following sections after section 2:

“2.1. Smoking is prohibited

(1) in bus shelters;

(2) in tents, under big tops and in other similar facilities that are put up temporarily or permanently and are open to the public;

(3) on grounds placed at the disposal of educational institutions referred to in paragraph 2 of section 2 and on the grounds of childcare centres, day care centres, stop over centres and nursery schools within the meaning of the Act respecting childcare centres and childcare services, during the hours these institutions are open to students or children.

“2.2. Smoking is prohibited outdoors within a nine-metre radius from any door leading to a place referred to in paragraph 1, 3, 4 or 6 of section 2. However, if the nine-metre radius anywhere extends beyond the boundaries of the grounds on which the place is situated, smoking is prohibited only up to those boundaries.

The smoking prohibition under the first paragraph does not apply outside premises where the services of an intermediary resource are offered if the premises are situated in a dwelling or outside private residences where home childcare is provided.”

5. Section 3 of the Act is amended by replacing the first and second paragraphs by the following paragraphs:

“3. The operator of a place referred to in section 2, except one referred to in paragraph 2, 4, 6 or 8, may set up a closed smoking room for persons lodged in the place.

The smoking room may be used only for tobacco smoking and only by persons lodged in the place.

The smoking room must be delimited by floor-to-ceiling partitions or walls so as to be fully enclosed, and must be equipped with a ventilation system that maintains negative air pressure at all times and exhausts smoke directly to the outside of the building. In addition, the smoking room door must be equipped with a properly functioning self-closing device.”

6. Section 4 of the Act is repealed.

7. Section 5 of the Act is amended

(1) by striking out “or business” and “or areas” in the first line of the portion before paragraph 1;

(2) by replacing paragraph 2 by the following subparagraph and paragraphs:

“(2) for persons temporarily lodged in a place referred to in paragraph 7.2 of section 2.

However, the number of rooms where smoking is permitted may not exceed 40% of the rooms available for all the clientele. Furthermore, the rooms where smoking is permitted must be grouped together so as to provide maximum protection to non-smokers given the total floor space, use and ventilation of the place.

This section shall not operate to prevent the operator of a place from setting certain conditions for the use of tobacco in a room where smoking is permitted or from prohibiting a person lodged in the place to smoke in such a room if the operator considers that the person's smoking would pose a threat to the person's own safety or the safety of others."

8. Section 6 of the Act is replaced by the following section:

"6. The operator of a tourist accommodation establishment or an outfitting operation may identify rooms where smoking is permitted.

The standards and requirements set out in the second paragraph of section 5 apply to such rooms."

9. Sections 7 and 8 of the Act are repealed.

10. The Act is amended by inserting the following sections after section 8:

"3.1. Smoking cigars or pipe tobacco is permitted in a cigar room provided that

(1) the cigar room is specially set up for cigar or pipe smoking;

(2) the cigar room was in operation on 10 May 2005;

(3) cigar and pipe tobacco sales by the operator of the cigar room generated a gross income of \$20,000 or more for the operator for the taxation year preceding the taxation year in progress on 10 May 2005. However, if operation of the cigar room began after 10 May 2004, the taxation year in which cigar and pipe tobacco sales must have generated a gross income of \$20,000 or more is the year in progress on 10 May 2005;

(4) the operator of the cigar room sends the Minister, not later than 10 November 2006, a written notice stating the name and address of the cigar room, together with sufficient proof that the operator meets the conditions set out in this paragraph.

Not later than 1 November 2006, the operator of a cigar room must delimit the cigar room using floor-to-ceiling partitions or walls so that it is fully enclosed, and equip the cigar room with a ventilation system that maintains negative air pressure at all times and exhausts smoke directly to the outside of the building. The operator of the cigar room must also, not later than that date, equip the cigar room doors with a properly functioning self-closing device.

“8.2. The operator of a cigar room may not permit that meals be consumed by customers in the cigar room.

The operator of a cigar room may not admit a minor to or allow the presence of a minor in the cigar room.”

11. Section 9 of the Act is amended

(1) by striking out the last sentence of the first paragraph;

(2) by replacing “third” in the second line of the second paragraph by “fourth”.

