



BILL NO. 243

Government Bill

*2nd Session, 63rd General Assembly
Nova Scotia
69 Elizabeth II, 2020*

An Act Respecting Certain Financial Measures

CHAPTER 2
ACTS OF 2020

**AS ASSENTED TO BY THE LIEUTENANT GOVERNOR
MARCH 10, 2020**

The Honourable Karen Casey
Minister of Finance and Treasury Board

*Halifax, Nova Scotia
Printed by Authority of the Speaker of the House of Assembly*

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An Act Respecting Certain Financial Measures

Be it enacted by the Governor and Assembly as follows:

- 1 This Act may be cited as the *Financial Measures (2020) Act*.

PART I

CROWN ATTORNEYS' LABOUR RELATIONS ACT

- 2 **Chapter 23 of the Acts of 2019, the *Crown Attorneys' Labour Relations Act*, is repealed.**

PART II

GAMING CONTROL ACT

- 3 **Chapter 4 of the Acts of 1994-95, the *Gaming Control Act*, is amended by adding immediately after Section 126 the following Section:**

126A (1) Notwithstanding anything in this Act, the regulations or any other enactment, no action or other proceeding lies or may be commenced or maintained against Her Majesty in right of the Province, the member of the Executive Council assigned responsibility for Part I, the Minister of Service Nova Scotia and Internal Services, the Corporation, the Atlantic Lottery Corporation or the operator of a casino, or a director, officer, employee or agent of any of them, acting in good faith, for anything done or omitted to be done under this Act or the regulations in the exercise or intended exercise of their powers or in the performance or intended performance of their duties respecting lottery schemes, including video lottery terminals.

(2) Subsection (1) does not relieve the Atlantic Lottery Corporation or a casino operator, or a director, officer, employee or agent of either of them, of any liability to which any of them would otherwise be subject in respect of an action for damages arising from a negligent act or omission of the Atlantic Lottery Corporation, casino operator or the director, officer, employee or agent.

(3) Nothing in subsection (2) makes the Atlantic Lottery Corporation or a casino operator, or a director, officer, employee or agent of either of them, liable for punitive damages or exemplary damages in an action for damages referred to in that subsection.

(4) An action for damages referred to in subsection (2) may not be instituted under the *Class Proceedings Act* or as part of any other representative proceeding.

PART III

INCOME TAX ACT

4 (1) Subsection 40(1) of Chapter 217 of the Revised Statutes, 1989, the *Income Tax Act*, is repealed and the following subsection substituted:

(1) The tax payable by a corporation under this Part for a taxation year is the corporation's taxable income earned in the year multiplied by the total of

(a) that proportion of 16% that the number of days in the taxation year that are before April 1, 2020, is of the number of days in the taxation year; and

(b) that proportion of 14% that the number of days in the taxation year that are on or after April 1, 2020, is of the number of days in the taxation year.

(2) Subsection 40(2) of Chapter 217, as enacted by Chapter 4 of the Acts of 2000 and amended by Chapter 3 of the Acts of 2010 and Chapter 8 of the Acts of 2011, is further amended by striking out "16%" in the last line and substituting "the rate applicable in subsection (1)".

(3) Subsection 40(7) of Chapter 217, as enacted by Chapter 8 of the Acts of 2011 and amended by Chapter 4 of the Acts of 2012 and Chapter 3 of the Acts 2013, is further amended by

(a) striking out "and" at the end of clause (d); and

(b) striking out clause (e) and substituting the following clauses:

(e) 3.0% for the period commencing on January 1, 2014, and ending on March 31, 2020; and

(f) 2.5% for the period commencing on April 1, 2020.

5 (1) Subsection 47A(2) of Chapter 217, as enacted by Chapter 9 of the Acts of 2007 and amended by Chapter 2 of the Acts 2008 and Chapter 33 of the Acts of 2014, is further amended by

(a) striking out "2021" in the second line of subclause (a)(ii) and substituting "2026";

(b) striking out "2021" in the second line of subclause (a)(iv) and substituting "2026";

(c) striking out "2021" in the second line of subclause (b)(ii) and substituting "2026"; and

(d) striking out "2021" in the second line of subclause (b)(iv) and substituting "2026".

