

**SENATE
STATE OF MINNESOTA
NINETY-SECOND SESSION**

S.F. No. 2529

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DATE
05/13/2021

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Introduction and first reading
Referred to Taxes

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to taxation; tobacco products; clarifying obligations for certain out-of-state
1.3 tobacco products retailers; amending Minnesota Statutes 2020, sections 297F.01,
1.4 by adding a subdivision; 297F.031; 297F.05, by adding a subdivision; 297F.09,
1.5 subdivisions 3, 4a, 7, 10; 325F.781, subdivisions 1, 5, 6.

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

1.7 Section 1. Minnesota Statutes 2020, section 297F.01, is amended by adding a subdivision
1.8 to read:

1.9 Subd. 7a. **Delivery sale.** "Delivery sale" has the meaning given in section 325F.781,
1.10 subdivision 1.

1.11 **EFFECTIVE DATE.** This section is effective January 1, 2022.

1.12 Sec. 2. Minnesota Statutes 2020, section 297F.031, is amended to read:

1.13 **297F.031 REGISTRATION REQUIREMENT.**

1.14 Prior to making delivery sales ~~or shipping cigarettes or tobacco products in connection~~
1.15 ~~with any sales,~~ an out-of-state retailer ~~shall~~ must file with the Department of Revenue a
1.16 statement setting forth the out-of-state retailer's name, trade name, ~~and the address of the~~
1.17 ~~out-of-state retailer's,~~ principal place of business, and any other place of business.

1.18 **EFFECTIVE DATE.** This section is effective for all delivery sales occurring after
1.19 December 31, 2021.

2.1 Sec. 3. Minnesota Statutes 2020, section 297F.05, is amended by adding a subdivision to
2.2 read:

2.3 Subd. 4b. **Retailer collection and remittance of use tax.** A retailer or out-of-state
2.4 retailer must, for any delivery sale, collect and pay to the state any use tax imposed by this
2.5 section. The retailer or out-of-state retailer must give the purchaser a receipt for the tax paid.

2.6 **EFFECTIVE DATE.** This section is effective for all delivery sales occurring after
2.7 December 31, 2021.

2.8 Sec. 4. Minnesota Statutes 2020, section 297F.09, subdivision 3, is amended to read:

2.9 Subd. 3. **Use tax return; cigarette or tobacco products consumer and retailers**
2.10 **making delivery sales.** (a) On or before the 18th day of each calendar month, a consumer
2.11 who, during the preceding calendar month, has acquired title to or possession of cigarettes
2.12 or tobacco products for use or storage in this state, upon which cigarettes or tobacco products
2.13 the tax imposed by this chapter has not been paid, shall file a return with the commissioner
2.14 showing the quantity of cigarettes or tobacco products so acquired. The return must be made
2.15 in the form and manner prescribed by the commissioner, and must contain any other
2.16 information required by the commissioner. The return must be accompanied by a remittance
2.17 for the full unpaid tax liability shown by it.

2.18 (b) On or before the 18th day of each calendar month, a retailer or out-of-state retailer
2.19 who, during the preceding calendar month, made delivery sales must file a return with the
2.20 commissioner showing the quantity of cigarettes or tobacco products so delivered. The
2.21 commissioner shall prescribe the content, format, and manner of returns pursuant to section
2.22 270C.30. The return must be accompanied by a remittance for the full unpaid tax liability.

2.23 **EFFECTIVE DATE.** This section is effective for all delivery sales occurring after
2.24 December 31, 2021.

2.25 Sec. 5. Minnesota Statutes 2020, section 297F.09, subdivision 4a, is amended to read:

2.26 Subd. 4a. **Reporting requirements.** No later than the 18th day of each calendar month,
2.27 ~~an a retailer or out-of-state retailer that has made a delivery of cigarettes or tobacco products~~
2.28 ~~or shipped or delivered cigarettes or tobacco products into the state in a delivery sale in the~~
2.29 previous calendar month shall file with the Department of Revenue ~~reports~~ a report in the
2.30 form and in the manner prescribed by the commissioner of revenue that provides for each
2.31 delivery sale, the name and address of the purchaser and the brand or brands and quantity
2.32 of cigarettes or tobacco products sold. A ~~tobacco~~ retailer or out-of-state retailer that meets

3.1 the requirements of United States Code, title 15, section 375 et seq. satisfies the requirements
3.2 of this subdivision. The filing of a return under subdivision 3, paragraph (b), satisfies the
3.3 requirements of this subdivision for the applicable month.

3.4 **EFFECTIVE DATE.** This section is effective for all delivery sales occurring after
3.5 December 31, 2021.

3.6 Sec. 6. Minnesota Statutes 2020, section 297F.09, subdivision 7, is amended to read:

3.7 Subd. 7. **Electronic payment.** A cigarette ~~or distributor,~~ tobacco products distributor,
3.8 retailer, or out-of-state retailer having a liability of \$10,000 or more during a fiscal year
3.9 ending June 30 must remit all liabilities in all subsequent calendar years by electronic means.

3.10 **EFFECTIVE DATE.** This section is effective for all delivery sales occurring after
3.11 December 31, 2021.

3.12 Sec. 7. Minnesota Statutes 2020, section 297F.09, subdivision 10, is amended to read:

3.13 Subd. 10. **Accelerated tax payment; ~~cigarette or tobacco products distributor.~~** A
3.14 cigarette ~~or distributor,~~ tobacco products distributor, retailer, or out-of-state retailer having
3.15 a liability of \$250,000 or more during a fiscal year ending June 30, shall remit the June
3.16 liability for the next year in the following manner:

3.17 (a) Two business days before June 30 of calendar years 2020 and 2021, the distributor
3.18 shall remit the actual May liability and 87.5 percent of the estimated June liability to the
3.19 commissioner and file the return in the form and manner prescribed by the commissioner.

