

BILL 24 – 2025

VAPING PRODUCT DAMAGES AND HEALTH CARE COSTS RECOVERY ACT

Contents

- 1 Definitions and interpretation
- 2 Direct action by government
- 3 Recovery of cost of health care benefits
- 4 Determination of defendant's market share
- 5 Private parties and proceedings
- 6 Joint and several liability in action under section 2 (1)
- 7 Population-based evidence to establish causation and liability and quantify damages or cost
- 8 Minister's certificates to establish health care benefits and cost of health care benefits
- 9 Limitation period
- 10 Liability based on risk contribution
- 11 Apportionment of liability in vaping-related wrongs
- 12 Joint and several liability of directors and officers
- 13 Retroactive effect
- 14 Class proceedings
- 15 No proceedings respecting information provided
- 16 Application of this Act
- 17 Regulations of the Lieutenant Governor in Council
- 18 Commencement

HIS MAJESTY, by and with the advice and consent of the Legislative Assembly of the Province of British Columbia, enacts as follows:

Definitions and interpretation

- 1** (1) In this Act:

“**benefit recipient**” means

- (a) a person, including a deceased person, for whom health care benefits have been provided, or
- (b) a person for whom health care benefits could reasonably be expected to be provided;

“consultant” means a person who provides advisory services

- (a) to a wholesaler in relation to the distribution, sale or offering for sale of vaping products, or
- (b) to a manufacturer in relation to the sale of vaping products;

“cost of health care benefits” means the sum of

- (a) the present value of the total expenditure by the government for health care benefits provided for benefit recipients as a result of disease, injury or illness, and
- (b) the present value of the estimated total expenditure by the government for health care benefits that could reasonably be expected to be provided for those benefit recipients as a result of disease, injury or illness;

“disease, injury or illness” includes the following:

- (a) physical or mental injury or illness;
- (b) problematic product use;
- (c) addiction;
- (d) general deterioration of health;
- (e) the risk of disease, injury or illness;

“education authority” means

- (a) a board or francophone education authority under the *School Act*, or
- (b) an authority under the *Independent School Act*;

“excluded device” means the following:

- (a) a cannabis accessory, as defined in section 1 of the *Cannabis Control and Licensing Act*;
- (b) a prescribed device;

“excluded substance” means the following:

- (a) a substance or combination of substances that contains cannabis, as defined in section 1 of the *Cannabis Control and Licensing Act*;
- (b) a prescribed substance or combination of substances;

“health care benefits” means

- (a) benefits as defined under the *Hospital Insurance Act*,
- (b) benefits as defined under the *Laboratory Services Act*,
- (c) benefits as defined under the *Medicare Protection Act*,
- (d) benefits as defined under the *Pharmaceutical Services Act*,
- (e) payments made by the government under the *Continuing Care Act*,
- (f) expenditures by the government, made directly or through one or more agents or intermediate bodies, for emergency health services provided under the *Emergency Health Services Act*, and

- (g) other expenditures by the government, made directly or through one or more agents, intermediate bodies or education authorities, for programs, services, benefits or similar matters associated with disease, injury or illness or the prevention of disease, injury or illness;

“joint venture” means an association of 2 or more persons, if

- (a) the relationship among the persons does not constitute a corporation, partnership or trust, and
- (b) the persons each have an undivided interest in assets of the association;

“manufacture” includes, for a vaping product, the production, assembly and packaging of the product;

“manufacturer” means a person who manufactures or has manufactured a vaping product and a person who, in the past or currently,

- (a) causes, directly or indirectly, through arrangements with contractors, subcontractors, licensees, franchisees or others, the manufacture of a vaping product,
- (b) for any fiscal year of the person, derives at least 10% of revenues, determined on a consolidated basis in accordance with generally accepted accounting principles, from the manufacture or promotion of vaping products by that person or by other persons,
- (c) engages in or causes, directly or indirectly, other persons to engage in promoting a vaping product, or
- (d) is a trade association primarily engaged in
 - (i) advancing the interests of manufacturers,
 - (ii) promoting a vaping product, or
 - (iii) causing, directly or indirectly, other persons to engage in promoting a vaping product;

“person” includes a trust, joint venture or trade association;

“promote” or **“promotion”** includes

- (a) the marketing of a vaping product, whether direct or indirect,
- (b) the distribution, dissemination or sale of a vaping product, and
- (c) any research with respect to a vaping product;

“specified device” means the following:

- (a) a device that
 - (i) renders a specified substance in the form of an aerosol,
 - (ii) is brought to the mouth for the purpose of inhaling the aerosol, and
 - (iii) is not an excluded device;
- (b) a prescribed delivery system for delivering a specified substance into an individual’s body;

