Non-Smokers’ Rights Association
Recommended Amendments to Bill S-5, An Act to amend the Tobacco Act and the Non-smokers’ Health Act and to make consequential amendments to other Acts

Tobacco Products

1. **Expand the definition of tobacco product in the Tobacco Act**

   Amend definition of “tobacco product” to cover raw leaf tobacco and herbal shisha and to cover “papers, tubes and filters” regardless of what product they are used with, by amending clause 3(1) of S-5, pp 1-2 (section 2 of TA), as follows:

   “‘tobacco product’ means any substance whose primary purpose is to be burned or heated to produce vapours, gases, or smoke intended for inhalation, and includes but is not limited to a product made in whole or in part of tobacco, including tobacco leaves and any extract of tobacco leaves, non-tobacco herbal shisha, and other plant material or oils. It also includes papers, tubes and filters and any other devices of that nature that are put to one’s mouth to inhale any substance that may or may not contain nicotine, and any other product or class of product considered to be tobacco under a government regulation.” (Adapted from Quebec Bill 44 and the Ottawa Water Pipes in Public Places and Workplaces Bylaw)

   **Rationale:** The changes to the definition of “tobacco product” would close existing gaps and help ‘future-proof’ the legislation. The use of what is ostensibly ‘herbal’ (i.e., non-tobacco) shisha has been an increasing problem over the past decade, whereby hookah lounges, bars, and restaurants have circumvented smoking bans by claiming the shisha being used contains no tobacco. Enforcement operations have demonstrated that in the vast majority of cases, the preparations did in fact contain tobacco.

   The amendment also includes language that is broad enough to cover innovative new products that, for example, do not contain tobacco but also do not fit the definition of vaping product.

   The amendment ensures that a narrow definition (“used for the smoking of tobacco products”) does not serve as a loophole to circumvent tobacco control measures, such as a ban on flavourings in papers, tubes, and filters.

   The amendment also puts “tobacco leaves” back in the definition to ensure that the provisions of the Act also apply to the sale of tobacco leaves.

2. **Expand the definition of “lifestyle advertising” to include the use of tobacco for reducing stress, one of the most common ways smoking is portrayed in movies**

   Amend the definition of “lifestyle advertising” in clause 3(3) of S-5, p 3 (section 2 of TA), as follows:

   “‘lifestyle advertising’ 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, [pleasure, relaxation or stress reduction].”

   **Rationale:** When the Tobacco Act was passed twenty years ago, smoking images in advertising and other forms of promotion typically associated smoking with desirable lifestyle attributes such as glamour and risk-taking. More recently smoking is often portrayed, particularly in video games and movies, as an effective way to reduce stress, and research shows that youth and young adults are vulnerable to smoking, not because they want to seem cool and hip but because they see it as a way to help them handle stress.
3. **Broaden the purpose of the Tobacco Act to include raising public awareness of the tactics used by the industry to undermine public health measures**

Amend clause 5 of S-5, p 4 (section 4(2) of TA), by adding a new subsection (e), as follows:

“(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 those hazards; and

(e) to enhance public awareness of tobacco industry strategies and tactics to undermine public health measures.”

**Rationale:** As a Party to the global tobacco control treaty, the World Health Organization Framework Convention on Tobacco Control (FCTC), Canada has an obligation to fulfill the treaty obligations, including obligations under Article 5.3 “to protect [public health policies with respect to tobacco control] from commercial and other vested interests of the tobacco industry.” Detailed Guidelines that support Parties in implementing Article 5.3 recommend that Parties “Raise awareness about the addictive and harmful nature of tobacco products and about tobacco industry interference with Parties’ tobacco control policies.” A related recommendation is that Parties “Require that information provided by the tobacco industry be transparent and accurate.” The Guidelines define “tobacco industry” very broadly and include not only tobacco manufacturers and importers, but also tobacco vendors, retail trade associations, law firms, lobbyists, and front groups—in short all entities that work to further the interests of tobacco companies. This amendment would enshrine in the Tobacco Act Canada’s obligation to raise public awareness of tobacco industry activities that are intended to interfere with tobacco control policies.

