B I L L

No. 32

An Act respecting a Tax on Vapour Products and making consequential amendments to *The Revenue and Financial Services Act*

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(Assented to)

HER MAJESTY, by and with the advice and consent of the Legislative Assembly of Saskatchewan, enacts as follows:

PART 1
Preliminary Matters

Short title

1 This Act may be cited as *The Vapour Products Tax Act*.

Definitions and interpretation

2(1) In this Act:

"consideration" means the amount in money or money's worth payable or transferable in exchange for the right to consume, use or dispose of any vapour product;

"consumer" means a person who, for consideration, either as principal or as agent for an undisclosed principal, acquires in Saskatchewan any vapour product for consumption or use, or for disposal other than by resale, by that person or by any other person at that person's expense;

"Crown" means the Crown in right of Saskatchewan;

"e-cigarette" means all or any of the following:

(a) a product or device, whether or not it resembles a cigarette, containing an electronic or battery-powered heating element capable of vaporizing an e-substance for inhalation or release into the air;

(b) a product or device similar in nature or use to a product or device described in clause (a);

and, subject to subsection (2), includes a product or device that is capable of vaporizing cannabis for inhalation or release into the air;

"e-substance" means a solid, liquid or gas that, on being heated, produces a vapour for use in an e-cigarette, regardless of whether the solid, liquid or gas contains nicotine, and includes cannabis in a liquid form designed for use in an e-cigarette, but does not include a heated tobacco product as defined in *The Tobacco Tax Act, 1998*;

"marketplace facilitator" means, with respect to vapour products, a person:

(a) that makes or facilitates a marketplace for retail sales by marketplace sellers; and

(b) that, directly or indirectly, collects payment from a consumer or user and remits payment to the marketplace seller;

whether or not that person receives consideration in exchange for its services;

"marketplace seller" means a person that makes retail sales of vapour products through any physical or electronic marketplace operated, owned or controlled by a marketplace facilitator;

"minister" means the member of the Executive Council to whom for the time being the administration of this Act is assigned;

"ministry" means the ministry over which the minister presides;

"retail sale" means a sale, including a sale by auction, of vapour products:

(a) to a consumer or user for the purposes of consumption or use and not for resale; or

(b) to a consumer or user to be used by the consumer or user for the purpose of promotional distribution;

"retailer" means a person who is engaged in a business that includes the sale of vapour products;

"sale" means:

(a) any transfer, exchange, barter or lease, conditional or otherwise in any manner or by any means whatsoever, of vapour products for a consideration; or

(b) the transfer for a consideration of the title to or possession of vapour products that have been produced, fabricated or processed to the order of the purchaser;

"user" means any person who, within Saskatchewan:

(a) purchases or leases from a vendor vapour products at a retail sale in Saskatchewan for the person's own use or for the use of other persons at the person's expense, or on behalf of, or as the agent of, a principal who desires to acquire the vapour products for use by the principal or other persons at the expense of the principal; or

(b) purchases from a vendor vapour products at a retail sale in Saskatchewan for the purpose of promotional distribution, to the extent that the value of the vapour products is greater than any payment intended to be and subsequently specifically made for those vapour products by the person to whom the vapour products are to be provided;

"value" means the consideration given or agreed to be given by the consumer or user for the transfer of the ownership of title to vapour products;

"vapour product" means any or all of the following:

(a) an e-cigarette;

(b) an e-substance;

(c) a cartridge for or a component of an e-cigarette;

but does not include a heated tobacco product as defined in *The Tobacco Tax Act, 1998*;

"vendor" means, unless otherwise specified, any person who, within Saskatchewan and in the course of the person's business or in the course of continuous or successive acts:

(a) sells or leases vapour products to a consumer or user at a retail sale in Saskatchewan for purposes of consumption or use, and not for resale; or

(b) sells vapour products to a consumer or user to be used by the consumer or user for the purposes of promotional distribution.

