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State of Minnesota

HOUSE OF REPRESENTATIVES

SPECIAL SESSION

H. F. No. 37

06/15/2021 Authored by Nash, Raleigh, Haley, Daudt, Neu Brindley and others
The bill was read for the first time and referred to the Committee on Commerce Finance and Policy

1.1 A bill for an act
1.2 relating to liquor; modifying certain taxation provisions; modifying off-sale limit
1.3 for microdistilleries; authorizing self-distribution for certain producers; modifying
1.4 certain malt liquor packaging and off-sale requirements; modifying brand
1.5 registration requirements; authorizing limited off-sale for bars and restaurants;
1.6 making clarifying, conforming, and technical changes; amending Minnesota
1.7 Statutes 2020, sections 297G.01, subdivision 3a; 297G.03, subdivisions 1, 6;
1.8 340A.101, by adding a subdivision; 340A.22, subdivision 4; 340A.24, subdivisions
1.9 3, 4; 340A.28, subdivisions 1, 2; 340A.285; 340A.301, subdivision 10, by adding
1.10 a subdivision; 340A.311; 340A.315, subdivisions 7, 8; repealing Minnesota Statutes
1.11 2020, sections 297G.03, subdivision 4; 340A.315, subdivision 4.

1.12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.13 Section 1. Minnesota Statutes 2020, section 297G.01, subdivision 3a, is amended to read:

1.14 Subd. 3a. Cider. "Cider" means a product that contains not less than one-half of one
1.15 percent nor more than seven 8-1/2 percent alcohol by volume and is made from the alcoholic
1.16 fermentation of the juice of apples or pears. Cider includes, but is not limited to, flavored,
1.17 sparkling, and carbonated cider.

1.18 EFFECTIVE DATE. This section is effective for tax due on sales after December 31,
1.19 2021.

1.20 Sec. 2. Minnesota Statutes 2020, section 297G.03, subdivision 1, is amended to read:

1.21 Subdivision 1. General rate; distilled spirits and wine. The following excise tax is
1.22 imposed on all distilled spirits and wine manufactured, imported, sold, or possessed in this
1.23 state:

	Standard	Metric
2.1		
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2.22 In computing the tax on a package of distilled spirits or wine, a proportional tax at a like
 2.23 rate on all fractional parts of a gallon or liter must be paid, except that the tax on a fractional
 2.24 part of a gallon less than 1/16 of a gallon is the same as for 1/16 of a gallon.

2.25 **EFFECTIVE DATE.** This section is effective for tax due on sales after December 31,
 2.26 2021.

2.27 Sec. 3. Minnesota Statutes 2020, section 297G.03, subdivision 6, is amended to read:

2.28 Subd. 6. **Small winery credit.** (a) A qualified winery producing wine or cider is entitled
 2.29 to a tax credit equal to the excise tax due under subdivision 1, paragraphs (b) to (g), on the
 2.30 wine or cider sold in any fiscal year beginning July 1. A qualified winery may take the credit
 2.31 on the 18th day of each month, but the total credit allowed may not exceed, in any fiscal
 2.32 year, the lesser of:

2.33 (1) the liability for tax; or

2.34 (2) \$136,275.

2.35 (b) For purposes of this subdivision, "qualified winery" means a winery, whether or not
 2.36 located in this state, that manufactured fewer than 75,000 gallons of wine ~~and~~ or 250,000
 2.37 barrels of cider in the calendar year immediately preceding the fiscal year for which the
 2.38 credit under this subdivision is claimed.

3.1 (c) By February 15 of each year, beginning in 2019, the commissioner of revenue shall
 3.2 provide a report to the chairs and ranking minority members of the legislative committees
 3.3 having jurisdiction over taxes that includes the following information for the previous fiscal
 3.4 year, regarding the credit authorized under this subdivision:

3.5 (1) the total amount of the tax expenditure for the credit, including the amount of credits
 3.6 claimed by Minnesota small wineries and out-of-state small wineries; and

3.7 (2) the number of claimants for the credit, including the number of Minnesota small
 3.8 wineries and the number of out-of-state small wineries.

