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State of Minnesota  
HOUSE OF REPRESENTATIVES

EIGHTY-NINTH SESSION

H. F. No. 865

02/12/2015 Authored by Davids

The bill was read for the first time and referred to the Committee on Public Safety and Crime Prevention Policy and Finance

1.1 A bill for an act  
1.2 relating to taxation; tobacco; providing penalties; appropriating money;  
1.3 amending Minnesota Statutes 2014, sections 289A.63, subdivisions 1, 2;  
1.4 297F.01, subdivision 14; 297F.03, subdivisions 5, 6; 297F.04, subdivisions 1, 2;  
1.5 297F.13, subdivision 4; 297F.19, by adding a subdivision; 297F.20, by adding  
1.6 subdivisions; 609.035, by adding a subdivision; proposing coding for new law  
1.7 in Minnesota Statutes, chapter 297F.

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

1.9 Section 1. **PURPOSE.**

1.10 This act is designed to bring fairness to tobacco tax administration and enforcement  
1.11 and reduce smuggling of contraband tobacco products. By increasing enforcement efforts  
1.12 and providing a unified system of collecting the taxes on cigarettes and other tobacco  
1.13 products, this proposal will deter tax evasion, prevent the expansion of criminal activity in  
1.14 Minnesota, and reduce youth access to unregulated tobacco products.

1.15 As required by Minnesota Laws 2013, chapter 143, article 5, section 27, the  
1.16 Department of Revenue submitted a report to the legislature on February 19, 2014. The  
1.17 report, conducted by an independent evaluator, included recommendations to improve  
1.18 collection of cigarette and tobacco products taxes. The proposals in this act include many  
1.19 of the recommendations in the report.

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

1.21 Sec. 2. Minnesota Statutes 2014, section 289A.63, subdivision 1, is amended to read:

1.22 Subdivision 1. **Penalties for knowing failure to file or pay; willful evasion.** (a) A  
1.23 person required to file a return, report, or other document with the commissioner, who  
1.24 knowingly, rather than accidentally, inadvertently, or negligently, fails to file it when

2.1 required, is guilty of a gross misdemeanor. A person required to file a return, report, or  
 2.2 other document who willfully attempts in any manner to evade or defeat a tax by failing  
 2.3 to file it when required, is guilty of a felony. Each violation of this paragraph is a single  
 2.4 course of conduct separate and independent from the conduct constituting a violation of  
 2.5 paragraph (b).

2.6 (b) A person required to pay or to collect and remit a tax, who knowingly, rather  
 2.7 than accidentally, inadvertently, or negligently, fails to do so when required, is guilty of a  
 2.8 gross misdemeanor. A person required to pay or to collect and remit a tax, who willfully  
 2.9 attempts to evade or defeat a tax law by failing to do so when required, is guilty of a felony.  
 2.10 Each violation of this paragraph is a single course of conduct separate and independent  
 2.11 from the conduct constituting a violation of paragraph (a) or subdivision 2, paragraph (a).

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

2.13 Sec. 3. Minnesota Statutes 2014, section 289A.63, subdivision 2, is amended to read:

2.14 Subd. 2. **False or fraudulent returns; penalties.** (a) A person who files with the  
 2.15 commissioner a return, report, or other document, known by the person to be fraudulent or  
 2.16 false concerning a material matter, is guilty of a felony. Each violation of this paragraph  
 2.17 is a single course of conduct separate and independent from the conduct constituting a  
 2.18 violation of subdivision 1, paragraph (b).

2.19 (b) A person who knowingly aids or assists in, or advises in the preparation or  
 2.20 presentation of a return, report, or other document that is fraudulent or false concerning  
 2.21 a material matter, whether or not the falsity or fraud committed is with the knowledge  
 2.22 or consent of the person authorized or required to present the return, report, or other  
 2.23 document, is guilty of a felony.