“specified substance” means a substance or combination of substances that

- (a) contains nicotine,
- (b) is used or intended to be used in a specified device, and
- (c) is not an excluded substance;

“use”, “use of” and “expose to” mean, as applicable,

- (a) the use of a vaping product, or
- (b) the ingestion, inhalation, injection, application or assimilation of a vaping product, whether intentional or otherwise;

“vaping product” means the following:

- (a) a specified device;
- (b) a specified substance;

“vaping-related disease, injury or illness” means disease, injury or illness caused or contributed to by an individual’s use of or exposure to a vaping product;

“vaping-related wrong” means

- (a) a tort that is committed in British Columbia by a manufacturer, wholesaler or consultant and that causes or contributes to vaping-related disease, injury or illness, or
- (b) in an action under section 2 (1), a breach by a manufacturer, wholesaler or consultant of a common law, equitable or statutory duty or obligation owed to persons in British Columbia who have used or been exposed to or might use or be exposed to a vaping product;

“wholesaler” means a person who distributes, sells or offers for sale vaping products to distributors, retailers or other persons for resale.

(2) The definition of “manufacturer” in subsection (1) does not include

- (a) an individual,
- (b) a wholesaler or retailer of vaping products who is not related to
 - (i) a person who manufactures a vaping product, or
 - (ii) a person described in paragraph (a) of the definition of “manufacturer”, or
- (c) a person who
 - (i) is a manufacturer only because paragraph (b) or (c) of the definition of “manufacturer” applies to the person, and
 - (ii) is not related to
 - (A) a person who manufactures a vaping product, or
 - (B) a person described in paragraph (a) or (d) of the definition of “manufacturer”.

- (3) For the purposes of subsection (2) of this section, a person is related to another person if, directly or indirectly, the person is
 - (a) an affiliate, as defined in the *Business Corporations Act*, of the other person, or
 - (b) an affiliate of the other person or an affiliate of an affiliate of the other person.
- (4) For the purposes of subsection (3) (b), a person is deemed to be an affiliate of another person if the person
 - (a) is a corporation and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, owns a beneficial interest in shares of the corporation
 - (i) carrying at least 50% of the votes for the election of directors of the corporation, and the votes carried by the shares are sufficient, if exercised, to elect a director of the corporation, or
 - (ii) having a fair market value, including a premium for control if applicable, of at least 50% of the fair market value of all the issued and outstanding shares of the corporation, or
 - (b) is a partnership, trust or joint venture, and the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has an ownership interest in the assets of that person that entitles the other person or group of persons to receive at least 50% of the profits or at least 50% of the assets on the dissolution, winding up or termination of the partnership, trust or joint venture.
- (5) For the purposes of subsection (3) (b), a person is deemed to be an affiliate of another person if the other person, or a group of persons not dealing with each other at arm's length of which the other person is a member, has any direct or indirect influence that, if exercised, would result in control in fact of that person, except if the other person or group of persons deals at arm's length with that person and derives influence solely as a lender.

Direct action by government

- 2 (1) The government has a direct and distinct action against manufacturers, wholesalers and consultants to recover the cost of health care benefits caused or contributed to by a vaping-related wrong.
- (2) An action under subsection (1) is brought by the government in its own right and not on the basis of a subrogated claim.
- (3) In an action under subsection (1), the government may recover the cost of health care benefits whether or not there has been any recovery by other persons who have suffered damage caused or contributed to by the vaping-related wrong committed by the defendant.

- (4) In an action under subsection (1), the government may recover the cost of health care benefits
 - (a) for particular individual benefit recipients, or
 - (b) on an aggregate basis, for a population of benefit recipients.
- (5) If the government seeks, in an action under subsection (1), to recover the cost of health care benefits on an aggregate basis,
 - (a) it is not necessary
 - (i) to identify particular individual benefit recipients,
 - (ii) to prove the cause of disease, injury or illness in any particular individual benefit recipient, or
 - (iii) to prove the cost of health care benefits for any particular individual benefit recipient,
 - (b) the health care records and documents of particular individual benefit recipients, or the documents relating to the provision of health care benefits for particular individual benefit recipients, are not compellable except as provided under a rule of law, practice or procedure that requires the production of documents relied on by an expert witness,
 - (c) a person is not compellable to answer questions with respect to the health of, or the provision of health care benefits for, particular individual benefit recipients,
 - (d) despite paragraphs (b) and (c), on application by a defendant, the court may order discovery of a statistically meaningful sample of the documents referred to in paragraph (b), and the order must include directions concerning the nature, level of detail and type of information to be disclosed, and
 - (e) if an order is made under paragraph (d), the identities of particular individual benefit recipients must not be disclosed, and all identifiers that disclose or may be used to trace the names or identities of any particular individual benefit recipients must be deleted from any documents before the documents are disclosed.