4. **Make all information disclosed by companies to the Health Minister also available to the public, unless prohibited by the regulations, i.e., reverse the onus regarding public disclosure of company information provided to the government**

Amend clause 9 of S-5, p 6 (section 6.1 of TA), as follows:

“Every manufacturer shall make available to the public, in the prescribed form and manner and within the prescribed time, unless otherwise exempted by the regulations, information that is supplied to the Minister about tobacco products and their emissions, as well as information about expenditures and activities related directly or indirectly to influencing public health policy related to tobacco, including any funding provided to third parties.”

Amend clause 11(6) of S-5, p 7 (subsection 7(d.02) of TA), as follows:

“(d.02) prescribing exempting, for the purposes of section 6.2, information that the Minister must make available to the public”

**Rationale:** This amendment is intended to help fulfill the purpose described in #4 above. It would provide greater public access to industry information, in keeping with Canada’s obligation as a Party to the FCTC to ensure that industry information provided to governments is transparent and accurate. Furthermore, the amendment would provide much greater transparency regarding industry efforts to influence tobacco control policies by requiring disclosure not only of activities and expenditures related directly to their own lobbying efforts but also of all funding provided to other organizations regardless of its nature and intent, whether a charitable donation or a membership fee in an association that seeks to influence government policies some of which are of interest to tobacco companies.

5. **Add additional requirements to help ensure that tobacco and vaping products are not delivered to minors**

Require the contents and the legal age of sale to be clearly marked on the package exterior.
Amend clause 15(1) of S-5, p 11 (subsection 9(1) of TA), by adding the following after 9(1):

“9(1)(a) Any package containing a tobacco or vaping product that is sent or delivered must clearly indicate on the exterior that the package contains a tobacco/vaping product and that the intended recipient must be of legal age to accept the product.”

Require the delivery person to inform the person taking delivery both of the package contents and of the requirement that the intended recipient and the person accepting delivery must be of legal age to accept the package.

Amend clause 15(1) of S-5, p 11 (subsection 9(2)(b) of TA (Defence—sender), as follows:

“instructed the person delivering the product to inform the person taking delivery of it of the package contents and of the requirement that the intended recipient must be of legal age, and 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 in accordance with the regulations, that the person taking delivery was of legal age.”

Amend clause 15(1) of S-5, p 11 (subsection 9(3)(a) of TA (Defence—person making delivery), as follows:

“notified the person taking delivery that the package contained a tobacco/vaping product and that the intended recipient must be of legal age, and verified, in accordance with the regulations, that the person taking delivery of the product was of legal age 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”

Note that there are subsequent sections in Bill S-5 that amend these sections; they will need to be amended to reflect the intent of these recommendations.

Rationale: The provisions related to the delivery of tobacco/vaping products as originally drafted do not meet the intended goal of preventing access to these products by minors, since the required age verification is only of the person taking delivery of package not of the intended recipient. The set of amendments ensures that the delivery person and the person taking delivery are aware of the contents of the package; are aware of the legal requirement that the person taking delivery of the package is of legal age; and are aware of the legal requirement that the intended recipient is also of legal age.

6. Establish regulatory authority to increase the legal age of sale

Amend clause 19(1) of S-5, p 13 (subsection 14(a) of TA), by adding the following:

“(a.01) increasing the age specified in the definition of young person in sections 2, 8, and 9.”

Rationale: There is considerable momentum in many U.S. states and cities to increase the legal age of sale to 21 years. This would mean that even senior high school students could not legally be sold tobacco, thus eliminating this important ‘social’ source of tobacco for younger students. Health Canada is currently consulting Canadians on the elements of a bold new Federal Tobacco Control Strategy and is exploring the possibility of the new strategy mandating 21 years as the legal age of sale. This amendment would facilitate the implementation of this reform.

7. Establish regulatory authority to require health warnings on certain tobacco products, such as cigarettes and heat-not-burn products, and on waterpipes

Amend clause 20(1) of S-5, p 13 (section 15(1) of TA), by replacing line 34 with the following:

“No manufacturer or retailer shall sell a tobacco product or a water pipe unless the product and the package containing it displays ...”
Amend clause 22 of S-5, p 15 (subsection 17(a) of TA), by adding the following to line 26:

“(a) respecting the information that must appear on tobacco products and tobacco product packages”

Rationale: Bill S-5 provides regulatory authority to require warnings directly on vaping products. Given the much greater health risks from use of tobacco products, similar regulatory authority should also apply to tobacco products. Warnings on cigarettes themselves and on “other instruments, such as those used for water pipe smoking” are recommended in Guidelines to implement Article 11 (tobacco packaging and labelling) under the WHO FCTC. Moreover, the advent of innovative new tobacco products, such as the iQOS heat-not-burn system, justifies securing this regulatory authority as a means of helping to ensure that the law is responsive to future developments.

