

1.1 A bill for an act

1.2 relating to tobacco; tobacco control and preventing tobacco use; modernizing
1.3 definitions of cigarette, tobacco, tobacco products, and tobacco-related devices;
1.4 modifying promotional and self-service distribution rules; subjecting sale of
1.5 tobacco related devices to municipal licensing; proposing a study; appropriating
1.6 money; amending Minnesota Statutes 2008, sections 297F.01, subdivisions 3,
1.7 19; 299F.850, subdivision 3; 325D.32, subdivision 2; 325F.77, subdivision 4;
1.8 461.12, subdivisions 1, 2, 3, 4, 5, 6; 609.685, subdivision 1.

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

1.10 Section 1. CITATION.

1.11 This act may be cited as the Tobacco Modernization and Compliance Act of 2010.

1.12 Sec. 2. Minnesota Statutes 2008, section 297F.01, subdivision 3, is amended to read:

1.13 Subd. 3. **Cigarette.** "Cigarette" means any roll for smoking made wholly or in
1.14 part of tobacco;

1.15 (1) the wrapper or cover of which is made of paper or another substance or material
1.16 except tobacco; or

1.17 (2) wrapped in any substance weighing 4.5 pounds or less per thousand; or

1.18 (3) wrapped in any substance, however labeled or named, which because of its
1.19 appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing,
1.20 or labeling, is likely to be offered to, purchased by, or consumed by consumers as a
1.21 cigarette, as defined in clause (1) or (2).

1.22 Sec. 3. Minnesota Statutes 2008, section 297F.01, subdivision 19, is amended to read:

1.23 Subd. 19. **Tobacco products.** "Tobacco products" means any product containing,
1.24 made, or derived from tobacco that is intended for human consumption, whether chewed,

S.F. No. 3055, as introduced - 86th Legislative Session (2009-2010) [10-5662]

2.1 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means,
2.2 or any component, part, or accessory of a tobacco product, including, but not limited
2.3 to, cigars; ~~little cigars~~, cheroots; stogies; periques; granulated, plug cut, crimp cut,
2.4 ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist
2.5 tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings and
2.6 sweepings of tobacco, and other kinds and forms of tobacco, ~~prepared in such manner~~
2.7 ~~as to be suitable for chewing or smoking in a pipe or otherwise, or both for chewing and~~
2.8 ~~smoking~~; but does not include cigarettes as defined in this section. Tobacco products
2.9 excludes any tobacco product that has been approved by the United States Food and
2.10 Drug Administration for sale as a tobacco cessation product, as a tobacco dependence
2.11 product, or for other medical purposes, and is being marketed and sold solely for such an
2.12 approved purpose.

2.13 Sec. 4. Minnesota Statutes 2008, section 299F.850, subdivision 3, is amended to read:

2.14 Subd. 3. **Cigarette.** "Cigarette" means any roll for smoking made wholly or in
2.15 part of tobacco;;

2.16 (1) the wrapper or cover of which is made of paper or any other substance or
2.17 material except tobacco; or

2.18 (2) wrapped in any substance weighing 4.5 pounds or less per thousand; or

2.19 (3) wrapped in any substance, however labeled or named, which because of its
2.20 appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing,
2.21 or labeling, is likely to be offered to, purchased by, or consumed by consumers as a
2.22 cigarette, as defined in clause (1) or (2).

2.23 Sec. 5. Minnesota Statutes 2008, section 325D.32, subdivision 2, is amended to read:

2.24 Subd. 2. **Cigarettes.** "Cigarettes" means and includes any roll for smoking, made
2.25 wholly or in part of tobacco, irrespective of size and shape and whether or not such
2.26 tobacco is flavored, adulterated or mixed with any other ingredient;;

2.27 (1) the wrapper or cover of which is made of paper or any other substance or
2.28 material except tobacco; or

2.29 (2) wrapped in any substance weighing 4.5 pounds or less per thousand; or

2.30 (3) wrapped in any substance, however labeled or named, which because of its
2.31 appearance, size, the type of tobacco used in the filler, or its packaging, pricing, marketing,
2.32 or labeling, is likely to be offered to, purchased by, or consumed by consumers as a
2.33 cigarette, as defined in clause (1) or (2).

S.F. No. 3055, as introduced - 86th Legislative Session (2009-2010) [10-5662]

3.1 Sec. 6. Minnesota Statutes 2008, section 325F.77, subdivision 4, is amended to read:

3.2 Subd. 4. **Prohibition.** No person shall distribute smokeless tobacco products or
3.3 cigarettes, cigars, pipe tobacco, or other tobacco products ~~suited for smoking~~, as defined
3.4 in section 297F.01, subdivision 19, except that single serving samples of tobacco may
3.5 be distributed in tobacco stores.