12. Section 11 of the Act is amended by adding the following paragraph at the end:

“In proceedings for a contravention of the first paragraph, the operator of the place or business is deemed to have tolerated smoking in an area where smoking is prohibited if it is shown that a person smoked in that area. The onus is on the operator to show that smoking was not tolerated by the operator in an area where smoking is prohibited.”

13. Section 12 of the Act is replaced by the following section:

“12. The Government may make regulations determining standards relating to

(1) the construction or layout of smoking rooms and cigar rooms;

(2) the ventilation system required in smoking rooms and cigar rooms;

(3) the notices referred to in section 10.”

14. The Act is amended by replacing the heading of Chapter III by the following:

“SALE OF TOBACCO, DISPLAYS AND SIGNS

“DIVISION I

“SALE OF TOBACCO”.

15. Section 13 of the Act is replaced by the following section:

“13. No one may sell tobacco to a minor.”

16. The Act is amended by inserting the following section after section 13:

“13.1. A person who wishes to purchase tobacco or to be admitted to a cigar room may be required to provide proof of age.

The Government may, by regulation, determine the documents that may be used as identification.”

17. Section 14 of the Act is amended by inserting “the second paragraph of section 8.2 or a contravention of” after “a contravention of” in the first line and by replacing “the operator of a business” in the second line by “a defendant”.

18. The Act is amended by inserting the following sections after section 14:

“**14.1.** Tobacco may not be sold retail except in a tobacco retail outlet, with both the operator of the retail outlet or an employee of the operator and the purchaser physically present.

For the purposes of this Act,

(1) a tobacco retail outlet is a fixed place permanently delimited by continuous floor-to-ceiling partitions or walls that is accessible only through an opening equipped with a door and in which tobacco is sold retail by the operator of the place;

(2) a person other than a tobacco farmer or a tobacco product manufacturer or distributor who is in possession of or holds a quantity of tobacco that exceeds the amount the person needs for personal consumption is presumed, in the absence of any evidence to the contrary, to engage in the retail sale of tobacco.

“**14.2.** The operator of a tobacco retail outlet may not give tobacco to a minor.

“**14.3.** The operator of a tobacco retail outlet may not sell tobacco to a person of full age if the operator knows the person is purchasing the tobacco for a minor.”

19. Section 15 of the Act is amended

(1) by replacing “business” in the first line of the first paragraph by “tobacco retail outlet”;

(2) by striking out the second, third and fourth paragraphs.

20. Section 16 of the Act is replaced by the following section:

“**16.** The operator of a place or business may not have a tobacco vending machine installed, or leave or keep a tobacco vending machine in the place or business.”

21. Section 17 of the Act is amended

(1) by replacing “The sale of tobacco is prohibited” in the portion before paragraph 1 by “No tobacco retail outlet may be operated”;

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

“(2) on the grounds or within the premises or buildings placed at the disposal of a school, a vocational training centre, an adult education centre or a private educational institution;”;

(3) by inserting the following paragraph after paragraph 2:

“(2.1) on the grounds or within the buildings of a general and vocational college or a university;”;

(4) by adding the following subparagraphs and paragraph at the end:

“(4) within premises where sports, recreational, cultural or artistic activities are presented, at the time they are presented;

“(5) within premises or buildings intended mainly for the presentation of sports, recreational, cultural or artistic activities or intended mainly as a place where members of the public may engage or take part in such activities;

“(6) in an establishment operating under a public house, tavern or bar permit within the meaning of the Act respecting liquor permits, other than a cigar room;

“(7) in premises where an activity forming part of a restaurateur’s business is carried on under a permit issued under subparagraph *n* of the first paragraph of section 9 of the Food Products Act (chapter P-29).

The Government may, by regulation, determine other places where operating a tobacco retail outlet is prohibited.”

22. The Act is amended by inserting the following section after section 17:

“17.1. It is prohibited to supply tobacco to a minor on the grounds or within the premises or buildings placed at the disposal of a school or a private educational institution dispensing services specified in paragraphs 1 to 3 of section 1 of the Act respecting private education, whether or not for a consideration.”

23. Section 19 of the Act is amended by replacing “business” in the first line of the first paragraph by “tobacco retail outlet”.

