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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 4082

03/04/2020 Authored by Mariani
The bill was read for the first time and referred to the Committee on Taxes

1.1 A bill for an act
1.2 relating to taxation; creating a gross receipts tax for cannabinoid products;
1.3 appropriating funds to the commissioner of public safety; amending Minnesota
1.4 Statutes 2018, sections 297A.61, subdivision 3; 297A.67, subdivisions 2, 7;
1.5 proposing coding for new law in Minnesota Statutes, chapter 295.

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

1.7 Section 1. 295.81 DEFINITIONS.

1.8 Subdivision 1. Definitions. For purposes of sections 295.81 to 295.85, the following
1.9 terms have the meanings given.

1.10 Subd. 2. Cannabinoid product. "Cannabinoid product" means any product that contains
1.11 nonintoxicating cannabinoids extracted from hemp that is intended for human or animal
1.12 consumption by any route of administration.

1.13 Subd. 3. Cannabinoid product retailer. "Cannabinoid product retailer" means a retailer
1.14 that sells cannabinoid products.

1.15 Subd. 4. Commissioner. "Commissioner" means the commissioner of revenue.

1.16 Subd. 5. Gross receipts. "Gross receipts" means the total amount received, in money
1.17 or by barter or exchange, for all retail sales of cannabinoid product as measured by the sales
1.18 price, but does not include any taxes imposed directly on the consumer that are separately
1.19 stated on the invoice, bill of sale, or similar document given to the purchaser.

1.20 Subd. 6. Retail sale. "Retail sale" has the meaning given in section 297A.61, subdivision
1.21 4.

2.1 **EFFECTIVE DATE.** This section is effective for purchases made on or after July 1,  
 2.2 2021.

2.3 Sec. 2. **[295.82] CANNABINOID PRODUCTS GROSS RECEIPTS TAX.**

2.4 Subdivision 1. **Gross receipts tax imposed.** A tax is imposed on each cannabinoid  
 2.5 product retailer equal to two percent of gross receipts from retail sales of cannabinoid  
 2.6 products in Minnesota.

2.7 Subd. 2. **Use tax imposed; credit for taxes paid.** (a) A person that receives cannabinoid  
 2.8 products for use or storage in Minnesota, other than from a retailer that paid the tax under  
 2.9 subdivision 1, is subject to tax at the rates imposed under subdivision 1. Liability for the  
 2.10 tax is incurred when the person has possession of the cannabinoid product in Minnesota.  
 2.11 The tax must be remitted to the commissioner in the same manner prescribed for the taxes  
 2.12 imposed under chapter 297A.

2.13 (b) A person that has paid taxes to another jurisdiction on the same transaction and is  
 2.14 subject to tax under this section is entitled to a credit for the tax legally due and paid to  
 2.15 another jurisdiction to the extent of the lesser of (1) the tax actually paid to the other  
 2.16 jurisdiction minus the amount of use tax owed under chapter 297A, or (2) the amount of  
 2.17 tax imposed under this section by the state of Minnesota on the transaction subject to tax  
 2.18 in the other jurisdiction.

2.19 Subd. 3. **Tax collection required.** A retailer that sells cannabinoid products with nexus  
 2.20 in Minnesota, who is not subject to tax under subdivision 1, is required to collect the tax  
 2.21 imposed under subdivision 2 from the purchaser of the cannabinoid products and give the  
 2.22 purchaser a receipt for the tax paid. The tax collected must be remitted to the commissioner  
 2.23 in the same manner prescribed for the taxes imposed under chapter 297A.

2.24 Subd. 4. **Taxes paid to another jurisdiction; credit.** A cannabinoid product retailer  
 2.25 that has paid taxes to another jurisdiction measured by gross receipts and is subject to tax  
 2.26 under this section on the same gross receipts is entitled to a credit for the tax legally due  
 2.27 and paid to another jurisdiction to the extent of the lesser of (1) the tax actually paid to the  
 2.28 other jurisdiction, or (2) the amount of tax imposed by the state of Minnesota on the gross  
 2.29 receipts subject to tax in the other taxing jurisdictions.

2.30 Subd. 5. **Sourcing of sales.** The provisions of section 297A.668 apply to the taxes  
 2.31 imposed by this section.