(2) Subsection 47A(6) of Chapter 217, as enacted by Chapter 9 of the Acts of 2007 and amended by Chapter 33 of the Acts of 2014, is further amended by striking out "2021" in the fourth line and substituting "2026".

6 Subsection 47B(7) of Chapter 217, as enacted by Chapter 6 of the Acts of 2015, is amended by striking out “July 1, 2020” in the third line and substituting “January 1, 2026”.

PART IV

REVENUE ACT

7 Subsection 34(1) of Chapter 17 of the Acts of 1995-96, the *Revenue Act*, as amended by Chapter 21 of the Acts of 1996, Chapter 3 of the Acts of 1997, Chapter 13 of the Acts of 1998, Chapter 5 of the Acts of 1999 (Second Session), Chapters 3 and 48 of the Acts of 2001, Chapter 5 of the Acts of 2002, Chapter 4 of the Acts of 2003, Chapter 3 of the Acts of 2004, Chapter 9 of the Acts of 2007, Chapter 5 of the Acts of 2009, Chapter 3 of the Acts of 2013, Chapter 6 of the Acts of 2015 and Chapter 2 of the Acts of 2016, is further amended by

- (a) striking out “twenty-seven and fifty-two one-hundredths cents” in the first line of clause (a) and substituting “twenty-nine and fifty-two one-hundredths cents”;
- (b) striking out “twenty-six cents” in the first line of clause (b) and substituting “forty cents”;
- (c) striking out “twenty-seven and fifty-two one-hundredths cents” in the first line of clause (c) and substituting “twenty-nine and fifty-two one-hundredths cents”;
- (d) striking out “sixty” in the first line of clause (d) and substituting “seventy-five”; and
- (e) striking out “eighteen and fifty-two one-hundredths cents” in the first line of clause (e) and substituting “forty cents”.

8 Section 37 of Chapter 17 is amended by

- (a) adding “(1)” immediately following the Section number; and
- (b) adding the following subsection:
 - (2) The Commissioner may refuse to issue a retail vendor’s permit to more than one person at the same place of business.

9 Section 46 of Chapter 17 is amended by striking out “Consolidated” in the second line and substituting “General Revenue”.

10 Chapter 17 is further amended by adding immediately after Part III the following Part:

PART IIIA

VAPING PRODUCT TAX

46A In this Part,

- (a) “consumer” means a person who purchases a vaping product from a vendor at a retail sale

(i) for that person's own consumption or use or for the consumption or use of other persons at that person's expense, or

(ii) as agent for a principal who desires to acquire a vaping product for consumption or use by the principal or other persons at the expense of the principal;

(b) "offshore area" means Sable Island and the submarine area of the Province that is between the inner limits and the outer limits described in Schedule I, as amended from time to time, of the *Canada-Nova Scotia Offshore Petroleum Resources Accord Implementation (Nova Scotia) Act*;

(c) "permit" means, unless the context otherwise requires, a wholesale vendor's permit or a retail vendor's permit issued pursuant to this Part;

(d) "retail sale" means a sale to a consumer for purposes of consumption or use and not for resale;

(e) "retail vendor" means a person who sells a vaping product in the Province to a consumer at a retail sale, whether or not that vendor holds a retail vendor's permit;

(f) "sale price" includes a price in money and also the value of services rendered, the actual value of the thing exchanged and other considerations accepted by the seller or person from whom the property passes as price or on account of the price of the thing covered by the contract, sale or exchange, and includes

(i) customs duties and excise tax imposed by or pursuant to an enactment of the Parliament of Canada and including an amount equal to the tax that would be paid or payable under subsection 165(1) of the *Excise Tax Act* (Canada) if that tax were calculated only on the preceding elements of this clause, determined without reference to the input tax credit provided for in that Part that would relate to the thing covered by the contract of sale, and

