

This Document can be made available in alternative formats upon request

State of Minnesota
HOUSE OF REPRESENTATIVES
NINETIETH SESSION

H. F. No. 791

02/02/2017 Authored by Garofalo, Applebaum, Koznick, Hoppe, Davids and others
The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform

1.1 A bill for an act
1.2 relating to liquor; regulating and providing for direct ship wineries; amending
1.3 Minnesota Statutes 2016, sections 295.75, subdivision 4; 297A.83, subdivision 1;
1.4 297G.07, subdivision 1; 299A.706; 340A.304; 340A.417; proposing coding for
1.5 new law in Minnesota Statutes, chapter 340A.

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

1.7 Section 1. Minnesota Statutes 2016, section 295.75, subdivision 4, is amended to read:

1.8 Subd. 4. **Tax collection required.** A liquor retailer with nexus in Minnesota or a direct
1.9 ship winery as defined in section 340A.550, who is not subject to tax under subdivision 2,
1.10 is required to collect the tax imposed under subdivision 3 from the purchaser of the liquor
1.11 and give the purchaser a receipt for the tax paid. The tax collected must be remitted to the
1.12 commissioner in the same manner prescribed for the taxes imposed under chapter 297A.

1.13 **EFFECTIVE DATE.** This section is effective for sales and purchases occurring on or
1.14 after June 30, 2017.

1.15 Sec. 2. Minnesota Statutes 2016, section 297A.83, subdivision 1, is amended to read:

1.16 Subdivision 1. **Persons applying.** (a) A retailer required to collect and remit sales taxes
1.17 under section 297A.66 or a direct ship winery as defined under section 340A.550 shall file
1.18 with the commissioner an application for a permit under this section.

1.19 (b) A retailer making retail sales from outside this state to a destination within this state
1.20 who is not required to obtain a permit under paragraph (a) may nevertheless voluntarily file
1.21 an application for a permit.

2.1 (c) The commissioner may require any person or class of persons obligated to file a use
2.2 tax return under section 289A.11, subdivision 3, to file an application for a permit.

2.3 **EFFECTIVE DATE.** This section is effective for permits applied for after June 30,
2.4 2017.

2.5 Sec. 3. Minnesota Statutes 2016, section 297G.07, subdivision 1, is amended to read:

2.6 Subdivision 1. **Exemptions.** The following are not subject to the excise tax:

2.7 (1) Sales by a manufacturer, brewer, or wholesaler for shipment outside the state in
2.8 interstate commerce.

2.9 (2) Alcoholic beverages sold or transferred between Minnesota wholesalers.

2.10 (3) Sales to common carriers engaged in interstate transportation of passengers, except
2.11 as provided in this chapter.

2.12 (4) Malt beverages served by a brewery for on-premise consumption at no charge, or
2.13 distributed to brewery employees for on-premise consumption under a labor contract.

2.14 ~~(5) Shipments of wine to Minnesota residents under section 340A.417.~~

2.15 ~~(6)~~ (5) Fruit juices naturally fermented or beer naturally brewed in the home for family
2.16 use and not sold or offered for sale.

2.17 ~~(7)~~ (6) Sales of wine for sacramental purposes under section 340A.316.

2.18 ~~(8)~~ (7) Alcoholic beverages sold to authorized manufacturers of food products or
2.19 pharmaceutical firms. The alcoholic beverage must be used exclusively in the manufacture
2.20 of food products or medicines. For purposes of this clause, "manufacturer" means a person
2.21 who manufactures food products intended for sale to wholesalers or retailers for ultimate
2.22 sale to the consumer.

2.23 ~~(9)~~ (8) Liqueur-filled candy.

2.24 ~~(10)~~ (9) Sales to a federal agency, that the state of Minnesota is prohibited from taxing
2.25 under the Constitution or laws of the United States or under the Constitution of Minnesota.

2.26 ~~(11)~~ (10) Sales to Indian tribes as defined in section 297G.08.