3.9 **EFFECTIVE DATE.** This section is effective for tax due on sales after December 31,
 3.10 2021.

3.11 Sec. 4. Minnesota Statutes 2020, section 340A.101, is amended by adding a subdivision
 3.12 to read:

3.13 **Subd. 4c. Cider.** "Cider" means a product that contains not less than one-half of one
 3.14 percent nor more than 8-1/2 percent alcohol by volume and is made from the alcoholic
 3.15 fermentation of the juice of apples or pears. Cider includes but is not limited to flavored,
 3.16 sparkling, and carbonated cider.

3.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

3.18 Sec. 5. Minnesota Statutes 2020, section 340A.22, subdivision 4, is amended to read:

3.19 **Subd. 4. Off-sale license.** A microdistillery may be issued a license by the local licensing
 3.20 authority for off-sale of distilled spirits, with the approval of the commissioner. The license
 3.21 may allow the sale of ~~one 375 milliliter bottle~~ up to 1.5 liters per customer per day of product
 3.22 manufactured on site, subject to the following requirements:

3.23 (1) off-sale hours of sale must conform to hours of sale for retail off-sale licensees in
 3.24 the licensing municipality; and

3.25 (2) no brand may be sold at the microdistillery unless it is also available for distribution
 3.26 by wholesalers.

3.27 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.1 Sec. 6. Minnesota Statutes 2020, section 340A.24, subdivision 3, is amended to read:

4.2 Subd. 3. **Total retail sales.** A brew pub's total retail sales at on- or off-sale under this
 4.3 section may not exceed 3,500 barrels per year, provided that off-sales may not exceed 768
 4.4 ounces per customer per day nor total more than 750 barrels per year.

4.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.6 Sec. 7. Minnesota Statutes 2020, section 340A.24, subdivision 4, is amended to read:

4.7 Subd. 4. **Interest in other license.** (a) A brew pub may hold or have an interest in other
 4.8 retail on-sale licenses, but may not have an ownership interest in whole or in part, or be an
 4.9 officer, director, agent, or employee of, any other manufacturer, brewer, importer, ~~or~~
 4.10 ~~wholesaler~~, or be an affiliate thereof whether the affiliation is corporate or by management,
 4.11 direction, or control.

4.12 (b) Notwithstanding this prohibition, a brew pub may be an affiliate or subsidiary
 4.13 company of a brewer licensed in Minnesota or elsewhere if that brewer's only manufacture
 4.14 of malt liquor is:

4.15 (1) manufacture licensed under section 340A.301, subdivision 6, clause (d);

4.16 (2) manufacture in another state for consumption exclusively in a restaurant located in
 4.17 the place of manufacture; or

4.18 (3) manufacture in another state for consumption primarily in a restaurant located in or
 4.19 immediately adjacent to the place of manufacture if the brewer was licensed under section
 4.20 340A.301, subdivision 6, clause (d), on January 1, 1995.

4.21 (c) A brew pub may own or have an interest in a malt liquor wholesaler that sells only
 4.22 the brew pub's products provided that no more than 200 barrels a year may be distributed
 4.23 under this paragraph.

4.24 **EFFECTIVE DATE.** This section is effective the day following final enactment.

4.25 Sec. 8. Minnesota Statutes 2020, section 340A.28, subdivision 1, is amended to read:

4.26 Subdivision 1. **License; limitations.** A brewer licensed under section 340A.301,
 4.27 subdivision 6, clause (c), (i), or (j), may be issued a license by a municipality for off-sale
 4.28 of malt liquor at its licensed premises that has been produced and packaged by the brewer.
 4.29 The license must be approved by the commissioner. A brewer may only have one license
 4.30 under this subdivision. The amount of malt liquor sold at off-sale may not exceed 768 ounces
 4.31 per customer per day nor 750 barrels annually. Off-sale of malt liquor shall be limited to

5.1 the legal hours for off-sale at exclusive liquor stores in the jurisdiction in which the brewer
 5.2 is located, and the malt liquor sold off-sale must be removed from the premises before the
 5.3 applicable off-sale closing time at exclusive liquor stores, except that malt liquor in growlers
 5.4 only may be sold at off-sale on Sundays. Sunday sales must be approved by the licensing
 5.5 jurisdiction and hours may be established by those jurisdictions. Packaging of malt liquor
 5.6 for off-sale under this subdivision must comply with section 340A.285.