24. Section 20 of the Act is replaced by the following:

“20. The retail sale of tobacco is an activity that must be declared in the register kept in accordance with the Act respecting the legal publicity of sole

proprietorships, partnerships and legal persons (chapter P-45) within 30 days after the commencement of the operations of a tobacco retail outlet.

The discontinuance of that activity must be declared in the same register within 30 days after its occurrence.

“20.1. Despite paragraph 1 of section 2 of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons, a natural person who operates a tobacco retail outlet under a name that includes his or her surname and given name is subject to the requirement of registration.

“DIVISION II

“DISPLAYS

“20.2. The operator of a tobacco retail outlet may not display tobacco or tobacco packaging in public view.

However, the operator may, by means of a sign permitted under subparagraph 9 of the first paragraph of section 24, provide consumers with the names of the tobacco products sold at the retail outlet and their price as well as with any other factual information referred to in that section. The sign must comply with the other provisions of section 24.

“20.3. Section 20.2 does not apply to the operator of a cigar room or a duty free shop.

Nor does it apply to the operator of a specialty tobacco retail outlet if the following conditions are met:

(1) the specialty tobacco retail outlet is and remains a tobacco retail outlet specially set up for the retail sale of tobacco;

(2) it is in operation on 10 May 2005;

(3) receipts derived by the operator of the specialty tobacco retail outlet from the retail sale of tobacco, accessories that may be used for tobacco smoking and specialized publications about such products in the 12 months before 31 May 2006 account for 75% of receipts from all sales made at that retail outlet in that period;

(4) the operator of the specialty tobacco retail outlet sends the Minister, not later than 30 June 2008, a written notice stating the name and address of the retail outlet, and sufficient proof that the operator meets the conditions set out in this paragraph.

However, the operator of a tobacco retail outlet that is covered by the first and second paragraphs must display tobacco and tobacco packaging in such a way that it is visible only from the inside of the retail outlet.

“DIVISION III

“SIGNS

“20.4. The operator of a tobacco retail outlet must post a notice prohibiting the sale of tobacco to minors and a warning attributed to the Minister concerning the harmful effects of tobacco on health as soon as the signs are provided by the Minister.

“20.5. Such signs must be posted in public view, on or next to each cash register used for tobacco sales.

“20.6. No person may remove or deface such signs.

“20.7. The Minister may make regulations determining the standards applicable to such signs.”

25. Section 21 of the Act is amended

(1) by inserting “by the manufacturer” after “regular marketing operations” in the second line of paragraph 2;

(2) by replacing “, as consideration for a purchase of tobacco or on presentation of proof of purchase of tobacco” at the end of paragraph 3 by “if consumers must, in return, provide information on tobacco or their tobacco consumption, purchase a tobacco product or present proof of purchase of a tobacco product”;

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

“For the purposes of this section, a manufacturer or distributor of tobacco products includes the mandatary or representative of the manufacturer or distributor, and a person or partnership that is controlled by or that controls the manufacturer or distributor.”

26. Section 23 of the Act is amended by inserting “, image” after “design” in the first line of the first paragraph and in the first line of the second paragraph.

27. Section 24 of the Act is amended

(1) by striking out subparagraph 10 of the first paragraph;

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

“Advertising disseminated in printed newspapers or magazines that have an adult readership of not less than 85% must include the warning attributed to the Minister and prescribed by regulation concerning the harmful effects of tobacco on health. The advertising must be forwarded to the Minister on being disseminated.”

28. The Act is amended by inserting the following section after section 24:

“24.1. Indirect advertising for the promotion of tobacco within the meaning of the first paragraph of section 24 includes the use, on a facility, a vehicle, a sign or any other object that is not a tobacco product, of a name, logo, brand element, design, image or slogan that is not directly associated with tobacco, a tobacco product, a brand of tobacco product or a manufacturer of tobacco products but that may reasonably be said to evoke a brand of tobacco product or a manufacturer of tobacco products because of its graphic design, presentation or association with a tobacco display stand or a tobacco retail outlet.”