3.20 (b) On or before August 18 of the year, the distributor, retailer, or out-of-state retailer
3.21 shall submit a return showing the actual June liability and pay any additional amount of tax
3.22 not remitted in June. A penalty is imposed equal to ten percent of the amount of June liability
3.23 required to be paid in June, less the amount remitted in June. However, the penalty is not
3.24 imposed if the amount remitted in June equals the lesser of:

3.25 (1) 87.5 percent of the actual June liability for the calendar year 2020 and 2021 June
3.26 liabilities and 84.5 of the actual June liability for June 2022 and thereafter; or

3.27 (2) 87.5 percent of the preceding May liability for the calendar year 2020 and 2021 June
3.28 liabilities and 84.5 percent of the preceding May liability for June 2022 and thereafter.

3.29 (c) For calendar year 2022 and thereafter, the percent of the estimated June liability the
3.30 vendor must remit by two business days before June 30 is 84.5 percent.

4.1 **EFFECTIVE DATE.** This section is effective for all delivery sales occurring after
4.2 December 31, 2021.

4.3 Sec. 8. Minnesota Statutes 2020, section 325F.781, subdivision 1, is amended to read:

4.4 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
4.5 the meanings given, unless the language or context clearly provides otherwise.

4.6 (b) "Consumer" means an individual who purchases, receives, or possesses tobacco
4.7 products for personal consumption and not for resale.

4.8 (c) "Delivery sale" means:

4.9 (1) a sale of tobacco products to a consumer in this state when:

4.10 (i) the purchaser submits the order for the sale by means of a telephonic or other method
4.11 of voice transmission, the mail or any other delivery service, or the Internet or other online
4.12 service; or

4.13 (ii) the tobacco products are delivered by use of the mail or other delivery service; or

4.14 (2) a sale of tobacco products that satisfies the criteria in clause (1), item (i), regardless
4.15 of whether the seller is located inside or outside of the state.

4.16 A sale of tobacco products to an individual in this state must be treated as a sale to a
4.17 consumer, unless the individual is licensed as a distributor or retailer of tobacco products.

4.18 (d) "Delivery service" means a person, including the United States Postal Service, that
4.19 is engaged in the commercial delivery of letters, packages, or other containers.

4.20 (e) "Distributor" means a person, whether located inside or outside of this state, other
4.21 than a retailer, who sells or distributes tobacco products in the state. Distributor does not
4.22 include a tobacco products manufacturer, export warehouse proprietor, or importer with a
4.23 valid permit under United States Code, title 26, section 5712 (1997), if the person sells or
4.24 distributes tobacco products in this state only to distributors who hold valid and current
4.25 licenses under the laws of a state, or to an export warehouse proprietor or another
4.26 manufacturer. Distributor does not include a common or contract carrier that is transporting
4.27 tobacco products under a proper bill of lading or freight bill that states the quantity, source,
4.28 and destination of tobacco products, or a person who ships tobacco products through this
4.29 state by common or contract carrier under a bill of lading or freight bill.

4.30 (f) "Retailer" means a person, whether located inside or outside this state, who sells or
4.31 distributes tobacco products to a consumer in this state.

5.1 (g) "Tobacco products" means: cigarettes and tobacco products as defined in section
 5.2 297F.01.

5.3 ~~(1) cigarettes, as defined in section 297F.01, subdivision 3;~~

5.4 ~~(2) smokeless tobacco as defined in section 325F.76; and~~

5.5 ~~(3) premium cigars as defined in section 297F.01, subdivision 13a.~~

5.6 **EFFECTIVE DATE.** This section is effective January 1, 2022.

5.7 Sec. 9. Minnesota Statutes 2020, section 325F.781, subdivision 5, is amended to read:

5.8 Subd. 5. **Registration requirement.** Prior to making delivery sales ~~or shipping tobacco~~
 5.9 ~~products in connection with any sales,~~ an out-of-state retailer must ~~meet the requirements~~
 5.10 ~~of~~ register with the commissioner of revenue as required under section 297F.031.

5.11 **EFFECTIVE DATE.** This section is effective for all delivery sales occurring after
 5.12 December 31, 2021.

5.13 Sec. 10. Minnesota Statutes 2020, section 325F.781, subdivision 6, is amended to read:

5.14 Subd. 6. **Collection of taxes.** ~~(a) Prior to shipping any tobacco products to a purchaser~~
 5.15 ~~in this state, the out-of-state~~ A retailer shall comply with all requirements of making delivery
 5.16 sales must file all returns and reports, collect and pay all taxes, and maintain all records
 5.17 required under chapter 297F and shall ensure that all state excise taxes and fees that apply
 5.18 ~~to such tobacco products have been collected and paid to the state and that all related state~~
 5.19 ~~excise tax stamps or other indicators of state excise tax payment have been properly affixed~~
 5.20 ~~to those tobacco products.~~

5.21 (b) In addition to any penalties under chapter 297F, ~~a distributor or a retailer making delivery~~
 5.22 sales who fails to pay any tax due according to paragraph (a) under chapter 297F, shall pay,
 5.23 in addition to any other penalty, a penalty of 50 percent of the tax due but unpaid.

5.24 **EFFECTIVE DATE.** This section is effective for all delivery sales occurring after
 5.25 December 31, 2021.