5.7 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.8 Sec. 9. Minnesota Statutes 2020, section 340A.28, subdivision 2, is amended to read:

5.9 Subd. 2. **Prohibition.** A municipality may not issue a license under this section to a
 5.10 brewer if the brewer seeking the license, or any person having an economic interest in the
 5.11 brewer seeking the license or exercising control over the brewer seeking the license, is a
 5.12 ~~brewer that brews more than 20,000 barrels of its own brands of malt liquor annually or a~~
 5.13 winery that produces more than 250,000 gallons of wine annually.

5.14 **EFFECTIVE DATE.** This section is effective the day following final enactment.

5.15 Sec. 10. Minnesota Statutes 2020, section 340A.285, is amended to read:

5.16 **340A.285 GROWLERS PACKAGING.**

5.17 (a) Malt liquor authorized for off-sale pursuant to section 340A.24 or 340A.28 shall be
 5.18 packaged in a container that is not more than 64 ounces in size and that is consistent with
 5.19 the provisions of Minnesota Rules, parts 7515.1080 to 7515.1120.

5.20 (b) Packaging of malt liquor in 64-ounce containers commonly known as "growlers" or
 5.21 in 750 milliliter bottles. ~~The containers or bottles~~ shall bear a twist-type closure, cork,
 5.22 stopper, or plug. At the time of sale, a paper or plastic adhesive band, strip, or sleeve shall
 5.23 be applied to the container or bottle and extended over the top of the twist-type closure,
 5.24 cork, stopper, or plug forming a seal that must be broken upon opening the container or
 5.25 bottle. The adhesive band, strip, or sleeve shall bear the name and address of the brewer.
 5.26 ~~The containers or bottles~~

5.27 (c) Containers shall be identified as malt liquor, contain the name of the malt liquor,
 5.28 bear the name and address of the brew pub or brewer selling the malt liquor, and shall be
 5.29 considered intoxicating liquor unless the alcoholic content is labeled as otherwise in
 5.30 accordance with the provisions of Minnesota Rules, part 7515.1100.

5.31 ~~(b)~~ (d) A brew pub or brewer, or exclusive liquor store may, but is not required to, refill
 5.32 any container or bottle with malt liquor for off-sale at the request of the customer. A brew

6.1 pub or brewer, or exclusive liquor store refilling a container or bottle must do so at its
 6.2 licensed premises and the container or bottle must be filled at the tap at the time of sale. A
 6.3 container or bottle refilled under this paragraph must be sealed and labeled in the manner
 6.4 described in paragraph (a).

6.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.6 Sec. 11. Minnesota Statutes 2020, section 340A.301, is amended by adding a subdivision
 6.7 to read:

6.8 **Subd. 9a. Additional permitted interest in wholesale business.** A winery may own or
 6.9 have an interest in a wine wholesaler that sells only the winery's products.

6.10 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.11 Sec. 12. Minnesota Statutes 2020, section 340A.301, subdivision 10, is amended to read:

6.12 **Subd. 10. Sales without license.** A licensed brewer or brew pub may without an
 6.13 additional license sell malt liquor to employees or retired former employees, in amounts of
 6.14 not more than 768 fluid ounces in a week for off-premise consumption only. A collector of
 6.15 commemorative bottles, those terms are as defined in section 297G.01, subdivisions 4 and
 6.16 5, may sell them to another collector without a license. It is also lawful for a collector of
 6.17 beer cans to sell unopened cans of a brand which has not been sold commercially for at
 6.18 least two years to another collector without obtaining a license. The amount sold to any one
 6.19 collector in any one month shall not exceed 768 fluid ounces. A licensed manufacturer of
 6.20 wine containing not more than 25 percent alcohol by volume ~~not less than 51 percent wine~~
 6.21 ~~made from Minnesota-grown agricultural products~~ may sell at on-sale or off-sale wine made
 6.22 on the licensed premises without a further license.