Recovery of cost of health care benefits

- 3 (1) In an action under section 2 (1), subsection (2) of this section applies if the government proves, on a balance of probabilities, that, in respect of a vaping product,
 - (a) the defendant breached a common law, equitable or statutory duty or obligation owed to benefit recipients who have used or been exposed to or might use or be exposed to the vaping product,

- (b) using or being exposed to the vaping product can cause or contribute to disease, injury or illness, and
 - (c) during all or part of the period of the breach referred to in paragraph (a) of this subsection, the vaping product manufactured or promoted by the defendant was offered for distribution, sale or use in British Columbia.
- (2) Subject to subsections (1) and (5), the court must presume that
 - (a) the population of benefit recipients who used or were exposed to the vaping product would not have used or been exposed to the vaping product but for the breach referred to in subsection (1) (a), and
 - (b) the use or exposure described in paragraph (a) of this subsection caused or contributed to disease, injury or illness in a portion of the population of benefit recipients described in paragraph (a).
- (3) If the presumptions under subsection (2) (a) and (b) apply,
 - (a) the court must determine the cost of health care benefits provided after the date of the breach referred to in subsection (1) (a) resulting from use of or exposure to the vaping product, and
 - (b) each defendant to which the presumptions apply is liable for the proportion of the cost referred to in paragraph (a) of this subsection equal to the proportion of its contribution to disease, injury or illness.
- (4) In assessing the proportion of a defendant's contribution to disease, injury or illness, the court may take into account anything it considers relevant, including a defendant's market share in the vaping product as determined under section 4.
- (5) The amount of a defendant's liability assessed under subsection (3) (b) may be reduced, or the proportions of liability assessed under subsection (3) (b) may be readjusted among the defendants, to the extent that a defendant proves, on a balance of probabilities, that the breach referred to in subsection (1) (a) did not cause or contribute to the use or exposure referred to in subsection (2) (a) or to the disease, injury or illness referred to in subsection (2) (b).

Determination of defendant's market share

- 4 (1) For the purposes of this section, each of the following is a separate category of vaping product:
 - (a) specified devices;
 - (b) specified substances.

- (2) For the purposes of determining the market share of a manufacturer in respect of a category of vaping product sold in British Columbia, the court must calculate the manufacturer's market share for the category by the formula

$$\text{mmsc} = (\text{mmc} / \text{MMC}) \times 100\%$$

where

- mmsc = the manufacturer's market share of the applicable category of vaping product from the date of the earliest vaping-related wrong committed by that manufacturer to the date of trial;
- mmc = in respect of the applicable category of vaping product, the quantity of vaping product manufactured by the manufacturer that is distributed, sold or offered for sale within British Columbia from the date of the earliest vaping-related wrong committed by that manufacturer to the date of trial;
- MMC = in respect of the applicable category of vaping product, the quantity of vaping product manufactured by all manufacturers that is purchased within British Columbia from the date of the earliest vaping-related wrong committed by the manufacturer to the date of trial.

- (3) For the purposes of determining the market share of a wholesaler in respect of a category of vaping product sold in British Columbia, the court must calculate the wholesaler's market share for the category by the formula

$$\text{wmisc} = (\text{wmc} / \text{WWC}) \times 100\%$$

where

- wmisc = the wholesaler's market share of the applicable category of vaping product from the date of the earliest vaping-related wrong committed by that wholesaler to the date of trial;
- wmc = in respect of the applicable category of vaping product, the quantity of vaping product that is distributed, sold or offered for sale by the wholesaler within British Columbia from the date of the earliest vaping-related wrong committed by that wholesaler to the date of trial;
- WWC = in respect of the applicable category of vaping product, the quantity of vaping product that is distributed, sold or offered for sale within British Columbia from the date of the earliest vaping-related wrong committed by the wholesaler to the date of trial.

Private parties and proceedings

- 5 (1) It is not a defence to an action commenced by the government under section 2 (1) that a claim for a benefit recipient's damages, alleged to have been caused or contributed to by a vaping-related wrong, has been adjudicated or settled.

- (2) It is not a defence to an action commenced in respect of a benefit recipient's claim for damages, alleged to have been caused or contributed to by a vaping-related wrong, that an action commenced by the government under section 2 (1) has been adjudicated or settled.

