

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

S.F. No. 3874

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DATE
03/02/2020

D-PG
5125 Introduction and first reading
Referred to Taxes

OFFICIAL STATUS

1.1 A bill for an act
1.2 relating to taxation; modifying the tobacco products excise tax; amending the
1.3 definition of tobacco products to include electronic delivery devices; creating a
1.4 definition of electronic delivery devices; imposing the tobacco products excise tax
1.5 on electronic delivery devices; establishing a tobacco prevention and cessation
1.6 account in the special revenue fund; appropriating money; amending Minnesota
1.7 Statutes 2018, sections 297F.01, by adding a subdivision; 297F.10, subdivision 2,
1.8 by adding a subdivision; Minnesota Statutes 2019 Supplement, section 297F.01,
1.9 subdivisions 19, 23; proposing coding for new law in Minnesota Statutes, chapter
1.10 144; repealing Minnesota Statutes 2019 Supplement, section 297F.01, subdivision
1.11 22b.

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

1.13 Section 1. [144.398] ACTIVITIES TO PREVENT YOUTH USE OF TOBACCO,
1.14 TOBACCO-RELATED DEVICES, ELECTRONIC DELIVERY DEVICES.

1.15 (a) The balance in the tobacco prevention and cessation account created under section
1.16 297F.10, subdivision 3, is annually appropriated to the commissioner of health for activities
1.17 to prevent youth use of:

1.18 (1) tobacco and tobacco-related devices, as defined in section 609.685; and

1.19 (2) electronic delivery devices that deliver nicotine through inhalation of aerosol or
1.20 vapor from the device.

1.21 (b) Activities funded under this section must be research-based or based on proven
1.22 effective strategies or promising strategies.

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

2.1 Sec. 2. Minnesota Statutes 2018, section 297F.01, is amended by adding a subdivision to
2.2 read:

2.3 Subd. 7a. **Electronic delivery device.** (a) "Electronic delivery device" means any device
2.4 that may be used to deliver aerosolized or vaporized nicotine or any other aerosolized or
2.5 vaporized substance to the person inhaling from the device, including but not limited to an
2.6 e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

2.7 (b) Electronic delivery device includes:

2.8 (1) any component, part, or accessory of the device, whether or not marketed or sold
2.9 separately; and

2.10 (2) any substance that may be aerosolized or vaporized by the device, whether or not
2.11 the substance contains nicotine or is marketed or sold separately.

2.12 (c) Electronic delivery device does not include a battery or battery charger when sold
2.13 separately. Electronic delivery device also does not include any drugs, devices, or
2.14 combination products, as defined by the Federal Food, Drug, and Cosmetic Act, that have
2.15 been approved for sale by the United States Food and Drug Administration.

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

2.17 Sec. 3. Minnesota Statutes 2019 Supplement, section 297F.01, subdivision 19, is amended
2.18 to read:

2.19 Subd. 19. **Tobacco products.** (a) "Tobacco products" means any product containing,
2.20 made, or derived from tobacco that is intended for human consumption, whether chewed,
2.21 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means, or
2.22 any component, part, or accessory of a tobacco product, including, but not limited to, cigars;
2.23 cheroots; stogies; periques; granulated, plug cut, crimp cut, ready rubbed, and other smoking
2.24 tobacco; snuff; snuff flour; cavendish; plug and twist tobacco; fine-cut and other chewing
2.25 tobacco; shorts; refuse scraps, clippings, cuttings and sweepings of tobacco, and other kinds
2.26 and forms of tobacco; but does not include cigarettes as defined in this section. Tobacco
2.27 products includes ~~nicotine solution products~~ electronic delivery devices. Tobacco products
2.28 excludes any ~~tobacco product~~ drugs, devices, or combination products, as defined by the
2.29 Federal Food, Drug, and Cosmetic Act, that ~~has~~ have been approved for sale by the United
2.30 States Food and Drug Administration ~~for sale as a tobacco cessation product, as a tobacco~~
2.31 ~~dependence product, or for other medical purposes, and is being marketed and sold solely~~
2.32 ~~for such an approved purpose.~~

3.1 (b) Except for the imposition of tax under section 297F.05, subdivisions 3 and 4, tobacco
3.2 products includes a premium cigar, as defined in subdivision 13a.

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

3.4 Sec. 4. Minnesota Statutes 2019 Supplement, section 297F.01, subdivision 23, is amended
3.5 to read:

3.6 Subd. 23. **Wholesale sales price.** (a) "Wholesale sales price" means the price at which
3.7 a distributor purchases a tobacco product.

3.8 ~~(b) When a distributor sells a cartridge, bottle, or other package of a solution containing~~
3.9 ~~nicotine that is part of a kit that also includes a product, device, component, part, or accessory~~
3.10 ~~described in subdivision 22b:~~

3.11 ~~(1) the wholesale sales price is the price at which the distributor purchases the kit; except~~
3.12 ~~that~~

3.13 ~~(2) if the distributor also separately sells the same package of solution containing nicotine~~
3.14 ~~that is sold with the kit and can isolate the cost of the package of solution containing nicotine,~~
3.15 ~~then the wholesale sales price includes only the price at which the distributor separately~~
3.16 ~~purchases the package of the solution containing nicotine and any taxes, charges, and costs~~
3.17 ~~listed in paragraph (c).~~

3.18 ~~(c)~~ Wholesale sales price includes the applicable federal excise tax, freight charges, or
3.19 packaging costs, regardless of whether they were included in the purchase price.

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

3.21 Sec. 5. Minnesota Statutes 2018, section 297F.10, subdivision 2, is amended to read:

3.22 Subd. 2. **Tax and use tax on tobacco products.** Revenue received from taxes on tobacco
3.23 products, other than electronic delivery devices as defined in section 297F.01, subdivision
3.24 7a, as well as related penalties, interest, and license fees shall be deposited by the
3.25 commissioner in the state treasury and credited to the general fund.

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

3.27 Sec. 6. Minnesota Statutes 2018, section 297F.10, is amended by adding a subdivision to
3.28 read:

3.29 Subd. 3. **Tax on electronic delivery devices.** A tobacco prevention and cessation account
3.30 is created in the special revenue fund. Revenue received from taxes on electronic delivery

4.1 devices, including related penalties, interest, and license fees, must be deposited by the
4.2 commissioner in the state treasury, with \$15,000,000 each year credited to the tobacco
4.3 prevention and cessation account in the special revenue fund and the remaining revenue
4.4 credited to the general fund.

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

4.6 Sec. 7. **REPEALER.**

4.7 Minnesota Statutes 2019 Supplement, section 297F.01, subdivision 22b, is repealed.

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

297F.01 DEFINITIONS.

Subd. 22b. **Nicotine solution products.** (a) "Nicotine solution products" means any cartridge, bottle, or other package that contains nicotine made or derived from tobacco, that is in a solution that is consumed, or meant to be consumed, through the use of a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means that produces vapor or aerosol. This paragraph expires December 31, 2019.

(b) Beginning January 1, 2020, "nicotine solution products" means any cartridge, bottle, or other package that contains nicotine, including nicotine made or derived from tobacco or sources other than tobacco, that is in a solution that is consumed, or meant to be consumed, through the use of a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means that produces vapor or aerosol.

(c) Nicotine solution products includes any electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device, and any batteries, heating elements, or other components, parts, or accessories sold with and meant to be used in the consumption of a solution containing nicotine.