(2) A dry herb vaporizer intended for use with dried cannabis within the meaning of *The Cannabis Control (Saskatchewan) Act* is not an e-cigarette.

(3) For the purposes of the definition of "vendor", a retail sale in Saskatchewan includes a retail sale of vapour products by a person who does not otherwise carry on business in Saskatchewan, if the vapour products are acquired for use or consumption in or relating to Saskatchewan.

(4) A person to whom a licence has been issued pursuant to section 3 is deemed to be a vendor unless the licence has been surrendered by the person to the minister or has been cancelled or suspended by the minister.

Marketplace facilitators deemed vendors

3 For the purposes of the definition of "vendor", a marketplace facilitator is deemed to be a vendor for the purpose of this Act, whether or not the marketplace facilitator carries on business in Saskatchewan, if the marketplace facilitator:

(a) makes or facilitates the marketplace in which the retail sale of vapour products for consumption or use in Saskatchewan takes place; and

(b) collects payment with respect to the retail sale mentioned in clause (a) from a consumer or user of the vapour products acquired for consumption or use in Saskatchewan and remits payment to the marketplace seller of those vapour products.

PART 2
Licences

Vendor to have licence

4(1) Subject to subsection (2), no vendor shall sell any vapour products in Saskatchewan at a retail sale unless the vendor holds a licence to do so issued to the vendor by the minister and the licence is valid at the time of the sale.

(2) Subsection (1) does not apply to a vendor who makes retail sales of vapour products only by way of a marketplace facilitator if the marketplace facilitator holds a licence pursuant to this section and that licence is valid at the time of those retail sales.

(3) The licence is issued without fee and, if required by the minister, must be kept posted, in a manner satisfactory to the minister, in the place where the vendor carries on the vendor's business.

(4) The minister may cancel or suspend the licence of a vendor for the vendor's failure to comply with any of the provisions of this Act or Part III of *The Revenue and Financial Services Act* or the regulations made pursuant to that Part.

(5) On the cancellation or suspension of a vendor's licence in accordance with subsection (4), any other licence of the vendor issued by any authority in Saskatchewan authorizing the vendor to carry on the vendor's business is deemed to be cancelled and of no effect.

PART 3
Tax

Tax

5(1) Every consumer or user, at the time the consumer or user acquires in Saskatchewan any vapour product for consumption, use or disposal, shall pay to the Crown a tax computed at the rate of 20% of that product's value.

(2) A retailer is deemed to be a consumer if the retailer:

(a) converts to the retailer's own use any vapour product acquired for resale; or

(b) allows any other person to consume, use or dispose of any vapour product acquired by the retailer for resale, except for consideration and in the ordinary course of business.

PART 4
Enforcement, Administration, Offences and Regulations

Collection, remittance, enforcement

6(1) Unless otherwise provided for in this Act, all taxes imposed pursuant to this Act are to be collected and remitted to the minister in accordance with Part III of *The Revenue and Financial Services Act* and the regulations made pursuant to that Part.

(2) The minister may enforce the collection and remittance of taxes imposed pursuant to this Act or any violation of any provision of this Act in accordance with Part III of *The Revenue and Financial Services Act* and the regulations made pursuant to that Part.

Refunds and refund applications

7(1) A person, vendor, consumer or user who believes that the person, vendor, consumer or user has made an overpayment of tax pursuant to this Act may do one or more of the following:

(a) apply to the minister for a refund;

(b) whether or not an application has been made to the minister for a refund, commence an action in the Court of Queen's Bench.

(2) The person, vendor, consumer or user applying for a refund pursuant to clause (1)(a) shall apply in a form acceptable to the minister and include:

(a) all the documents or information the minister requires to be satisfied of the person's, vendor's, consumer's or user's claim to a refund; and

(b) evidence satisfactory to the minister that any returns required to be filed pursuant to this Act or *The Revenue and Financial Services Act* were filed.

(3) The minister shall respond to the application mentioned in subsection (2) within 120 days after receiving the application.