Recent research in New Zealand provides further support for the idea of requiring warnings on cigarettes; the research shows that cigarette sticks with health warnings or in unattractive colours enhance the effects of the health warnings on packaging and make smoking less appealing. Waterpipe use has been growing in popularity among youth and young adults in Canada. Because it is often done in social settings as part of a group, waterpipe smokers often do not see the package containing the waterpipe (tobacco) product that bears a health warning.

8. Prohibit lifestyle advertising directed at growers, manufacturers, distributors and retailers

Repeal the provision that says restrictions on promotion are not applicable to promotions directed at growers, manufacturers, distributors, and retailers.

Amend clause 23(2) of S-5, p 16 (18(2)(c) of TA) by adding subclause (2.1), as follows:

“(2.1) Paragraph 18(2)(c) is repealed: a promotion by a tobacco grower or a manufacturer that is directed at tobacco growers, manufacturers, persons who distribute tobacco products or retailers but not, either directly or indirectly, at consumers.”

Rationale: At present, promotions within the tobacco trade are completely exempt from the restrictions on advertising and promotion in the Tobacco Act, and lifestyle advertising is being used in trade publications. Bill S-5 contains a mechanism to require companies to report on promotions within the tobacco trade, but there is no mechanism to regulate such promotions. Lifestyle advertising undermines plain packaging by perpetuating brand imagery. Moreover, lifestyle advertising of a product that kills half its long-term users cannot be justified on any grounds.

9. Expand the types of promotional elements prohibited on tobacco packaging to prohibit, among other things, the use of brand names that evoke a desirable lifestyle or mislead about the health risks of tobacco use

Amend clause 27 of S-5, p 17 (section 20.1 of TA), by revising subsection (b) and adding new subsections (c) and (d), as follows:

“No person shall promote a tobacco product, including by means of the packaging,

(b) by using terms, expressions, logos, symbols, or illustrations, colours, and other markings that are prohibited by the regulations.”

(c) by using a package design element, including shape, size, and opening style, that is prohibited by the regulations.”

(d) by using a brand or brand variant name that is associated with a desirable lifestyle, that references a colour or a number, that refers to the filter, or that includes any other term prohibited by the regulations.”
**Rationale:** This is one of the most important provisions in Bill S-5, as its intent is to provide the necessary authority for plain and standardized tobacco packaging. However, the provision in S-5 that would ban promotional “terms, expressions, logos, symbols and illustrations” on tobacco packaging does not go far enough to ensure that the proposed packaging restrictions in Health Canada’s consultation on plain and standardized packaging can be implemented.

In recent years, tobacco companies have introduced a wide range of package sizes and shapes, many with novel opening styles. Research is clear that these package formats serve to promote tobacco use, undermine health warnings, and mislead smokers and vulnerable youth about the health risks of tobacco use. Experience in Australia shows that when companies can no longer use images, colours or numbers, and descriptive text to create appealing brand “personalities” or to suggest that one brand variant is ‘lighter’/less harmful than another, they have resorted to relying on brand and variant names. For example, several new products with long and highly suggestive names were introduced into the Australian market after plain packaging, including Peter Stuyvesant New York Blend and Marlboro Silver Fine Scent. The companies are using brand names in place of (banned) imagery to evoke attractive lifestyle associations. As well, brands that used colour coding to connote different strengths/levels of risk prior to plain packaging incorporated the colour into the variant name after plain packaging; for example, Peter Jackson Rich that was sold in gold-coloured packaging before plain packaging became Peter Jackson Rich Gold.