2.32 **EFFECTIVE DATE.** This section is effective for purchases made on or after July 1,  
 2.33 2021.

3.1 Sec. 3. **[295.83] REGISTRATION REQUIREMENTS.**

3.2 Subdivision 1. **Minnesota cannabinoid product retailers.** Prior to the sale of a  
3.3 cannabinoid product, all cannabinoid product retailers located in Minnesota must file with  
3.4 the commissioner a statement setting forth the retailer's name, trade name, address of the  
3.5 principal place of business and any other place of business, and sales tax identification  
3.6 number.

3.7 Subd. 2. **Out-of-state cannabinoid product retailers.** Prior to making delivery sales  
3.8 or shipping cannabinoid products in connection with any sales, all cannabinoid product  
3.9 retailers located outside of Minnesota must file with the commissioner a statement setting  
3.10 forth the retailer's name, trade name, address of the principal place of business and any other  
3.11 place of business, and sales tax identification number.

3.12 **EFFECTIVE DATE.** This section is effective for purchases made on or after July 1,  
3.13 2021.

3.14 Sec. 4. **[295.84] ADMINISTRATION.**

3.15 Subdivision 1. **Administration.** Unless specifically provided otherwise by sections  
3.16 295.81 to 295.85, the audit, assessment, refund, penalty, interest, enforcement, collection  
3.17 remedies, appeal, and administrative provisions of chapters 270C and 289A that are  
3.18 applicable to taxes imposed under chapter 297A apply to taxes imposed under section  
3.19 295.82.

3.20 Subd. 2. **Payment; reporting.** (a) A cannabinoid product retailer must report the tax on  
3.21 a return prescribed by the commissioner, and must remit the tax with the return. The return  
3.22 and the tax must be filed and paid using the filing cycle and due dates provided for taxes  
3.23 imposed under chapter 297A.

3.24 (b) A cannabinoid product retailer must use the sales tax identification number issued  
3.25 by the commissioner for all returns filed for the tax imposed under section 295.82.

3.26 Subd. 3. **Interest on overpayments.** Interest must be paid on an overpayment refunded  
3.27 or credited to the taxpayer from the date of payment of the tax until the date the refund is  
3.28 paid or credited. For purposes of this subdivision, the date of payment is the due date of the  
3.29 return or the date of actual payment of the tax, whichever is later.

3.30 Subd. 4. **Deposit of revenues.** The commissioner must deposit all revenues, including  
3.31 penalties and interest, derived from the tax imposed by this section in the general fund.

4.1 Subd. 5. Appropriation to the commissioner of public safety. (a) \$960,000 in fiscal  
 4.2 year 2022 is appropriated from the general fund to the commissioner of public safety.

4.3 (b) \$510,000 in fiscal year 2023 and each fiscal year thereafter is appropriated to the  
 4.4 commissioner of public safety.

4.5 **EFFECTIVE DATE.** This section is effective July 1, 2021.

4.6 Sec. 5. **[295.85] DE MINIMIS EXEMPTION FROM TAX.**

4.7 The use tax under section 295.82, subdivision 2, does not apply to the possession, use,  
 4.8 or storage of cannabinoid products if (1) the cannabinoid products have an aggregate cost  
 4.9 to the consumer of \$50 or less in any calendar month, and (2) the cannabinoid products  
 4.10 were carried into this state by that consumer.

4.11 **EFFECTIVE DATE.** This section is effective for purchases made after June 30, 2021.

4.12 Sec. 6. Minnesota Statutes 2018, section 297A.61, subdivision 3, is amended to read:

4.13 Subd. 3. **Sale and purchase.** (a) "Sale" and "purchase" include, but are not limited to,  
 4.14 each of the transactions listed in this subdivision. In applying the provisions of this chapter,  
 4.15 the terms "tangible personal property" and "retail sale" include the taxable services listed  
 4.16 in paragraph (g), clause (6), items (i) to (vi) and (viii), and the provision of these taxable  
 4.17 services, unless specifically provided otherwise. Services performed by an employee for  
 4.18 an employer are not taxable. Services performed by a partnership or association for another  
 4.19 partnership or association are not taxable if one of the entities owns or controls more than  
 4.20 80 percent of the voting power of the equity interest in the other entity. Services performed  
 4.21 between members of an affiliated group of corporations are not taxable. For purposes of  
 4.22 the preceding sentence, "affiliated group of corporations" means those entities that would  
 4.23 be classified as members of an affiliated group as defined under United States Code, title  
 4.24 26, section 1504, disregarding the exclusions in section 1504(b).