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

2.25 Sec. 4. Minnesota Statutes 2014, section 297F.01, subdivision 14, is amended to read:

2.26 Subd. 14. **Retailer.** "Retailer" means a person ~~required to be licensed under chapter~~  
 2.27 ~~461~~ located in this state engaged in this state in the business of selling, or offering to sell,  
 2.28 cigarettes or tobacco products to consumers.

2.29 **EFFECTIVE DATE.** This section is effective January 1, 2016.

2.30 Sec. 5. Minnesota Statutes 2014, section 297F.03, subdivision 5, is amended to read:

2.31 Subd. 5. **License fees; cigarettes.** Each application for a cigarette distributor's  
 2.32 license must be accompanied by a fee of ~~\$300~~ \$500. Each application for a cigarette

3.1 subjobber's license must be accompanied by a fee of ~~\$24~~ \$100. A distributor or subjobber  
 3.2 applying for a license during the second year of a two-year licensing period is required to  
 3.3 pay only one-half of the license fee.

3.4 **EFFECTIVE DATE.** This section is effective for license periods beginning after  
 3.5 December 31, 2015.

3.6 Sec. 6. Minnesota Statutes 2014, section 297F.03, subdivision 6, is amended to read:

3.7 Subd. 6. **License fees; tobacco products.** Each application for a tobacco products  
 3.8 distributor's license must be accompanied by a fee of ~~\$75~~ \$500. Each application for  
 3.9 a tobacco products subjobber's license must be accompanied by a fee of ~~\$20~~ \$100. A  
 3.10 distributor or subjobber applying for a license during the second year of a two-year  
 3.11 licensing period is required to pay only one-half of the license fee.

3.12 **EFFECTIVE DATE.** This section is effective for license periods beginning after  
 3.13 December 31, 2015.

3.14 Sec. 7. **[297F.032] STATE RETAIL LICENSE.**

3.15 Subdivision 1. **Selling without license illegal.** No person shall engage in the  
 3.16 business of a retailer of cigarette or tobacco products at any place of business without  
 3.17 first having received a license from the commissioner to engage in that business at that  
 3.18 place of business.

3.19 Subd. 2. **Form of application.** The commissioner shall prescribe the content,  
 3.20 format, and manner of every application for a cigarette and tobacco products retail license.  
 3.21 The application must state the name and address of the applicant. If the applicant is a  
 3.22 corporation, the application shall state the name and address of each of its officers, the  
 3.23 address of its principal place of business, the place where the business to be licensed  
 3.24 will be conducted, and any other information the commissioner may require for the  
 3.25 administration of this chapter.

3.26 Subd. 3. **Place of application.** An application for a retailer's license must be made  
 3.27 for each location at which a retailer proposes to engage in business.

3.28 Subd. 4. **Retail license fee.** Each application for a cigarette and tobacco products  
 3.29 retailer's license must be accompanied by a fee of \$50.

3.30 Subd. 5. **Issuance of license.** Upon receipt of the application in proper form  
 3.31 and payment of the license fee required by this chapter, the commissioner shall, unless  
 3.32 otherwise provided by this chapter, issue the applicant a license in the form prescribed by

4.1 the commissioner. The license permits the applicant to engage in business as a cigarette  
 4.2 and tobacco products retailer at the place of business shown in the application.

4.3 Subd. 6. **Licensing period; expiration.** The licensing period begins January 1 of  
 4.4 each year and ends on December 31 of that year. Each license issued shall expire on  
 4.5 December 31 of the year of the licensing period unless sooner revoked by the commissioner  
 4.6 or unless the business with respect to which the license was issued is transferred.

4.7 Subd. 7. **Display.** Each license must be prominently displayed at the retail location  
 4.8 covered by the license.

4.9 Subd. 8. **Transfer.** Licenses are not transferable to any other person.

4.10 Subd. 9. **Local control.** Nothing in this section preempts or supersedes any local  
 4.11 cigarette or tobacco products provisions set forth in chapter 461.