10. **Prohibit tobacco branding on any product or service, including tobacco accessories, whether or not the product or service is appealing to children or associated with a way of life**

   Remove the exemption that allows tobacco brand elements to be used on a “thing/service” provided the thing/service is not associated with young persons, appealing to young persons, or associated with a way of life; and remove the exemption for a tobacco-branded accessory

   Amend clause 34 of S-5, pp 19-20 (section 27 of TA), as follows:

   “No person shall furnish or promote a tobacco product if any of its brand elements is displayed on a thing, other than a tobacco product or an accessory, or is used with a service, and
   (a) the thing or service is associated with young persons;
   (b) there are reasonable grounds to believe that the thing or service could be appealing to young persons; or
   (c) the thing or service is associated with a way of life such as one that includes glamour, recreation, excitement, vitality, risk or daring.”

   As a consequence, repeal subsection 26(1) of TA, as follows:

   “Subject to the regulations, a manufacturer or retailer may sell an accessory that displays a tobacco product-related brand element.”

   As a consequence, repeal section 28 of TA, as follows

   “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 thing, other than a tobacco product or an accessory, or is used with a service, and the thing or service does not fall within the criteria described in paragraphs 27(a) to (c).

   (2) Subject to the regulations, a person may promote a thing, other than a tobacco product or an accessory, that displays a tobacco product-related brand element, or a service that uses a tobacco product-related brand element, if the thing or service does not fall within the criteria described in paragraphs 27(a) to (c).”

**Rationale:** The tobacco industry is increasingly putting branded accessories in prominent displays on the checkout counter and behind the cash in retail outlets. Displays of branded lighters, matches, and other tobacco...
accessories in close proximity to the now-covered powerwalls of tobacco products serve to promote tobacco sales through product association. Branded accessories would also undermine tobacco plain packaging by maintaining and reinforcing brand imagery. This amendment would extend the partial restrictions on brand-stretching to a complete ban, fulfilling Canada’s legal obligation under the FCTC to implement a comprehensive ban on tobacco promotion and enhancing the effectiveness of plain packaging.

11. Prohibit tobacco companies from making promotional/incentive payments to retailers

Amend clause 35(2) of S-5, pp 20-21 (section 29 of TA), by renumbering existing section 29 as 29(1) and adding a new provision, section 29(2), as follows:

“29(2) No manufacturer or distributor of tobacco products shall offer rebates, gratuities or any other form of benefit related to the sale or the retail price of a tobacco product to operators of tobacco retail outlets, including their employees.” (Adapted from Quebec Bill 44, clause 21.1)

Rationale: Given the tight restrictions on tobacco advertising and promotion in Canada, tobacco manufacturers have increasingly relied on retailers to communicate with customers and boost tobacco sales, recognizing retailers as an essential component of their marketing strategies. Testimony given by convenience store stakeholders during legislative hearings in Quebec included details of loyalty programs in which retailers are pressured to sign performance-based contracts. Bonuses and perks such as vacations are available to retailers who meet sales volume targets, and rebates are offered for selling a particular brand below a maximum retail price. To meet sales targets and avoid losing their contracts and associated perks, retailers will sell tobacco at deeply discounted prices, sometimes even at a loss. Given that the purpose of the Tobacco Act is to protect the health of Canadians and “to protect young persons and others from inducements to use tobacco products,” such promotional tactics that are overtly aimed at maximizing tobacco product sales cannot be justified. A provision banning promotional/incentive payments to retailers has been in force in Quebec since November 26, 2016.

12. Prohibit manufacturers and retailers from promoting tobacco sales through discounts and volume purchases

Amend clause 35(2) of S-5, p 20 (section 29 of TA) by adding new subsections (d) and (e), as follows:

“29 No manufacturer or retailer shall

(d) furnish or offer to furnish a tobacco accessory to consumers for less than the wholesale price; or

(e) offer a reduced retail price on a pack of cigarettes on the basis of quantity purchased.”

Rationale: Tobacco tax increases that serve to increase tobacco prices are the single most effective vehicle for reducing tobacco use. Recognizing the importance influence of price on tobacco sales, tobacco manufacturers and retailers employ a range of price-based strategies to promote tobacco sales, including by offering a discounted price for the purchase of more than one pack of cigarettes and by furnishing a tobacco accessory below cost, e.g., by selling a pack of cigarettes together with a lighter at less than the combined cost of the two. The proposed amendments would prohibit such promotions, reducing the ability of tobacco companies and vendors to undermine Canada’s tobacco taxation policy and helping to fulfill Canada’s legal obligation under the FCTC to implement a comprehensive ban on tobacco promotion.