(ii) charges for transportation, unless the total charges for transportation of the thing sold relate solely to transportation within the Province and are shown separately on the invoice or in the contract with the purchaser;

(g) "tax" means a tax imposed pursuant to this Part and includes all penalties and interest that are, may be or may have been added to a tax pursuant to this Part and includes deposits made or required to be made on account of tax liability under this Part;

(h) "vaping device" means

(i) a product or device containing an electronic or battery-powered heating element capable of vapourizing a vaping substance for inhalation, including a component or part that can be used to build the product or device, or

(ii) a prescribed product or device similar in nature or use to a product or device described in subclause (i),

but does not include a product or device described in subclause (i) that is prescribed by the regulations;

(i) “vaping package” means a vaping device and a vaping substance bundled together in a package and sold to the consumer for a single price;

(j) “vaping product” means

- (i) a vaping device,
- (ii) a vaping substance, or
- (iii) a vaping package;

(k) “vaping substance” means a solid or liquid that

- (i) is designed for use in a vaping device,
- (ii) on being heated, produces a vapour, and
- (iii) may or may not contain nicotine,

but does not include a product that is subject to the coordinated cannabis duty under the Coordinated Cannabis Taxation Agreement between the Governments of Canada and the Province;

(l) “vendor” means a retail vendor or a wholesale vendor;

(m) “wholesale vendor” means

- (i) a person who sells a vaping product in the Province for the purpose of resale,
- (ii) a person who manufactures, fabricates or produces a vaping product in the Province, or
- (iii) a prescribed vendor.

46B This Part does not apply to the offshore area, except in respect of

(a) a vaping product purchased on

- (i) a regularly scheduled ferry for use by the general public, or
- (ii) vessels engaged in the transportation of persons for profit or with a view to profit,

where the voyage originates or terminates inside the Province, or during a temporary stopover in the Province by a ferry or vessel that originates or terminates its voyage outside of the Province;

(b) a vaping product purchased on docks, wharfs or other structures that are permanently attached to land

- (i) above the low-water mark of the Province, and
- (ii) outside the offshore area; or

(c) a vaping product purchased for use in respect of submarine mines or mine workings accessible from outside the offshore area.

46C (1) Every consumer shall pay to Her Majesty a tax at the rate of

- (a) for a vaping substance that is a liquid, fifty cents per millilitre;
- (b) for a vaping substance that is a solid and is not subject to tax under Part III, fifty cents per gram;
- (c) for vaping devices other than vaping packages, twenty per cent of the manufacturer's or importer's suggested retail selling price; and
- (d) for vaping packages, the greater of
 - (i) twenty per cent of the manufacturer's or importer's suggested retail selling price, and
 - (ii) fifty cents per millilitre or gram of the included vaping substance.

(2) For the purpose of this Part, every consumer of a vaping product is deemed to have purchased the vaping product from a vendor at a retail sale in the Province and the vaping product is deemed to have passed at the sale.

46D Every person who

- (a) brings a vaping product into the Province; or
- (b) receives delivery in the Province of a vaping product acquired by that person for value
 - (i) for that person's own consumption or use in the Province, or for the consumption or use in the Province of other persons at that person's expense, or
 - (ii) on behalf of, or as agent for, a principal who desires to acquire the vaping product for consumption or use in the Province by such principal or other persons at the principal's expense,

shall immediately

- (c) report the matter in writing to the Commissioner;
- (d) supply to the Commissioner the invoice and all other pertinent information as required by the Commissioner in respect of the consumption or use of the vaping product; and
- (e) pay to Her Majesty the same tax in respect of the consumption or use of the vaping product as would have been payable if the vaping product had been purchased at a retail sale in the Province.

46E (1) Where the Commissioner deems fit, the Commissioner may make a valuation of a vaping product that passes at any sale, and thereupon the sale price for the purpose of taxation pursuant to this Part is as determined by the Commissioner.