29. Section 25 of the Act is amended

(1) by inserting the following paragraphs after paragraph 1:

“(1.1) prescribing standards relating to the display, on the facilities of a tobacco retail outlet, of the name under which the retail outlet is operated and to the display, on the facilities of a tobacco product manufacturer or distributor, of the name under which the manufacturer or distributor carries on its activities or by which the manufacturer or distributor identifies itself;

“(1.2) prohibiting the use of certain words or expressions in the name under which a tobacco retail outlet is operated;”;

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

“(2) prescribing standards relating to the display of specialized publications about tobacco or about accessories that may be used for tobacco smoking;

“(2.1) determining the standards relating to the display of tobacco in specialty tobacco retail outlets, cigar rooms and duty free shops;”;

(3) by striking out paragraph 3;

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

“For the purposes of subparagraph 1.1 of the first paragraph, a tobacco product manufacturer or distributor includes the mandatary or representative of the manufacturer or distributor, and a person or partnership that is controlled by or controls the manufacturer or distributor.”

30. The Act is amended by inserting the following section after section 25:

“25.1. The Minister may, by regulation, determine the wording of, and standards applicable to, the warning required under the third paragraph of section 24.”

31. Section 27 of the Act is replaced by the following section:

“27. No operator of a business or tobacco product manufacturer or distributor may sell or give an object that is not a tobacco product or supply such an object as part of an exchange, if a name, logo, brand element, design, image or slogan that is directly associated with tobacco, a tobacco product, a brand of tobacco product or a manufacturer of tobacco products, except a colour, appears on the object.

For the purposes of this section, a tobacco product manufacturer or distributor includes the mandatary or representative of the manufacturer or distributor, and a person or partnership that is controlled by or controls the manufacturer or distributor.”

32. The Act is amended by replacing “COMPOSITION” in the heading of Chapter V by “PRODUCTS”.

33. The Act is amended by inserting the following section after section 29:

“29.1. The Government may, by regulation, specify any other product or class of product considered to be tobacco.”

34. Section 33 of the Act is amended

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

“(1) referred to in sections 2 to 2.2;”;

(2) by replacing “8” in the first line of paragraph 3 by “8.1”.

35. Section 34 of the Act is amended

(1) by replacing “section 2” in the second line of paragraph 1 by “sections 2 to 2.2”;

(2) by replacing “8” in the second line and in the third line of paragraph 2 by “8.1”;

(3) by inserting the following paragraph after paragraph 2:

“(2.1) verify the layout of the place where tobacco is sold to ascertain that the place meets the requirements set out in sections 14.1, 15 and 20.2;”;

(4) by replacing paragraphs 8 and 9 by the following paragraphs:

“(8) verify whether the notices and signs referred to in sections 10 and 20.4 meet the requirements of section 10, Division III of Chapter III and the regulations made under paragraph 3 of section 12 and section 20.7;

“(9) verify whether the display of specialized publications about tobacco or about accessories that may be used for tobacco smoking meets the requirements of the regulations made under section 25;

“(9.1) verify whether the display of tobacco in specialty tobacco retail outlets, cigar rooms and duty free shops meets the requirements of section 20.3 and the regulations made under section 25;”;

(5) by striking out paragraph 10;

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

“(10.1) take photographs of the place inspected and of the equipment, property and products found there;”;

(7) by replacing “13 and 16 to 20” in paragraph 11 by “13, 14.1 to 14.3 and 16 to 19”.

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

“34.1. A person authorized by the Minister may, in a request sent by registered or certified mail or by personal service, require the operator of a place or business to submit any information or document relating to the application of this Act or the regulations, by registered or certified mail or by personal service, within a reasonable time period specified by the person.

The person to whom the request is made shall comply with it within the time period specified even if the person has already submitted such information or document or answered a similar request made under this Act.”

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

“38.1. An inspector or analyst may not be prosecuted for an act or omission in good faith in the performance of duties.”

38. Section 41 of the Act is amended by inserting “or the Minister, as the case may be,” after “Government” in the first line.

39. Section 42 of the Act is amended by inserting “or the fourth paragraph of section 59” after “Chapter II” in the second line.

40. Section 43 of the Act is amended

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

“(1) 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;”;

(2) by replacing “subparagraph 3 of the second paragraph” in the second line of paragraph 2 by “paragraph 3”.