(4) The minister may, with respect to the application mentioned in subsection (2):

(a) allow the claim, in part or in whole; or

(b) deny the claim.

(5) If the minister allows the claim, in part or in whole, pursuant to clause (4)(a), the minister may pay interest in accordance with clause 56(1)(b) of *The Revenue and Financial Services Act*.

(6) A person, vendor, consumer or user who is dissatisfied with the decision of the minister made pursuant to subsection (4) may commence an action in the Court of Queen's Bench.

(7) No action may be brought to recover an overpayment of tax after the expiration of the period mentioned in clause 56(4)(b) of *The Revenue and Financial Services Act*.

(8) Any refund of an overpayment of tax or any interest that is paid pursuant to this section is to be paid out of the general revenue fund and is to be accounted for as a reduction of revenues received pursuant to this Act with respect to which the overpayment of tax or interest was made.

Offences and penalties

8(1) Every person who contravenes section 4 is guilty of an offence and liable on summary conviction:

(a) for a first offence, to a fine in an amount equal to the amount of the tax paid or that would have been payable, not exceeding $5,000;

(b) for a second offence, to a fine in an amount equal to two times the amount of the tax paid or that would have been payable, not exceeding $25,000;

(c) for a third and each subsequent offence, to a fine in an amount equal to three times the amount of taxes paid or that would have been payable, not exceeding $50,000.

(2) If a corporation commits an offence pursuant to this Act, any officer, director or agent of the corporation who directed, authorized, assented to, acquiesced in or participated in the commission of the offence is guilty of the offence and liable on summary conviction to the penalties mentioned in this section whether or not the corporation has been prosecuted or convicted.

Limitation on prosecution

9 No proceeding to enforce any provision of this Act is to be commenced more than 6 years after the facts on which the proceeding is based first came to the knowledge of the minister.

Immunity

10 No action or proceeding lies or shall be commenced against the Crown, the minister, the ministry or any officer or employee or administrator or agent of the minister, if that person is acting pursuant to the authority of this Act or the regulations, for anything in good faith done, caused or permitted or authorized to be done, attempted to be done or omitted to be done by that person or by any of those persons pursuant to or in the exercise or supposed exercise of any power conferred by this Act or the regulations or in the carrying out or supposed carrying out of any duty imposed by this Act or the regulations.

Regulations

11(1) The Lieutenant Governor in Council may make regulations:

(a) defining, enlarging or restricting the meaning of any word or expression used in this Act but not defined in this Act;

(b) prescribing any matter or thing required or authorized by this Act to be prescribed in the regulations;

(c) respecting any other matter or thing that the Lieutenant Governor in Council considers necessary to carry out the intent of this Act.

(2) A regulation made pursuant to this Act may be made retroactive to a day not earlier than September 1, 2021.

PART 5

Consequential Amendments and Coming into Force

SS 1983, c R-22.01, section 47 amended

12 Subsection 47(1) of *The Revenue and Financial Services Act* is amended:

(a) by adding the following subclause after subclause (a)(vi):

"(vii) a person required to collect and remit taxes to the minister pursuant to *The Vapour Products Tax Act*"**;**

(b) in clause (e):

(i) by adding the following subclause after subclause (xi):

"(xii) *The Vapour Products Tax Act*"**; and**

(ii) in the portion following subclause (xii) by striking out "to (xi)**" and substituting "**to (xii)"**; and**

(c) by adding the following subclause after subclause (g)(ix):

"(x) a consumer or user as defined in *The Vapour Products Tax Act*"**.**

Coming into force

13 This Act comes into force on September 1, 2021.

FIRST SESSION

Twenty-ninth Legislature

SASKATCHEWAN

B I L L

No. 32

An Act respecting a Tax on Vapour Products and making consequential amendments to *The Revenue and Financial Services Act*

Received and read the

First time

Second time

Third time

And passed

Honourable Donna Harpauer

Printed under the authority of
The Speaker of the Legislative Assembly
of Saskatchewan
2021