13. Prohibit the display of tobacco product accessories at POS in any store that sells tobacco, except in adults-only tobacconists

Amend clause 36 of S-5, p 21 (subsection 30(1) of TA), as follows:

“Subject to the regulations, a person may display, at the point of sale, a tobacco product or an accessory that displays a tobacco product-related brand element, only where minors are prohibited by law.”
**Rationale:** The display of tobacco products is now prohibited in all provinces/territories in Canada because such displays normalized tobacco products and tobacco use; undermined the salience of health messaging about the risks of tobacco use; promoted the perception among youth that ‘most people’ smoke and that tobacco is easily accessible, both factors in youth uptake; and increased social cues to smoke, increasing impulse buys among occasional and experimental smokers and relapse among former smokers. In recent years, the prominent displays of tobacco products at point-of-sale have been replaced by prominent displays both on and behind the check-out counter of a wide range of tobacco accessories. These displays play much the same role that tobacco displays used to play and thus a prohibition on such displays in retail outlets accessible to minors is necessary and justified.

14. **Ban the use of waterpipes/heat not burn cigarettes where smoking is banned**

   Amend definition of “smoke” in NSHA to cover waterpipe use and use of new products, including heat not burn tobacco products, etc.

   Amend clause 81 of S-5, p 47 (section 82(2) of NSHA), as follows:

   “‘smoke’ means to smoke, inhale or exhale smoke from, burn, carry, hold or otherwise have control over a lit or heated tobacco or vaping product or other device that burns or heats tobacco or another substance that is intended to be smoked or inhaled” (Adapted from the NS Smoke-Free Places Act)

**Rationale:** Bill S-5 amends the *Non-Smokers’ Health Act* to include a ban on vaping in places where smoking is banned under the Act. Given the much broader range of products now available than when the NSHA was passed and the variety of products under development, it is an opportune time to ensure that workers remain assured of clean indoor air in the workplace, by banning the use of a wide range of smoking-related products, including heat-not-burn cigarettes and waterpipes.

**Vaping Products**

1. **Expand the purpose of the Act to better reflect the balance sought between youth protection and legal access for adults**

   Amend clause 5 of S-5, p 4 (section 4 of TA), “Purpose of Act,” by adding a new subsection under 4(3), as follows:

   “4(3)(a.1) to support smokers by providing access to less harmful alternatives to tobacco and by providing accurate relative risk information.”

   Amend clause 5 of S-5, p 4 (section 4 of TA), as follows:

   “4(3)(d) to prevent the public from being deceived or misled with respect to the health hazards of using vaping products and the relative hazards of these products compared to tobacco use;”

   Amend clause 5 of S-5, p 4 (section 4 of TA), as follows:

   “4(3)(e) to enhance public awareness of those hazards and of relative hazards of these products compared to tobacco use.”

**Rationale:** The intent of Bill S-5 is to strike a balance between youth protection and legal access to less harmful nicotine alternatives for adults. However, the bill focuses disproportionately on the risks of vaping products without adequate consideration for the potential benefits of shifting large numbers of Canadians away from smoking. These amendments reflect the need to provide adult smokers access to vaping products and to potentially life-saving information about their relative risks compared to smoking tobacco.
2. **Require companies to provide relative risk information**

   Amend clause 21 of S-5, p 14 (section 16 of TA), to expand requirement re “Information – sale of vaping products” to include relative risk information:

   “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 and about the health hazards, health effects and relative risks arising from the use of the product and from its emissions.”

   Amend clause 21 of S-5, p 14 (section 16 of TA), to expand requirement re “Information – manufacture of vaping products” to include relative risk information:

   “15.1(2) No person shall manufacture a vaping product unless the product displays, in the prescribed form and manner, the information required by the regulations about the product and its emissions and about the health hazards, health effects and relative risks arising from the use of the product and from its emissions.”

   Amend clause 21 of S-5, p 14 (section 16 of TA), to expand requirement re “Information – packaging of vaping products” to include relative risk information:

   “15.1(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, health effects and relative risks arising from the use of the product and from its emissions.”