41. The Act is amended by inserting the following sections after section 43:

“43.1. The operator of a cigar room who, in contravention of the second paragraph of section 8.2, admits a minor to or allows the presence of a minor in a cigar room is liable to a fine of \$500 to \$2,000 and, for a subsequent offence, to a fine of \$1,000 to \$6,000.

“43.2. A person who sells tobacco to a minor in contravention of section 13 is liable to a fine of \$500 to \$2,000 and, for a subsequent offence, to a fine of \$1,000 to \$6,000.

In addition, an employee of the operator of a tobacco retail outlet who makes such a sale is liable to a fine of \$100 to \$300 and, for a subsequent offence, to a fine of \$200 to \$600.

“43.3. A person who contravenes section 14.1 is liable to a fine of \$2,000 to \$25,000 and, for a subsequent offence, to a fine of \$4,000 to \$50,000.

“43.4. The operator of a tobacco retail outlet who, in contravention of section 14.2, gives tobacco to a minor is liable to a fine of \$500 to \$2,000 and, for a subsequent offence, to a fine of \$1,000 to \$6,000.

“43.5. The operator of a tobacco retail outlet who, in contravention of section 14.3, sells tobacco to a person of full age knowing the person is purchasing the tobacco for a minor is liable to a fine of \$500 to \$2,000 and, for a subsequent offence, to a fine of \$1,000 to \$6,000.

In addition, an employee of the operator of a tobacco retail outlet who makes such a sale is liable to a fine of \$100 to \$300 and, for a subsequent offence, to a fine of \$200 to \$600.”

42. Section 44 of the Act is amended

(1) by replacing “business who sells or supplies tobacco to a minor in contravention of section 13 or who contravenes the retail outlet display standards prescribed by” in the first, second and third lines of the first paragraph by “tobacco retail outlet who contravenes”;

(2) by striking out the second paragraph.

43. Section 45 of the Act is amended by replacing “the fourth paragraph of section 15” in the second line by “section 20.6”.

44. Section 46 of the Act is amended by replacing “section 16,” in the second line by “section 16 or the operator of a tobacco retail outlet who contravenes”.

45. Section 47 of the Act is repealed.

46. Section 48 of the Act is amended by replacing “section” in the first line by “section 17 or”.

47. The Act is amended by inserting the following section after section 48:

“**48.1.** A person who contravenes section 17.1 is liable to a fine of \$100 to \$300 and, for a subsequent offence, to a fine of \$200 to \$600.”

48. Section 49 of the Act is replaced by the following sections:

“**49.** The operator of a tobacco retail outlet who, in contravention of section 20, omits to declare the retail sale of tobacco or the discontinuance of that activity in the register is liable to a fine of \$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000.

“**49.1.** A natural person who operates a tobacco retail outlet under a name that includes his or her surname and given name and who, in contravention of section 20.1, omits to register is liable to a fine of \$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000.

“**49.2.** The operator of a tobacco retail outlet who contravenes the provisions of section 20.2 or the third paragraph of section 20.3 is liable to a fine of \$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000.

“**49.3.** The operator of a tobacco retail outlet who contravenes the provisions of section 20.4 or 20.5 or the provisions of a regulation made under section 20.7 the violation of which constitutes an offence is liable to a fine of \$200 to \$2,000 and, for a subsequent offence, to a fine of \$400 to \$4,000.”

49. Section 51 of the Act is amended

(1) by replacing “and third paragraphs” in the second line by “or third paragraph”;

(2) by replacing “last” in the third line by “third”;

(3) by inserting “, 25.1” after “25” in the fourth line.

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

“**54.1.** The operator of a place or business who refuses or neglects to comply with a request under section 34.1 within the time period specified is liable to a fine of \$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000.

If the operator of the place or business is a tobacco product manufacturer or distributor, the tobacco product manufacturer or distributor is liable to a fine

of \$1,000 to \$5,000 and, for a subsequent offence, to a fine of \$2,000 to \$15,000.”

51. Section 57 of the Act is amended by replacing “48” in the first line by “49.3”.

52. The Act is amended by inserting the following sections after section 57:

“57.1. Where a legal person, partnership or association commits an offence against this Act or a regulation, a director, officer, partner, employee or mandatary of the legal person, partnership or association who directed, authorized or advised the commission of the offence or consented to it is a party to the offence and is liable to the same penalty as that prescribed for committing the offence, whether or not the legal person, partnership or association has been prosecuted or found guilty.