3.6 Sec. 7. Minnesota Statutes 2008, section 461.12, subdivision 1, is amended to read:

3.7 Subdivision 1. **Authorization.** A town board or the governing body of a home
3.8 rule charter or statutory city may license and regulate the retail sale of tobacco and
3.9 tobacco-related devices as defined in section 609.685, subdivision 1, and establish a
3.10 license fee for sales to recover the estimated cost of enforcing this chapter. The county
3.11 board shall license and regulate the sale of tobacco and tobacco-related devices in
3.12 unorganized territory of the county and in a town or a home rule charter or statutory city if
3.13 the town or city does not license and regulate retail tobacco sales. Retail establishments
3.14 licensed by a town or city to sell tobacco are not required to obtain a second license for the
3.15 same location under the licensing ordinance of the county.

3.16 Sec. 8. Minnesota Statutes 2008, section 461.12, subdivision 2, is amended to read:

3.17 Subd. 2. **Administrative penalties; licensees.** If a licensee or employee of a
3.18 licensee sells tobacco or tobacco-related devices to a person under the age of 18 years, or
3.19 violates any other provision of this chapter, the licensee shall be charged an administrative
3.20 penalty of \$75. An administrative penalty of \$200 must be imposed for a second violation
3.21 at the same location within 24 months after the initial violation. For a third violation at the
3.22 same location within 24 months after the initial violation, an administrative penalty of
3.23 \$250 must be imposed, and the licensee's authority to sell tobacco at that location must be
3.24 suspended for not less than seven days. No suspension or penalty may take effect until the
3.25 licensee has received notice, served personally or by mail, of the alleged violation and an
3.26 opportunity for a hearing before a person authorized by the licensing authority to conduct
3.27 the hearing. A decision that a violation has occurred must be in writing.

3.28 Sec. 9. Minnesota Statutes 2008, section 461.12, subdivision 3, is amended to read:

3.29 Subd. 3. **Administrative penalty; individuals.** An individual who sells tobacco
3.30 or tobacco-related devices to a person under the age of 18 years must be charged an
3.31 administrative penalty of \$50. No penalty may be imposed until the individual has
3.32 received notice, served personally or by mail, of the alleged violation and an opportunity

S.F. No. 3055, as introduced - 86th Legislative Session (2009-2010) [10-5662]

4.1 for a hearing before a person authorized by the licensing authority to conduct the hearing.
4.2 A decision that a violation has occurred must be in writing.

4.3 Sec. 10. Minnesota Statutes 2008, section 461.12, subdivision 4, is amended to read:

4.4 Subd. 4. **Minors.** The licensing authority shall consult with interested educators,
4.5 parents, children, and representatives of the court system to develop alternative penalties
4.6 for minors who purchase, possess, and consume tobacco or tobacco-related devices.
4.7 The licensing authority and the interested persons shall consider a variety of options,
4.8 including, but not limited to, tobacco free education programs, notice to schools, parents,
4.9 community service, and other court diversion programs.

4.10 Sec. 11. Minnesota Statutes 2008, section 461.12, subdivision 5, is amended to read:

4.11 Subd. 5. **Compliance checks.** A licensing authority shall conduct unannounced
4.12 compliance checks at least once each calendar year at each location where tobacco is sold
4.13 to test compliance with section 609.685. Compliance checks must involve minors over
4.14 the age of 15, but under the age of 18, who, with the prior written consent of a parent
4.15 or guardian, attempt to purchase tobacco or tobacco-related devices under the direct
4.16 supervision of a law enforcement officer or an employee of the licensing authority.

4.17 Sec. 12. Minnesota Statutes 2008, section 461.12, subdivision 6, is amended to read:

4.18 Subd. 6. **Defense.** It is an affirmative defense to the charge of selling tobacco or
4.19 tobacco-related devices to a person under the age of 18 years in violation of subdivision 2
4.20 or 3 that the licensee or individual making the sale relied in good faith upon proof of age
4.21 as described in section 340A.503, subdivision 6.

4.22 Sec. 13. Minnesota Statutes 2008, section 609.685, subdivision 1, is amended to read:

4.23 Subdivision 1. **Definitions.** For the purposes of this section, the following terms
4.24 shall have the meanings respectively ascribed to them in this section.