   Amend clause 21 of S-5, pp 14-15 (section 16 of TA), to expand requirement re “Information – leaflet or tag” to include relative risk information:

   “15.1(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, health effects and relative risks arising from the use of the product and from its emissions.”

   **Rationale:** The relative risks of vaping compared to smoking are not well understood by Canadians and some research suggests the problem is worsening. Regardless of whether or not a vaping product receives market authorization as therapeutic, Canadians have a right to access to relative risk information on which to make informed decisions about their health.

3. **Expand regulatory authority to require information about relative risk**

   Amend clause 22 of S-5, p 15 (section 17(a) of TA), as follows:

   “17(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, health effects and relative risks arising from the use of the products and from their emissions;”

   **Rationale:** To enable the Governor-in-Council to make regulations requiring the provision of relative risk information.

4. **Create regulatory authority to permit controls on vaping product advertising and promotion**

   Amend clause 36 of S-5, p 21 (section 30 of TA), “Division 2 Vaping Products,” by adding the following before line 17:
“Promotion prohibited by regulations
30.1 No person shall promote a vaping product by means of a promotion prohibited by the regulations.”

Note that this amendment will require the renumbering of subsequent clauses: 30.2 Advertising appealing to young persons, 30.3(1) Lifestyle advertising, 30.3(2) Exception, etc.

Rationale: This amendment would establish regulatory authority to address vaping product advertising and promotion, including restrictions on both type and content. Currently Bill S-5 only prohibits advertising appealing to young people and lifestyle advertising accessible to youth. This means that Bill S-5 allows for a wide variety of advertising and promotion, including TV, radio, print, billboards, and online. The government needs flexibility to adjust restrictions on advertising and promotion in response to marketplace developments and emerging scientific evidence. In the UK, where tobacco harm reduction is embraced and e-cigarettes are promoted as cessation devices, the only forms of permitted advertising are outdoor advertising; posters on public transport; cinema; direct hard copy mail; leaflets; private correspondence to a consumer; and promotion in trade publications.

5. Delete exceptions that permit lifestyle advertising in places off limits to minors and in publications addressed and sent to a named adult

Amend clause 36 of S-5, p 21 (section 30 of TA), by deleting (2)(a) and(2)(b) of 30.2, as follows:

“30.2(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
(a) a publication that is addressed and sent to an adult who is identified by name; or
(b) places where young persons are not permitted by law.”

Rationale: This amendment would remove the provision that allows vaping product lifestyle advertising in bars and casinos and in publications sent to a named adult. Nicotine is an addictive drug—there is no need to have it associated with fashion, glamour, status, femininity, etc. This is especially the case in a bar, where the consumption of alcoholic beverages may mean that individuals have reduced inhibitions.

6. Limit vaping product advertising to only information and brand preference advertising

Amend clause 36 of S-5, p 21 (section 30 of TA), by adding the following after line 25:

“Advertising
30.21 No person shall advertise a vaping product or a vaping product-related brand element unless the advertising is limited to information advertising or brand preference advertising.”

Rationale: The bill bans lifestyle advertising but there is no provision that clarifies that only information and brand preference advertising are permitted. This amendment makes it explicit.

7. Prohibit manufacturer sales promotions to retailers or distributors or to their employees

Amend clause 36 of S-5, p 22 (section 30 of the TA), “Sales promotions – offering consideration,” by adding a new subsection, as follows:

“30.6(1) No manufacturer shall offer rebates, gratuities, or any form of benefit related to the sale or the retail price of a vaping product to a retailer or distributor or to an employee of a retailer or a distributor.”
Note that this will require a re-numbering of the subsequent subsections, *Sales promotions – offering consideration*, to become 30.6(2) and *Sales promotions – providing consideration*, to become 30.6(3).

**Rationale:** This amendment will establish restrictions on promotion within the vaping product trade to ensure that manufacturers are not able to provide incentives (e.g., sports and entertainment tickets, chances to win vacations, etc.) to retailers to meet sales targets or even simply to stock products. Vaping products are addictive and not without harm—further restrictions are warranted to prohibit manufacturers from exerting undue power and influence over retailers to increase sales. The goal of the legislation is to protect youth and offer a less harmful nicotine alternative to adult smokers—not to expand the market and addict new users.