(2) The Commissioner shall give notice in writing of a valuation pursuant to subsection (1) to the seller and purchaser, either by mail or by personal service.

46F (1) No person shall sell or agree to sell a vaping product to a consumer at a retail sale, by any means, including vending machines, unless the person has been granted, upon application in the manner required by the Commissioner, a retail vendor's permit and such permit is in force at the time of the sale.

(2) The Commissioner may refuse to issue a retail vendor's permit to more than one person at the same place of business.

46G The Commissioner may issue a wholesale vendor's permit upon application to the Commissioner by a person in the manner and form required by the Commissioner.

46H (1) No person shall be in possession of a vaping product

(a) on which tax has not been paid; or

(b) not purchased from a retail vendor who holds a valid retail vendor's permit, where the person in possession is a consumer.

(2) No retail vendor shall be in possession of a vaping product other than a vaping product purchased by the retail vendor from a wholesale vendor who, at the time of purchase, held a wholesale vendor's permit that was issued pursuant to this Part and that, at the time of purchase, was in force.

(3) No person shall distribute, sell, barter or offer for sale or as a gift a vaping product except as permitted by this Part or the regulations.

46I No person shall transport a vaping product unless, at the time the vaping product is being transported, that person is in possession of a bill of lading, waybill or other document showing the origin and destination of the vaping product.

46J No person who sells a vaping product shall advertise or hold out or state to the public or to any purchaser, directly or indirectly, that the tax or any part of the tax imposed pursuant to this Part will be assumed or absorbed by that person or that it will not be considered as an element in the price to the purchaser or, if added, that it or any part thereof will be refunded.

46K The judge of a court trying a prosecution for a contravention of this Part may, in the absence of proof to the contrary, infer that the substance in question is a vaping product by the substance's appearance or packaging and from the fact that a witness describes the substance as a vaping product.

46L (1) For the purpose of carrying into effect this Part according to its true intent and of supplying any deficiency therein and for the purpose of relaxing the strictness of the law relative to the incidence or the collection of the tax thereunder, in cases where, without relaxation, great public inconvenience or great hardship or injustice to persons or individuals could not be avoided, the Governor in Council may make such regulations as are considered necessary or advisable.

(2) Without limiting the generality of subsection (1), the Governor in Council may make regulations

(a) governing the acquisition, transportation, storage, possession and sale of a vaping product;

(b) prescribing products or devices to be included in the definition of vaping device for the purpose of subclause 46A(h)(ii);

(c) prescribing products or devices that are excluded from the definition of vaping device;

(d) prescribing vendors or classes of vendors for the purpose of subclause 46A(m)(iii);

(e) defining any word or expression used but not defined in this Part;

(f) respecting any matter deemed necessary or advisable to carry out effectively the intent and purpose of this Part.

(3) A regulation made pursuant to subsection (2) may, if it so provides, be retroactive in its operation to a date not earlier than July 1, 2020.

(4) The exercise by the Governor in Council of the authority contained in this Section is a regulation within the meaning of the *Regulations Act*.

46M Clause 46A(b) and Section 46B cease to have effect on such day as the Governor in Council orders and declares by proclamation.

46N The proceeds of any tax levied pursuant to this Part shall be paid into the General Revenue Fund of the Province.

11 Section 48 of Chapter 17, as amended by Chapter 6 of the Acts of 2005 and Chapter 2 of the Acts of 2006, is further amended by

(a) striking out “or III” in the second line of clause (c) and substituting “, III or IIIA”;

(b) striking out the semicolon at the end of subclause (g)(iii) and substituting a comma; and

(c) adding immediately after subclause (g)(iii) the following subclause:

(iv) vaping products as defined in Part IIIA of this Act;

12 Subsection 51(11) of Chapter 17 is amended by striking out “and III” in the second line and substituting “, III and IIIA”.