6.23 **EFFECTIVE DATE.** This section is effective the day following final enactment.

6.24 Sec. 13. Minnesota Statutes 2020, section 340A.311, is amended to read:

6.25 **340A.311 BRAND REGISTRATION.**

6.26 (a) Except as provided in paragraph (e), a brand of intoxicating liquor or 3.2 percent
 6.27 malt liquor may not be manufactured, imported into, or sold in the state unless the brand
 6.28 label has been registered with and approved by the commissioner. A brand registration must
 6.29 be renewed ~~every three years~~ in order to remain in effect. The fee for an ~~initial~~ annual brand
 6.30 registration is \$15 and the fee for a three-year registration is \$40. The fee for a three-year
 6.31 brand registration renewal is \$30. The brand label of a brand of intoxicating liquor or 3.2

7.1 percent malt liquor for which the brand registration has expired, is conclusively deemed
7.2 abandoned by the manufacturer or importer.

7.3 (b) In this section "brand" and "brand label" include trademarks and designs used in
7.4 connection with labels.

7.5 (c) The label of any brand of wine or intoxicating or nonintoxicating malt beverage may
7.6 be registered only by the brand owner or authorized agent. No such brand may be imported
7.7 into the state for sale without the consent of the brand owner or authorized agent. This
7.8 section does not limit the provisions of section 340A.307.

7.9 (d) The commissioner shall refuse to register a malt liquor brand label, and shall revoke
7.10 the registration of a malt liquor brand label already registered, if the brand label states or
7.11 implies in a false or misleading manner a connection with an actual living or dead American
7.12 Indian leader. This paragraph does not apply to a brand label registered for the first time in
7.13 Minnesota before January 1, 1992.

7.14 (e) Brewers or a manufacturer producing cider are not required to register a brand label
7.15 under this section if the malt liquor or cider is sold solely for consumption on tap at a licensed
7.16 premises.

7.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

7.18 Sec. 14. Minnesota Statutes 2020, section 340A.315, subdivision 7, is amended to read:

7.19 Subd. 7. **Distilled spirits permitted.** Farm wineries licensed under this section are
7.20 permitted to manufacture distilled spirits as defined under section 340A.101, subdivision
7.21 9, which may exceed 25 percent alcohol by volume, made from ~~Minnesota-produced or~~
7.22 ~~Minnesota-grown~~ grapes, grape juice, other fruit bases, or honey. The following conditions
7.23 pertain:

7.24 (1) no farm winery or firm owning multiple farm wineries may manufacture more than
7.25 5,000 gallons of distilled spirits in a given year, and this 5,000 gallon limit is part of the
7.26 50,000 gallon limit found in subdivision 2;

7.27 (2) a farm winery may not sell at on-sale, off-sale, or wholesale, a distilled spirit that
7.28 does not qualify as a Minnesota spirit. For purposes of this section, to qualify as a Minnesota
7.29 spirit, 50 percent of the distilled spirit must be processed and distilled on premises. Distilled
7.30 spirits produced or in production prior to July 1, 2017, are not counted as part of the
7.31 calculations under this clause;

8.1 (3) farm wineries must pay an additional annual fee of \$50 to the commissioner before
8.2 beginning production of distilled spirits; and

8.3 (4) farm wineries may not sell or produce distilled spirits for direct sale to manufacturers
8.4 licensed under section 340A.301, subdivision 6, paragraph (a).