Joint and several liability in action under section 2 (1)

- 6 (1) Two or more defendants in an action under section 2 (1) are jointly and severally liable for the cost of health care benefits if
- (a) those defendants jointly committed a vaping-related wrong, and
 - (b) as a consequence of the vaping-related wrong, at least one of those defendants is held liable in the action under section 2 (1) for the cost of those health care benefits.
- (2) For purposes of an action under section 2 (1), 2 or more persons, whether or not they are defendants in the action, are deemed to have jointly committed a vaping-related wrong if
- (a) one or more of those persons are held to have committed the vaping-related wrong, and
 - (b) at common law, in equity or under an enactment, those persons would be held
 - (i) to have conspired or acted in concert with respect to the vaping-related wrong,
 - (ii) to have acted in a principal and agent relationship with each other with respect to the vaping-related wrong, or
 - (iii) to be jointly or vicariously liable for the vaping-related wrong if damages would have been awarded to a person who suffered damages as a consequence of the vaping-related wrong.

Population-based evidence to establish causation and liability and quantify damages or cost

- 7 Statistical information and information derived from epidemiological, sociological and other relevant studies, including information derived from sampling, is admissible as evidence for the purposes of establishing causation and liability and quantifying damages or the cost of health care benefits respecting a vaping-related wrong in an action brought
- (a) by or on behalf of a person, in the person's own name or as a member of a class of persons under the *Class Proceedings Act*, if the cause of action is substantially similar to that of an action brought under section 2 (1) of this Act, or
 - (b) by the government under section 2 (1).

**Minister's certificates to establish health care benefits
and cost of health care benefits**

- 8** (1) A certificate
- (a) purporting to have been issued by or on behalf of a minister of the government for the purposes of an action under section 2 (1), and
 - (b) setting out the health care benefits that have been provided and will likely be provided for a benefit recipient or population of benefit recipients who have suffered damage caused or contributed to by a vaping-related wrong,
- is proof of those health care benefits.
- (2) A certificate
- (a) purporting to have been issued by or on behalf of a minister of the government for the purposes of an action under section 2 (1), and
 - (b) setting out the cost of health care benefits that have been provided and will likely be provided for a benefit recipient or population of benefit recipients who have suffered damage caused or contributed to by a vaping-related wrong,
- is conclusive proof of the cost of those health care benefits.

Limitation period

- 9** (1) No action under section 2 (1) is barred under the *Limitation Act* if the action is commenced by the government within 15 years after
- (a) the coming into force of this Act, or
 - (b) the day on which the claim is discovered.
- (2) Any action commenced by the government for damages that are substantially similar to the cost of health care benefits and that are alleged to have been caused or contributed to by a vaping-related wrong is revived if the action was dismissed before the coming into force of this Act merely because it was held by a court to be barred or extinguished by the *Limitation Act*.

Liability based on risk contribution

- 10** (1) If, in an action under section 2 (1), the government is unable to establish which defendant caused or contributed to the use or exposure described in paragraph (b) of this subsection and, as a result of a breach of a common law, equitable or statutory duty or obligation,
- (a) one or more defendants causes or contributes to disease, injury or illness by making a vaping product available to benefit recipients or exposing benefit recipients to a vaping product, and

- (b) a benefit recipient has used or been exposed to the vaping product referred to in paragraph (a) and suffers disease, injury or illness as a result of the use or exposure,

the court may find each defendant that caused or contributed to disease, injury or illness liable for a proportion of the cost of health care benefits incurred, equal to the proportion of its contribution to that disease, injury or illness.

- (2) The court may consider the following in apportioning liability under subsection (1):
 - (a) the length of time a defendant engaged in the conduct that caused or contributed to disease, injury or illness;
 - (b) the riskiness or recklessness of the conduct referred to in paragraph (a);
 - (c) the degree to which the conduct referred to in paragraph (a) deviated from the ordinary standard of conduct in the defendant's industry, profession or business;
 - (d) whether a defendant breached a statutory duty or obligation in manufacturing or promoting the vaping product;
 - (e) whether a defendant has a history of conduct similar to the conduct referred to in paragraph (a);
 - (f) the market share a defendant had in the vaping product that caused or contributed to disease, injury or illness, as determined under section 4;
 - (g) the profits or revenues that a defendant received as a result of manufacturing or promoting the vaping product;
 - (h) the degree of harmfulness of the vaping product manufactured or promoted by a defendant;
 - (i) the amount spent by a defendant on promoting the vaping product that caused or contributed to disease, injury or illness;
 - (j) the vulnerability of the population to which the vaping product was promoted;
 - (k) the degree to which a defendant collaborated or acted in concert with other persons in any conduct that caused, contributed to or aggravated disease, injury or illness;
 - (l) the extent to which a defendant conducted tests and studies to determine whether and to what extent disease, injury or illness could result from use of or exposure to the vaping product;
 - (m) the extent to which a defendant assumed a leadership role in manufacturing or promoting the vaping product;
 - (n) the efforts a defendant made to warn the public about disease, injury or illness resulting from use of or exposure to the vaping product;