“57.2. A person who assists another person in committing an offence under this Act or a regulation or who, by encouragement, advice or consent, or by an authorization or an order, induces another person to commit such an offence, is guilty of an offence.

A person convicted of an offence under this section is liable to the same penalty as that prescribed for committing the offence which the person assisted in committing or induced to commit, whether or not the person who was assisted or induced has been prosecuted or found guilty.”

53. Section 58 of the Act is amended by replacing “business” in the second line by “tobacco retail outlet” and by replacing “sections 13 and 15” in the fourth line by “section 13, 14.2, 14.3, 20.4 or 20.5”.

54. Section 59 of the Act is replaced by the following section:

“59. The operator of a retail outlet is prohibited from selling tobacco at the retail outlet if, for that retail outlet,

- (1) the operator was convicted of an offence under section 13, 14.2 or 14.3;
- (2) the operator was found guilty of a total of three offences under section 20.4 or 20.5 within five years.

The prohibition to sell tobacco under subparagraph 1 of the first paragraph applies for one month, six months or two years according to whether it is the operator’s first, second or third or more conviction under any of sections 13, 14.2 and 14.3 within five years.

The prohibition to sell tobacco under subparagraph 2 of the first paragraph applies for one month.

If a tobacco retail outlet under a prohibition to sell tobacco is also a cigar room, smoking cigars or pipe tobacco is also prohibited in that retail outlet for as long as the operator is prohibited from selling tobacco.”

55. Section 60 of the Act is amended

(1) by replacing “of a business” in the second line of the first paragraph by “of a tobacco retail outlet”;

(2) by replacing “the registration certificate provided for in the Act respecting the Québec sales tax (chapter T-0.1) for the duration of the prohibition from selling tobacco” in the first, second and third lines of the second paragraph by “and for the sale of tobacco, for the duration of the prohibition from selling tobacco, the registration certificate issued under the Act respecting the Québec sales tax (chapter T-0.1)”.

56. Section 61 of the Act is amended by replacing “business” in the first line of the second paragraph by “tobacco retail outlet” and by adding “, failing which the Minister may have the tobacco or advertising removed at the operator’s expense. In such a case, once the prohibition expires, the operator of the tobacco retail outlet may, after paying storage charges, recover the tobacco or advertising at the place designated by the Minister. If the operator does not recover the tobacco or advertising within 60 days after the prohibition expires, the Minister may dispose of it as the Minister wishes and claim expenses from the operator.”

57. Sections 68 to 74 and 76 of the Act are repealed.

58. Section 75 of the Act is amended by replacing “last” in the first line by “third”.

59. Section 77 of the Act is amended by replacing “2005” in the first line of the first paragraph by “2010”.

TOBACCO TAX ACT

60. Section 2 of the Tobacco Tax Act (R.S.Q., chapter I-2) is amended

(1) by striking out “, but does not include vending machines” at the end of the definition of establishment;

(2) by striking out the definition of vending machine operator.

61. Section 5.0.1 of the Act is amended by striking out the third and fourth paragraphs.

62. Sections 7.11 and 13.2.1 of the Act are repealed.

63. Section 13.5 of the Act is replaced by the following section:

“13.5. Despite sections 13.4 and 13.4.2, where the things seized are packages of tobacco or a vehicle, a judge of the Court of Québec may authorize the Minister in writing, on application by the Minister, to sell the packages or the vehicle or have the packages or the vehicle sold on the conditions determined in the authorization. An authorization concerning packages of tobacco must also provide for samples to be kept in sufficient quantity to serve as evidence. Prior notice must be served at least one clear day before the application on the person from whom the packages or the vehicle was seized and on the persons who claim to have a right in the packages or vehicle, if the identity of these persons is known. The proceeds of the sale, after deduction of the costs, must be kept by a person authorized by the Minister and in the manner prescribed by regulation until disposed of according to law.”

64. Section 14.1 of the Act is amended

(1) by replacing “,7.11 or 17.10, the third paragraph of section 5.0.1” in the first and second lines of paragraph *a* by “or 17.10”;

(2) by striking out paragraph *f*.