2.27 ~~(12)~~ (11) Shipments of intoxicating liquor from foreign countries to diplomatic personnel
2.28 of foreign countries assigned to service in this state.

2.29 ~~(13)~~ (12) Shipments of bulk distilled spirits or bulk wine to farm wineries licensed under
2.30 section 340A.315 for input to the final product.

3.1 **EFFECTIVE DATE.** This section is effective July 1, 2017.

3.2 Sec. 4. Minnesota Statutes 2016, section 299A.706, is amended to read:

3.3 **299A.706 ALCOHOL ENFORCEMENT ACCOUNT; APPROPRIATION.**

3.4 (a) An alcohol enforcement account is created in the special revenue fund, consisting
 3.5 of money credited to the account by law. Money in the account may be appropriated by law
 3.6 for (1) costs of the Alcohol and Gambling Division related to administration and enforcement
 3.7 of sections 340A.403, subdivision 4; 340A.414, subdivision 1a; ~~and~~ 340A.504, subdivision
 3.8 7; 340A.550, subdivisions 2, 4, 5, and 6; and 340A.560, and (2) costs of the State Patrol.

3.9 (b) The commissioner shall transfer from the account to the trunk highway fund
 3.10 \$3,500,000 in fiscal year 2004 and \$3,700,000 in fiscal year 2005, or so much thereof as is
 3.11 necessary to pay costs of adding State Patrol positions.

3.12 **EFFECTIVE DATE.** This section is effective July 1, 2017.

3.13 Sec. 5. Minnesota Statutes 2016, section 340A.304, is amended to read:

3.14 **340A.304 LICENSE SUSPENSION AND REVOCATION.**

3.15 The commissioner shall revoke, or suspend for up to 60 days, a license issued under
 3.16 section 340A.301 ~~or~~ 340A.302, or 340A.550, or impose a fine of up to \$2,000 for each
 3.17 violation, on a finding that the licensee has violated a state law or rule of the commissioner
 3.18 relating to the possession, sale, transportation, or importation of alcoholic beverages. A
 3.19 license revocation or suspension under this section is a contested case under sections 14.57
 3.20 to 14.69 of the Administrative Procedure Act.

3.21 **EFFECTIVE DATE.** This section is effective July 1, 2017.

3.22 Sec. 6. Minnesota Statutes 2016, section 340A.417, is amended to read:

3.23 **340A.417 SHIPMENTS INTO MINNESOTA.**

3.24 (a) Notwithstanding section 297G.07, subdivision 2, or any provision of this chapter
 3.25 except for section 340A.550, a winery licensed in a state other than Minnesota, or a winery
 3.26 located in Minnesota, may ship, for personal use and not for resale, not more than two cases
 3.27 of wine, containing a maximum of nine liters per case, in any calendar year to any resident
 3.28 of Minnesota age 21 or over. ~~Delivery of a shipment under this section may not be deemed~~
 3.29 ~~a sale in this state.~~

4.1 (b) The shipping container of any wine sent under this section must be clearly marked
4.2 "Alcoholic Beverages: adult signature (over 21 years of age) required."

4.3 (c) It is not the intent of this section to impair the distribution of wine through distributors
4.4 or importing distributors, but only to permit shipments of wine for personal use.

4.5 (d) Except for a violation of section 295.75, or chapters 297A and 297G, no criminal
4.6 penalty may be imposed on a person for a violation of this section or section 340A.550 or
4.7 340A.560 other than a violation described in paragraph (e) or (f). Whenever it appears to
4.8 the commissioner that any person has engaged in any act or practice constituting a violation
4.9 of this section, or section 340A.550 or 340A.560 and the violation is not within two years
4.10 of any previous violation of this section, the commissioner shall issue and cause to be served
4.11 upon the person an order requiring the person to cease and desist from violating this section.
4.12 The order must give reasonable notice of the rights of the person to request a hearing and
4.13 must state the reason for the entry of the order. Unless otherwise agreed between the parties,
4.14 a hearing shall be held not later than ~~seven~~ 20 days after the request for the hearing is
4.15 received by the commissioner after which and within 20 days after the receipt of the
4.16 administrative law judge's report and subsequent exceptions and argument, the commissioner
4.17 shall issue an order vacating the cease and desist order, modifying it, or making it permanent
4.18 as the facts require. If no hearing is requested within 30 days of the service of the order, the
4.19 order becomes final and remains in effect until modified or vacated by the commissioner.
4.20 All hearings shall be conducted in accordance with the provisions of chapter 14. If the
4.21 person to whom a cease and desist order is issued fails to appear at the hearing after being
4.22 duly notified, the person shall be deemed in default, and the proceeding may be determined
4.23 against the person upon consideration of the cease and desist order, the allegations of which
4.24 may be deemed to be true.