- (o) the extent to which a defendant continued manufacturing or promoting the vaping product after the defendant knew or ought to have known that disease, injury or illness could result from use of or exposure to the vaping product;
- (p) affirmative steps that a defendant took to reduce the risk to the public of disease, injury or illness;
- (q) other matters or circumstances considered relevant by the court.

Apportionment of liability in vaping-related wrongs

- 11**
- (1) This section does not apply to a defendant in respect of whom the court has made a finding of liability under section 10 (1).
 - (2) A defendant who is found liable for a vaping-related wrong in an action under section 2 (1) may commence, against one or more of the defendants found liable for that wrong in the same action, an action or proceeding for contribution toward the cost of health care benefits caused or contributed to by that wrong.
 - (3) Subsection (2) applies whether or not the defendant commencing an action or proceeding under that subsection has paid all or any of the cost of health care benefits caused or contributed to by the vaping-related wrong.
 - (4) In an action or proceeding described in subsection (2), the court may apportion liability and order contribution among each of the defendants in accordance with the considerations listed in section 10 (2).

Joint and several liability of directors and officers

- 12**
- (1) A director or officer of a corporation who directs, authorizes, assents to, acquiesces in or participates in a vaping-related wrong committed by the corporation is jointly and severally liable with the corporation for the cost of health care benefits caused or contributed to by the vaping-related wrong.
 - (2) Subsection (1) applies whether or not an action against the corporation for recovery of the cost of health care benefits has been commenced or concluded.
 - (3) A director or officer is not liable under subsection (1) if the director or officer proves, on a balance of probabilities, that the director or officer
 - (a) did not know, and in the exercise of reasonable diligence could not have known, that the corporation was committing the vaping-related wrong, or
 - (b) exercised reasonable diligence to prevent the corporation from committing the vaping-related wrong.

Retroactive effect

- 13** A provision of this Act has the retroactive effect necessary to give the provision full effect for all purposes, including allowing an action to be brought under section 2 (1) arising from a vaping-related wrong whenever the vaping-related wrong occurred.

Class proceedings

- 14** (1) For the purposes of section 4 of the *Class Proceedings Act*, the government may bring an action on behalf of a class consisting of the following:
- (a) one or more governments of a jurisdiction within Canada;
 - (b) in relation to a government referred to in paragraph (a), an agent of that government that makes reimbursement for the cost of services that are in the nature of health care benefits within the meaning of this Act.
- (2) Nothing in subsection (1) of this section prevents a member of the class described in that provision from opting out of the proceeding in accordance with section 16 of the *Class Proceedings Act*.
- (3) If the government has commenced a proceeding in relation to a vaping-related wrong and the proceeding is ongoing as of the date this section comes into force,
- (a) the proceeding continues in accordance with this Act,
 - (b) a procedure completed, and an order made, before this section comes into force continues to have effect unless
 - (i) it would be inconsistent with this Act, or
 - (ii) the court orders otherwise, and
 - (c) a procedure that began but was not completed before this section comes into force must be completed in accordance with this Act.

No proceedings respecting information provided

- 15** No legal proceeding for damages lies or may be commenced or maintained against a person because the person has, in good faith, provided information to the government for the purposes of this Act.

Application of this Act

- 16** (1) This Act does not apply to the government as a defendant.
- (2) This Act does not apply to the recovery of the cost of health care benefits for which an action was brought under the *Tobacco Damages and Health Care Costs Recovery Act* before the coming into force of this Act.

Regulations of the Lieutenant Governor in Council

- 17** (1) The Lieutenant Governor in Council may make regulations referred to in section 41 of the *Interpretation Act*.
- (2) Without limiting subsection (1), the Lieutenant Governor in Council may make regulations as follows:
- (a) prescribing devices for the purposes of the definition of “excluded device”;
 - (b) prescribing substances or combinations of substances for the purposes of the definition of “excluded substance”;
 - (c) prescribing delivery systems for the purposes of the definition of “specified device”, including nicotine pouches.

Commencement

- 18** This Act comes into force on the date of Royal Assent.