ACT RESPECTING THE LEGAL PUBLICITY OF SOLE PROPRIETORSHIPS, PARTNERSHIPS AND LEGAL PERSONS

65. Section 10 of the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., chapter P-45) is amended by adding “as well as any other activity carried on there that the registrant is required by law to declare” at the end of subparagraph 6 of the second paragraph.

ACT RESPECTING THE SOCIÉTÉ DES LOTERIES DU QUÉBEC

66. Section 25.1 of the Act respecting the Société des loteries du Québec (R.S.Q., chapter S-13.1) is amended by replacing “third paragraph of section 13” in the second line of the third paragraph by “second paragraph of section 13.1”.

TRANSITIONAL AND FINAL PROVISIONS

67. All operators of a tobacco retail outlet within the meaning of section 14.1 of the Tobacco Act, enacted by section 18, must, not later than 15 June 2006, declare in the register kept in accordance with the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons (R.S.Q., chapter P-45) the name and address of every establishment where a tobacco retail sale activity is engaged in.

The operator of a tobacco retail outlet who omits to declare the information referred to in the first paragraph as required under that paragraph is liable to a fine of \$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000.

68. A natural person who operates a tobacco retail outlet within the meaning of section 14.1 of the Tobacco Act, enacted by section 18, under a name that includes his or her surname and given name must, not later than 15 June 2006, register in accordance with the Act respecting the legal publicity of sole proprietorships, partnerships and legal persons.

A natural person who omits to register as required under the first paragraph is liable to a fine of \$300 to \$2,000 and, for a subsequent offence, to a fine of \$600 to \$6,000.

69. Until 30 May 2008, the operator of a place referred to in section 2 of the Tobacco Act, as amended by section 3, except one referred to in paragraph 2, 4 or 6 of that section 2, may, despite section 3 of that Act, as amended by section 5, set up a closed smoking room for the officers and employees working in the place.

The smoking room may be used only for tobacco smoking and only by the officers and employees working in the place, and persons referred to in section 3 of the Tobacco Act, as amended by section 5.

The smoking room must be delimited by floor-to-ceiling partitions or walls so as to be fully enclosed, and must be equipped with a ventilation system that maintains negative air pressure at all times and exhausts smoke directly to the outside of the building. In addition, the smoking room door must be equipped with a properly functioning self-closing device.

The penal provisions set out in paragraph 1 of section 43 of the Tobacco Act, as amended by section 40, apply with the necessary modifications to any person who contravenes this section.

70. The Government may make a regulation prescribing standards relating to the display of tobacco in tobacco retail outlets to apply until 30 May 2008 and determine the provisions of the regulation the violation of which constitutes an offence.

The penal provisions set out in section 51 of the Tobacco Act, as amended by section 49, apply with the necessary modifications to the operator of a tobacco retail outlet who contravenes the provisions of the regulation the violation of which constitutes an offence.

A person acting pursuant to section 33 of the Tobacco Act may, during an inspection, verify whether the display of tobacco products meets the requirements of the regulation.

71. Section 1.6 of the Regulation respecting the application of the Tobacco Tax Act made by Order in Council 1929-86 dated 16 December 1986 is repealed.

72. This Act comes into force on 31 May 2006 except

- (1) sections 65, 67 and 68, which come into force on 1 January 2006;
- (2) sections 20 and 20.1 of the Tobacco Act, enacted by section 24, and sections 49 and 49.1 of that Act, enacted by section 48, which come into force on 16 June 2006;
- (3) paragraph 3 of section 2.1 of the Tobacco Act, enacted by section 4, section 17.1 of that Act, enacted by section 22, and section 48.1 of that Act, enacted by section 47, which come into force on 1 September 2006;
- (4) Division II of Chapter III of the Tobacco Act, enacted by section 24, paragraph 2.1 of section 25 of that Act, as amended by section 29, paragraph 9.1 of section 34 of that Act, as amended by section 35, section 49.2 of that Act, enacted by section 48, and the reference to section 20.2 in paragraph 2.1 of section 34 of that Act, as amended by section 35, which come into force on 31 May 2008.