4.25 (e) Any person who violates this section or section 340A.550 or 340A.560 within two
4.26 years of a violation for which a cease and desist order was issued under paragraph (d), is
4.27 guilty of a misdemeanor.

4.28 (f) Any person who commits a third or subsequent violation of this section or section
4.29 340A.550 or 340A.560 within any subsequent two-year period is guilty of a gross
4.30 misdemeanor.

4.31 **EFFECTIVE DATE.** This section is effective July 1, 2017.

5.1 Sec. 7. [340A.550] PROHIBITION ON UNAUTHORIZED DIRECT SHIPMENTS
 5.2 OF WINE.

5.3 Subdivision 1. Definitions. (a) "Direct ship purchaser" means a person who purchases
 5.4 wine for personal use and not for resale from a winery located in a state other than Minnesota
 5.5 for delivery to a Minnesota address.

5.6 (b) "Direct ship winery" means a winery licensed in a state other than Minnesota that
 5.7 manufactures and makes a retail sale of wine and ships the wine to a direct ship purchaser
 5.8 as authorized under section 340A.417.

5.9 (c) "Third-party provider" means a person, other than a common carrier, authorized by
 5.10 a direct ship winery to ship wine to a direct ship purchaser on the direct ship winery's behalf.

5.11 Subd. 2. License requirements. (a) A direct ship winery must apply to the commissioner
 5.12 for a direct ship license. The commissioner must not issue a license under this section unless
 5.13 the applicant:

5.14 (1) is a licensed winery in a state other than Minnesota and provides a copy of its current
 5.15 license in any state in which it is licensed to manufacture wine;

5.16 (2) provides a shipping address list, including all addresses from which it intends to ship
 5.17 wine;

5.18 (3) provides the name and address of any third-party provider, other than a common
 5.19 carrier, authorized to ship wine on behalf of the direct ship winery, and provides a copy of
 5.20 the appointment of the third-party provider;

5.21 (4) agrees to comply with the requirements of subdivision 5; and

5.22 (5) consents to the jurisdiction of the Departments of Public Safety and Revenue, the
 5.23 courts of this state, and any statute, law, or rule in this state related to the administration or
 5.24 enforcement of this section, including any provision authorizing the commissioners of public
 5.25 safety and revenue to audit a direct ship winery for compliance with this and any related
 5.26 section.

5.27 (b) A direct ship winery obtaining a license under this section must annually renew its
 5.28 license by January 1 of each year and must inform the commissioner at the time of renewal
 5.29 of any changes to the information previously provided in paragraph (a).

5.30 (c) The application fee for a license is \$..... The fee for a license renewal is \$..... The
 5.31 commissioner must deposit all fees received under this subdivision in the alcohol enforcement
 5.32 account in the special revenue fund established under section 299A.706.

6.1 Subd. 3. **Direct ship wineries; restrictions.** (a) A direct ship winery may only ship
6.2 wine from an address provided to the commissioner in subdivision 2, paragraph (a), clause
6.3 (2), or through a third-party provider whose name and address the licensee provided to the
6.4 commissioner in subdivision 2, paragraph (a), clause (3).

6.5 (b) Only wine from a direct ship winery's own production may be shipped by a direct
6.6 ship winery or the direct ship winery's third-party provider.