4.12 Subd. 10. **General information.** (a) Starting January 1, 2016, a retailer must  
 4.13 possess and maintain a license to engage in the retail sale of cigarettes or tobacco products.  
 4.14 A retailer that owns or controls more than one retail location shall obtain a separate license  
 4.15 for each retail location, but may submit a single application for those licenses.

4.16 (b) A retailer who obtains a license as a retailer who ceases to do business as specified  
 4.17 in the license, or who never commenced business, or whose license is suspended, canceled,  
 4.18 revoked, or not renewed, shall immediately surrender the license to the commissioner.

4.19 (c) A license shall be valid for a 12-month period, and shall be renewed annually.

4.20 **EFFECTIVE DATE.** This section is effective for license periods beginning after  
 4.21 December 31, 2015.

4.22 Sec. 8. Minnesota Statutes 2014, section 297F.04, subdivision 1, is amended to read:

4.23 Subdivision 1. **Powers of commissioner.** The commissioner may revoke or<sub>2</sub>  
 4.24 suspend, or cancel the license or licenses of any distributor or<sub>2</sub> subjobber, or retailer  
 4.25 for violation of this chapter, any other act applicable to the sale of cigarettes or tobacco  
 4.26 products, or any rule promulgated by the commissioner, in furtherance of this chapter.

4.27 **EFFECTIVE DATE.** This section is effective January 1, 2016.

4.28 Sec. 9. Minnesota Statutes 2014, section 297F.04, subdivision 2, is amended to read:

4.29 Subd. 2. **Refusal to issue or renew; revocation.** (a) The commissioner must not  
 4.30 issue or renew a license under this chapter, and may revoke or suspend a license under  
 4.31 this chapter, if the applicant or licensee:

4.32 (1) owes \$500 or more in delinquent taxes as defined in section 270C.72, subdivision  
 4.33 2;

- 5.1 (2) after demand, has not filed tax returns required by the commissioner;
- 5.2 (3) had a cigarette or tobacco license revoked by the commissioner within the past
- 5.3 two years;
- 5.4 (4) had a sales and use tax permit revoked by the commissioner within the past
- 5.5 two years; ~~or~~
- 5.6 (5) has been convicted of a crime involving cigarettes, including but not limited
- 5.7 to: selling stolen cigarettes or tobacco products, receiving stolen cigarettes or tobacco
- 5.8 products, or involvement in the smuggling of cigarettes or tobacco products.

5.9 (b) The commissioner may refuse to issue or renew a license under this chapter, and

5.10 may revoke or suspend a license under this chapter, if the applicant or licensee has had

5.11 untaxed tobacco or cigarette product seized or been assessed tax for such untaxed product

5.12 within the previous two years.

5.13 **EFFECTIVE DATE.** This section is effective for seizures or tax assessments for

5.14 untaxed product occurring after June 30, 2015.

5.15 Sec. 10. Minnesota Statutes 2014, section 297F.13, subdivision 4, is amended to read:

5.16 Subd. 4. **Retailer and subjobber to preserve purchase invoices.** Every retailer and

5.17 subjobber shall procure itemized invoices of all cigarettes or tobacco products purchased.

5.18 The retailer and subjobber shall preserve a legible copy of each invoice for one

5.19 year from the date of the invoice or as long as the cigarette or tobacco product listed on

5.20 the invoice is available for sale or in their possession, whichever period is longer. The

5.21 retailer and subjobber shall preserve copies of the invoices at each retail location or at a

5.22 central location provided that the invoice must be produced and made available at a retail

5.23 location within one hour when requested by the commissioner or duly authorized agents

5.24 and employees. Copies should be numbered and kept in chronological order.

5.25 To determine whether the business is in compliance with the provisions of this

5.26 chapter, at any time during usual business hours, the commissioner, or duly authorized

5.27 agents and employees, may enter any place of business of a retailer or subjobber without

5.28 a search warrant and inspect the premises, the records required to be kept under this

5.29 chapter, and the packages of cigarettes, tobacco products, and vending devices contained

5.30 on the premises.