13 Subsection 54(1) of Chapter 17 is amended by adding “, if any,” immediately after “services” in the second line.

14 Clause 83(ca) of Chapter 17, as enacted by Chapter 3 of the Acts of 2001, is amended by striking out “Department of Health” in the first line and substituting “a department established by or pursuant to the *Public Service Act*”.

15 Chapter 17 is further amended by adding immediately after Section 89 the following Section:

89A (1) Every person who contravenes Part IIIA of this Act where no fine is otherwise specifically provided is liable on summary conviction to a fine of not less than two hundred and fifty dollars and not more than five thousand dollars.

(2) Subject to subsection (3), a person who unlawfully possesses, purchases, sells, transports, acquires or stores a vaping product, in contravention of this Act, commits an offence and is liable

(a) for a first conviction, to

(i) a fine of not less than five hundred dollars and not more than five thousand dollars, and

(ii) a fine equal to three times the tax that would have been due had the vaping product been sold to consumers required to pay the tax,

and, in default of payment, to imprisonment for a term not exceeding ninety days;

(b) for a subsequent conviction, to

(i) a fine of not less than five thousand dollars and not more than twenty-five thousand dollars, and

(ii) a fine equal to three times the tax that would have been due had the vaping product been sold to consumers required to pay the tax,

and, in default of payment, to imprisonment for a term not exceeding one hundred and eighty days.

(3) A wholesale vendor, or an employee of a wholesale vendor, who contravenes Part IIIA of this Act is liable, on summary conviction, to a fine of not less than five thousand dollars and not more than one hundred thousand dollars and, in default of payment, to imprisonment for a term not exceeding two years, and in any event shall, in addition, be ordered by the judge to pay the amount of the tax that is owing, including any arrears, penalties and interest on or before such date as is fixed by the judge.

(4) A person who fails to collect the tax imposed by Part IIIA of this Act is liable, on summary conviction, to a fine equal to the amount of the tax, including any arrears, penalties and interest that should have been collected as determined pursuant to this Act and, in addition, to a penalty of not less than twenty-five hundred dollars and not more than twenty-five thousand dollars and, in default of payment, to imprisonment for a term not exceeding one year.

(5) Where a court or judge convicts a person of a contravention of Part IIIA of this Act that involves the use of a vehicle to transport or store a vaping product, the court or judge shall forthwith make a report of the conviction to the Commissioner who shall report the conviction to the Registrar of Motor Vehicles in the case of a person who holds a driver's licence, vehicle permit or certificate of registration issued pursuant to the *Motor Vehicle Act*.

(6) Upon receipt of a report of the conviction of a person who holds a driver's licence, vehicle permit or certificate of registration issued pursuant to the *Motor Vehicle Act*, the Registrar of Motor Vehicles shall suspend the licence, permit or certificate of registration of the vehicle in respect of which the violation was committed for a period of three months for a first conviction, six months for a second conviction and one year for any subsequent conviction.

16 Subsection 92(2) of Chapter 17, as amended by Chapter 5 of the Acts of 1996, is further amended by

- (a) adding “or vaping products” immediately after “tobacco” in the third line of clause (h); and**
- (b) adding immediately after clause (q) the following clause:**
 - (qa) delegating any authority under this Act to any person;

PART V

TOBACCO ACCESS ACT

17 Clause 3(h) of Chapter 14 of the Acts of 1993, the *Tobacco Access Act*, as amended by Chapter 58 of the Acts of 2014, is further amended by adding “Part III or IIIA of” immediately after “of” in the second line.

PART VI

EFFECTIVE DATES

- 18 (1)** Section 3 has effect on and after May 2, 1991.
- (2)** Section 7 has effect on and after February 26, 2020.
- (3)** Section 10, except Sections 46C to 46E, subsection 46H(1) and Sections 46J, 46M and 46N of Chapter 17, as enacted by Section 10, has effect on and after July 1, 2020.
- (4)** Sections 46C to 46E, subsection 46H(1) and Sections 46J, 46M and 46N of Chapter 17, as enacted by Section 10, have effect on and after September 15, 2020.
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