6.7 (c) A direct ship winery must not ship wine to a direct ship purchaser if it does not control
6.8 all winery operations.

6.9 Subd. 4. **Third-party providers.** (a) A third-party provider is an agent of the direct ship
6.10 winery and the direct ship winery is responsible for the third-party provider's compliance
6.11 with this section.

6.12 (b) A third-party provider must not ship wine to a direct ship purchaser if it controls the
6.13 operation of a direct ship winery.

6.14 (c) Unless the direct ship winery has supplied the required statement to the commissioner,
6.15 a third-party provider must provide a monthly statement to the commissioner, on a form
6.16 prescribed by the commissioner, detailing each shipment of wine made to a resident of this
6.17 state and any other information required by the commissioner.

6.18 (d) Before shipping wine to a direct ship purchaser, a third-party provider must verify
6.19 that a direct ship winery has obtained the proper license from the commissioner as required
6.20 under this section and that the direct ship winery appears on the licensed direct ship wineries
6.21 list required in subdivision 6.

6.22 Subd. 5. **Taxation.** A direct ship winery must:

6.23 (1) collect and remit the liquor gross receipts tax as required in section 295.75;

6.24 (2) apply for a permit as required in section 297A.83 and collect and remit as required
6.25 the sales and use tax imposed in chapter 297A;

6.26 (3) remit the tax as required in chapter 297G; and

6.27 (4) provide a statement to the commissioner, on a form prescribed by the commissioner,
6.28 detailing each shipment of wine made to a resident of this state and any other information
6.29 required by the commissioner.

6.30 Subd. 6. **Common carriers; shipments prohibited.** The commissioner must maintain
6.31 a licensed direct ship wineries list, including addresses, of persons who are authorized to
6.32 ship wine into Minnesota. The list must not include persons whose licenses were suspended

7.1 or revoked under section 340A.304 in the prior month and any third-party providers who
 7.2 have failed to comply with the requirements of this section in the prior month. The
 7.3 commissioner must provide this list on a monthly basis to any common carrier or third-party
 7.4 provider doing business in this state. A common carrier must not deliver a package to a
 7.5 Minnesota address if it contains an alcoholic beverage and the package is shipped from a
 7.6 person or address not on the list.

7.7 Subd. 7. **Private or nonpublic data; classification and sharing.** (a) Data collected,
 7.8 created, or maintained by the commissioner as required under this section are classified as
 7.9 private data on individuals or nonpublic data, as defined in section 13.02, subdivisions 9
 7.10 and 12.

7.11 (b) The commissioner must share data classified as private or nonpublic under this
 7.12 section with the commissioner of revenue, for purposes of administering section 295.75
 7.13 and chapters 289A, 297A, and 297G.

7.14 Subd. 8. **Enforcement; penalties.** Section 340A.417, paragraphs (d), (e), and (f), apply
 7.15 to this section.

7.16 **EFFECTIVE DATE.** This section is effective July 1, 2017.

7.17 Sec. 8. **[340A.560] BOOTLEGGING PROHIBITED.**

7.18 Subdivision 1. **Direct shipments prohibited.** (a) No person may ship an alcoholic
 7.19 beverage for personal use, and not for resale, to a Minnesota address unless:

7.20 (1) the person shipping the alcoholic beverage obtains a license as required in section
 7.21 340A.405 or 340A.550; or

7.22 (2) the shipment originates from a person holding a license as required in clause (1).

7.23 (b) A person making a shipment under paragraph (a) must provide a statement to the
 7.24 commissioner, on a form prescribed by the commissioner, detailing each shipment of an
 7.25 alcoholic beverage made to a resident of this state and any other information required by
 7.26 the commissioner.

7.27 (c) Nothing in this section prohibits a person from shipping an alcoholic beverage to a
 7.28 wholesaler licensed in section 340A.3021.

7.29 Subd. 2. **Enforcement; penalties.** Section 340A.417, paragraphs (d), (e), and (f), apply
 7.30 to this section.

7.31 **EFFECTIVE DATE.** This section is effective July 1, 2017.