4.25 (a) "Tobacco" means cigarettes and any product containing, made, or derived from
4.26 tobacco that is intended for human consumption, whether chewed, smoked, absorbed,
4.27 dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component,
4.28 part, or accessory of a tobacco product, including, but not limited to, electronic cigarettes;
4.29 cigars; cheroots; stogies; perique; granulated, plug cut, crimp cut, ready rubbed, and other
4.30 smoking tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine cut and other
4.31 chewing tobaccos; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco; and
4.32 other kinds and forms of tobacco, ~~prepared in such manner as to be suitable for chewing~~

5.1 ~~or smoking in a pipe or other tobacco-related devices.~~ Tobacco excludes any tobacco
5.2 product that has been approved by the United States Food and Drug Administration for
5.3 sale as a tobacco cessation product, as a tobacco dependence product, or for other medical
5.4 purposes, and is being marketed and sold solely for such an approved purpose.

5.5 (b) "Tobacco-related devices" means cigarette papers or pipes for smoking or
5.6 electronic cigarettes or any components, parts, or accessories of electronic cigarettes,
5.7 including cartridges.

5.8 (c) "Electronic cigarettes" means any electronic oral devices which provide vapor
5.9 of nicotine or any other substances in any manner or in any form to an individual user,
5.10 the use or inhalation of which simulates smoking. This term includes any components,
5.11 parts, or accessories of electronic cigarettes, including cartridges, whether manufactured,
5.12 distributed, marketed, or sold as an e-cigarette, as an e-pipe, or under any other product
5.13 name or descriptor.

5.14 Sec. 14. **TOBACCO TAX COLLECTION REPORT.**

5.15 Subdivision 1. Report to legislature. (a) The commissioner of revenue shall report
5.16 to the 2011 legislature on the tobacco tax collection system, including recommendations
5.17 that will improve compliance under the excise tax for both cigarettes and other tobacco
5.18 products. The purpose of the report is to provide information and guidance to the
5.19 legislature on improvements to the tobacco tax collection system that will:

5.20 (1) provide a unified system of collecting both the cigarette and other tobacco
5.21 products taxes, regardless of category, size, or shape, that ensures the highest reasonable
5.22 rates of tax collection;

5.23 (2) discourage tax evasion; and

5.24 (3) help to prevent illegal sale of tobacco products, which may make these products
5.25 more accessible to youth.

5.26 (b) In the report, the commissioner shall:

5.27 (1) provide a detailed review of the present excise tax collection and compliance
5.28 system as it applies to both cigarettes and other tobacco products. This must include
5.29 an assessment of the levels of compliance for each category of products and the effect
5.30 of the stamping requirement on compliance rates for cigarettes relative to other tobacco
5.31 products. It also must identify any weaknesses in the system;

5.32 (2) survey the methods of collection and enforcement used by other states or nations,
5.33 including identifying and discussing emerging best practices that ensure tracking of both
5.34 cigarettes and other tobacco products and result in the highest rates of tax collection and
5.35 compliance. These best practices must consider high-technology alternatives, such as use

6.1 of bar codes, radio-frequency identification tags, or similar mechanisms for tracking
6.2 compliance;

6.3 (3) evaluate the adequacy and effectiveness of the existing penalties and other
6.4 sanctions for noncompliance;

6.5 (4) evaluate the adequacy of the resources allocated by the state to enforce the
6.6 tobacco tax and prevention laws; and

6.7 (5) make recommendations on implementation of a comprehensive tobacco tax
6.8 collection system for Minnesota that can be implemented by January 1, 2013, including:

6.9 (i) recommendations on the specific steps needed to institute and implement the new
6.10 system, including estimates of the state's costs of doing so and any additional personnel
6.11 requirements;

6.12 (ii) recommendations on methods to recover the cost of implementing the system
6.13 from the industry;

6.14 (iii) evaluation of the extent to which the proposed system is sufficiently flexible
6.15 and adaptable to adjust to modifications in the construction, packaging, formatting, and
6.16 marketing of tobacco products by the industry; and

6.17 (iv) recommendations to modify existing penalties or to impose new penalties or
6.18 other sanctions to ensure compliance with the system.

6.19 Subd. 2. **Due date.** The report required by subdivision 1 is due January 15, 2011.

6.20 Subd. 3. **Procedure.** The report required under this section must be made in
6.21 the manner provided under section 3.195. In addition, copies must be provided to the
6.22 chairs and ranking minority members of the legislative committees and divisions with
6.23 jurisdiction over taxation.

6.24 Subd. 4. **Appropriation.** (a) \$..... is appropriated from the general fund to the
6.25 commissioner of revenue for fiscal year 2011 for the cost of preparing the report under
6.26 subdivision 1.

6.27 (b) The appropriation under this subdivision is a onetime appropriation and is not
6.28 included in the base budget.