8.5 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.6 Sec. 15. Minnesota Statutes 2020, section 340A.315, subdivision 8, is amended to read:

8.7 Subd. 8. **Bulk wine.** Farm wineries licensed under this section are permitted to purchase
8.8 and use bulk wine, provided that:

8.9 (1) the quantity of bulk wine in any farm winery's annual production shall not exceed
8.10 ten percent of that winery's annual production; and

8.11 ~~(2) the bulk wine under subdivision 4 shall be counted as a portion of the 49 percent of~~
8.12 ~~product that need not be Minnesota-grown and may be imported from outside Minnesota;~~
8.13 ~~and~~

8.14 ~~(3)~~ (2) the bulk wine must be blended and not directly bottled.

8.15 "Bulk wine," as used in this subdivision, means fermented juice from grapes, other fruit
8.16 bases, or honey.

8.17 **EFFECTIVE DATE.** This section is effective the day following final enactment.

8.18 Sec. 16. **LIMITED OFF-SALE FOR BARS AND RESTAURANTS.**

8.19 (a) A qualifying licensee may offer off-sales of malt liquor, hard seltzer, cider, wine,
8.20 and cocktails with a prepared food take-out order, without obtaining an additional license,
8.21 subject to the following limitations:

8.22 (1) any sale of malt liquor, hard seltzer, cider, wine, and cocktails is made in conjunction
8.23 with and is incidental to the sale of prepared food for take-out;

8.24 (2) the alcoholic beverages other than cocktails are sold in their original, unopened
8.25 packaging;

8.26 (3) cocktails must be packaged in a container with a secure lid or cap and in a manner
8.27 designed to prevent consumption without removal of the lid or cap;

8.28 (4) no more than 72 ounces in total of malt liquor, hard seltzer, and cider; 128 ounces
8.29 in total of malt liquor, if packaged in a growler; 750 milliliters of wine; and 34 ounces of
8.30 cocktails may be sold per prepared food take-out order;

9.1 (5) the qualifying licensee must confirm that the person picking up the prepared food
9.2 take-out order is at least 21 years of age as provided by Minnesota Statutes, section 340A.503,
9.3 subdivision 6; and

9.4 (6) the qualifying licensee must notify the insurer providing the coverage required by
9.5 Minnesota Statutes, section 340A.409, that it is making off-sales under this section.

9.6 (b) All laws and rules relating to the off-sale of liquor under Minnesota Statutes, chapter
9.7 340A, not inconsistent with this section apply to the sales allowed by this section including
9.8 but not limited to Minnesota Statutes, sections 340A.502 to 340A.504.

9.9 (c) For purposes of this section, "qualifying licensee" means an establishment licensed
9.10 under Minnesota Statutes, section 340A.404, subdivision 1, paragraph (a), or subdivision
9.11 6, paragraph (a).

9.12 **EFFECTIVE DATE.** This section is effective the day following final enactment.

9.13 Sec. 17. **REPEALER.**

9.14 (a) Minnesota Statutes 2020, section 297G.03, subdivision 4, is repealed.

9.15 (b) Minnesota Statutes 2020, section 340A.315, subdivision 4, is repealed.

9.16 **EFFECTIVE DATE.** Paragraph (a) is effective for tax due on sales after December
9.17 31, 2021. Paragraph (b) is effective the day following final enactment.

297G.03 DISTILLED SPIRITS AND WINE; RATE OF TAX.

Subd. 4. **Bottle tax.** A tax of one cent is imposed on each bottle or container of distilled spirits and wine except as provided in 297G.07, subdivision 3. The wholesaler is responsible for the payment of this tax when the bottles of distilled spirits and wine are removed from inventory for sale, delivery, or shipment.

340A.315 FARM WINERY LICENSE.

Subd. 4. **Minnesota products.** If Minnesota-produced or -grown grapes, grape juice, other fruit bases, or honey is not available in quantities sufficient to constitute a majority of the table, sparkling, or fortified wine produced by a farm winery, the holder of the farm winery license may file an affidavit stating this fact with the commissioner. If the commissioner, after consultation with the commissioner of agriculture, determines this to be true, the farm winery may use imported products and shall continue to be governed by the provisions of this section. The affidavit is effective for a period of one year, after which time the farm winery must use the required amount of Minnesota products as provided by subdivision 1 unless the farm winery holder files a new affidavit with the commissioner.