5.31 **EFFECTIVE DATE.** This section is effective for sales and purchases by subjobbers

5.32 and retailers made after June 30, 2015.

6.1 Sec. 11. Minnesota Statutes 2014, section 297F.19, is amended by adding a subdivision  
6.2 to read:

6.3 Subd. 10. **Penalty for retailers and subjobbers failure to comply.** Retailers  
6.4 or subjobbers (1) failing to comply with the invoice requirements in section 297F.13,  
6.5 subdivision 4; (2) found to be possessing untaxed cigarettes or tobacco products; or (3)  
6.6 found to be selling cigarettes or tobacco products without a valid license, shall be subject  
6.7 to a \$1,000 per violation penalty. Second-time offenders within three years of the first  
6.8 offense shall be subject to a penalty of \$2,000 per violation. Third-time or more offenders  
6.9 within three years of the second offense shall be subject to a \$5,000 per violation penalty.

6.10 **EFFECTIVE DATE.** This section is effective for violations occurring after June  
6.11 30, 2015.

6.12 Sec. 12. Minnesota Statutes 2014, section 297F.20, is amended by adding a subdivision  
6.13 to read:

6.14 Subd. 2a. **Penalties for willful failure to file or pay.** (a) A person or consumer  
6.15 required to file a return, report, or other document with the commissioner who willfully  
6.16 attempts in any manner to evade or defeat a tax by failing to do so when required, is  
6.17 guilty of a felony.

6.18 (b) A person or consumer required to pay or to collect and remit a tax under this  
6.19 chapter, who willfully attempts to evade or defeat a tax by failing to do so when required,  
6.20 is guilty of a felony.

6.21 **EFFECTIVE DATE.** This section is effective for offenses committed after August  
6.22 30, 2015.

6.23 Sec. 13. Minnesota Statutes 2014, section 297F.20, is amended by adding a subdivision  
6.24 to read:

6.25 Subd. 13. **Aggregation and consolidation of venue.** In any prosecution under this  
6.26 section, the number of unstamped cigarettes or the value of the untaxed tobacco products  
6.27 possessed, received, transported, sold, offered to be sold, or purchased in violation of  
6.28 this section within any six-month period may be aggregated and the defendant charged  
6.29 accordingly in applying the provisions of this section. When two or more offenses are  
6.30 committed by the same person in two or more counties, the accused may be prosecuted in  
6.31 any county in which one of the offenses was committed. In the alternative, prosecutions  
6.32 under this section may be brought in Ramsey County.

7.1 **EFFECTIVE DATE.** This section is effective for offenses committed after August  
 7.2 30, 2015.

7.3 Sec. 14. Minnesota Statutes 2014, section 609.035, is amended by adding a subdivision  
 7.4 to read:

7.5 Subd. 7. **Exception; tax crimes.** Notwithstanding subdivision 1, a prosecution or  
 7.6 conviction for committing a violation of section 289A.63, subdivision 1, paragraph (b), is  
 7.7 not a bar to conviction of or punishment for any other crime committed by the defendant  
 7.8 as part of the same conduct. If an offender is punished for more than one crime as  
 7.9 authorized by this subdivision and the court imposes consecutive sentences for the crimes,  
 7.10 the consecutive sentences are not a departure from the sentencing guidelines.

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

7.12 Sec. 15. **APPROPRIATIONS.**

7.13 \$1,421,000 in fiscal year 2016, \$1,036,000 in fiscal year 2017, \$1,036,000 in fiscal  
 7.14 year 2018, and \$1,036,000 in fiscal year 2019 are appropriated from the general fund to  
 7.15 the commissioner of revenue to carry out the provisions of this act. This is an ongoing  
 7.16 appropriation and shall be added to the base.

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