8. **Prohibit lifestyle advertising directed at manufacturers, distributors, and retailers and create regulatory authority to further control promotion within the vaping products trade**

   Amend clause 23(3) of S-5, p 16, (section 18 of TA), as follows:

   “18(3)(c) With the exception of the ban on lifestyle advertising, and subject to this Act or the regulations, 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.”

9. **Create regulatory authority to permit controls on the giving or offering to give a vaping product**

   Amend clause 36 of S-5, p 22 (section 30 of TA), as follows:

   “30.5 Subject to regulation, no manufacturer or retailer shall give or offer to give a vaping product.”

**Rationale:** This amendment would establish regulatory authority for the government to permit manufacturers to give or offer to give vaping products under specific circumstances. As the evidence on the risks and benefits of vaping products continues to grow, and as health organizations adjust their policies accordingly, there may be certain situations where the provision of free vaping products would be in the interest of public health.

10. **Create regulatory authority to restrict sales promotions to specialty vape shops only and to permit restrictions on the types of promotions**

    Amend clause 36 of S-5, p 22 (section 30 of TA) to restrict sales promotions to specialty vape shops under certain circumstances, as follows:

    “30.6(2) Subject to regulation, no manufacturer or retailer shall, in a place other than a retail establishment where vaping products are ordinarily sold specialty vape shop, (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.”

**Rationale:** This amendment would create regulatory authority for the government to limit incentive promotions to specialty vape shops where young people under 18 do not have access. This restriction supports the stated purpose of the Act “to protect young persons and non-users of tobacco products from inducements to use vaping products.” In addition, the government would have regulatory authority to restrict or prohibit certain types of sales promotions should marketplace developments deem this necessary, including a gift to a purchaser or a third party, bonus, premium, cash rebate or right to participate in a game, lottery or contest; and to prohibit the furnishing of a vaping product in consideration of the purchase of a product or service or the performance of a service.
11. Expand required information on advertising to include relative risk information

Amend clause 36 of S-5, p 23 (section 30 of TA), as follows:

“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, health effects and relative risks arising from the use of the product and from its emissions.”

Rationale: The relative risks of vaping compared to smoking are not well understood by the general public, and some research suggests the problem is worsening. Bill S-5 provides legal access to vaping products with nicotine. However, in addition to greater access to these products, the 5.3 million Canadians who smoke need access to relative risk information in order to make informed decisions that affect their health.

12. Create regulatory authority pertaining to comparisons

Amend clause 38 of S-5, p 24 (section 30 of TA), as follows:

“30.43(2) Subject to regulation, 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.”

Rationale: This amendment would create regulatory authority for comparative risk statements to be made in specific circumstances for non-therapeutic vaping products and tobacco. The government needs flexibility to be able to provide consumers with information related to new evidence as it emerges.

13. Prohibit vaping product branding on non-vaping products and services, whether or not they are appealing to children or associated with a way of life

Amend clause 40 of S-5, p 26 (section 30 of TA), by adding a new subsection 30.72:

“Trademarks on non-vaping products and services

30.72(1) No manufacturer or importer of vaping products shall

(a) apply a vaping product trademark, in any form in which it appears on packages of the product that are sold in Canada, to any product or service other than a vaping product or a package or container in which a vaping product is sold or shipped, or

(b) use the trademark for the purpose of advertising any product other than a vaping product or any service, activity or event.

Sale of non-vaping products and services

(2) No person shall sell or offer for sale or expose for sale any product or service, other than a vaping product or a package or container in which a vaping product is sold or shipped, that bears a trademark of a vaping product in any form in which it appears on packages of the vaping product that are sold in Canada.”

Rationale: This amendment would ban all brand-stretching of vaping products, such that vaping product brand names and logos would be prohibited on all consumer products (e.g., phone cases, t-shirts, caps, etc.) and services, except those directly related to vaping products. The goal of the legislation is to provide legal access to a less harmful nicotine alternative for adult smokers, while ensuring that youth and non-smokers do not become enticed to develop a nicotine addiction. There is no justification for vaping product brand stretching in this regard.