4.25 (b) Sale and purchase include:

4.26 (1) any transfer of title or possession, or both, of tangible personal property, whether  
 4.27 absolutely or conditionally, for a consideration in money or by exchange or barter; and

4.28 (2) the leasing of or the granting of a license to use or consume, for a consideration in  
 4.29 money or by exchange or barter, tangible personal property, other than a manufactured  
 4.30 home used for residential purposes for a continuous period of 30 days or more.

5.1 (c) Sale and purchase include the production, fabrication, printing, or processing of  
5.2 tangible personal property for a consideration for consumers who furnish either directly or  
5.3 indirectly the materials used in the production, fabrication, printing, or processing.

5.4 (d) Sale and purchase include the preparing for a consideration of food. Notwithstanding  
5.5 section 297A.67, subdivision 2, taxable food includes, but is not limited to, the following:

5.6 (1) prepared food sold by the retailer;

5.7 (2) soft drinks;

5.8 (3) candy; ~~and~~

5.9 (4) dietary supplements; and

5.10 (5) products that contain nonintoxicating cannabinoid extracted from hemp, authorized  
5.11 for retail sale under section 151.72.

5.12 (e) A sale and a purchase includes the furnishing for a consideration of electricity, gas,  
5.13 water, or steam for use or consumption within this state.

5.14 (f) A sale and a purchase includes the transfer for a consideration of prewritten computer  
5.15 software whether delivered electronically, by load and leave, or otherwise.

5.16 (g) A sale and a purchase includes the furnishing for a consideration of the following  
5.17 services:

5.18 (1) the privilege of admission to places of amusement, recreational areas, or athletic  
5.19 events, and the making available of amusement devices, tanning facilities, reducing salons,  
5.20 steam baths, health clubs, and spas or athletic facilities;

5.21 (2) lodging and related services by a hotel, rooming house, resort, campground, motel,  
5.22 or trailer camp, including furnishing the guest of the facility with access to telecommunication  
5.23 services, and the granting of any similar license to use real property in a specific facility,  
5.24 other than the renting or leasing of it for a continuous period of 30 days or more under an  
5.25 enforceable written agreement that may not be terminated without prior notice and including  
5.26 accommodations intermediary services provided in connection with other services provided  
5.27 under this clause;

5.28 (3) nonresidential parking services, whether on a contractual, hourly, or other periodic  
5.29 basis, except for parking at a meter;

5.30 (4) the granting of membership in a club, association, or other organization if:

6.1 (i) the club, association, or other organization makes available for the use of its members  
6.2 sports and athletic facilities, without regard to whether a separate charge is assessed for use  
6.3 of the facilities; and

6.4 (ii) use of the sports and athletic facility is not made available to the general public on  
6.5 the same basis as it is made available to members.

6.6 Granting of membership means both onetime initiation fees and periodic membership dues.  
6.7 Sports and athletic facilities include golf courses; tennis, racquetball, handball, and squash  
6.8 courts; basketball and volleyball facilities; running tracks; exercise equipment; swimming  
6.9 pools; and other similar athletic or sports facilities;

6.10 (5) delivery of aggregate materials by a third party, excluding delivery of aggregate  
6.11 material used in road construction; and delivery of concrete block by a third party if the  
6.12 delivery would be subject to the sales tax if provided by the seller of the concrete block.  
6.13 For purposes of this clause, "road construction" means construction of:

6.14 (i) public roads;

6.15 (ii) cartways; and

6.16 (iii) private roads in townships located outside of the seven-county metropolitan area  
6.17 up to the point of the emergency response location sign; and

6.18 (6) services as provided in this clause:

6.19 (i) laundry and dry cleaning services including cleaning, pressing, repairing, altering,  
6.20 and storing clothes, linen services and supply, cleaning and blocking hats, and carpet,  
6.21 drapery, upholstery, and industrial cleaning. Laundry and dry cleaning services do not  
6.22 include services provided by coin operated facilities operated by the customer;

6.23 (ii) motor vehicle washing, waxing, and cleaning services, including services provided  
6.24 by coin operated facilities operated by the customer, and rustproofing, undercoating, and  
6.25 towing of motor vehicles;

6.26 (iii) building and residential cleaning, maintenance, and disinfecting services and pest  
6.27 control and exterminating services;

6.28 (iv) detective, security, burglar, fire alarm, and armored car services; but not including  
6.29 services performed within the jurisdiction they serve by off-duty licensed peace officers as  
6.30 defined in section 626.84, subdivision 1, or services provided by a nonprofit organization  
6.31 or any organization at the direction of a county for monitoring and electronic surveillance

7.1 of persons placed on in-home detention pursuant to court order or under the direction of the  
7.2 Minnesota Department of Corrections;

7.3 (v) pet grooming services;

7.4 (vi) lawn care, fertilizing, mowing, spraying and sprigging services; garden planting  
7.5 and maintenance; tree, bush, and shrub pruning, bracing, spraying, and surgery; indoor plant  
7.6 care; tree, bush, shrub, and stump removal, except when performed as part of a land clearing  
7.7 contract as defined in section 297A.68, subdivision 40; and tree trimming for public utility  
7.8 lines. Services performed under a construction contract for the installation of shrubbery,  
7.9 plants, sod, trees, bushes, and similar items are not taxable;

7.10 (vii) massages, except when provided by a licensed health care facility or professional  
7.11 or upon written referral from a licensed health care facility or professional for treatment of  
7.12 illness, injury, or disease; and

7.13 (viii) the furnishing of lodging, board, and care services for animals in kennels and other  
7.14 similar arrangements, but excluding veterinary and horse boarding services.

7.15 (h) A sale and a purchase includes the furnishing for a consideration of tangible personal  
7.16 property or taxable services by the United States or any of its agencies or instrumentalities,  
7.17 or the state of Minnesota, its agencies, instrumentalities, or political subdivisions.

7.18 (i) A sale and a purchase includes the furnishing for a consideration of  
7.19 telecommunications services, ancillary services associated with telecommunication services,  
7.20 and pay television services. Telecommunication services include, but are not limited to, the  
7.21 following services, as defined in section 297A.669: air-to-ground radiotelephone service,  
7.22 mobile telecommunication service, postpaid calling service, prepaid calling service, prepaid  
7.23 wireless calling service, and private communication services. The services in this paragraph  
7.24 are taxed to the extent allowed under federal law.

7.25 (j) A sale and a purchase includes the furnishing for a consideration of installation if the  
7.26 installation charges would be subject to the sales tax if the installation were provided by  
7.27 the seller of the item being installed.

7.28 (k) A sale and a purchase includes the rental of a vehicle by a motor vehicle dealer to a  
7.29 customer when (1) the vehicle is rented by the customer for a consideration, or (2) the motor  
7.30 vehicle dealer is reimbursed pursuant to a service contract as defined in section 59B.02,  
7.31 subdivision 11.

7.32 (l) A sale and a purchase includes furnishing for a consideration of specified digital  
7.33 products or other digital products or granting the right for a consideration to use specified

8.1 digital products or other digital products on a temporary or permanent basis and regardless  
 8.2 of whether the purchaser is required to make continued payments for such right. Wherever  
 8.3 the term "tangible personal property" is used in this chapter, other than in subdivisions 10  
 8.4 and 38, the provisions also apply to specified digital products, or other digital products,  
 8.5 unless specifically provided otherwise or the context indicates otherwise.

8.6 (m) The sale of the privilege of admission under section 297A.61, subdivision 3,  
 8.7 paragraph (g), clause (1), to a place of amusement, recreational area, or athletic event  
 8.8 includes all charges included in the privilege of admission's sales price, without deduction  
 8.9 for amenities that may be provided, unless the amenities are separately stated and the  
 8.10 purchaser of the privilege of admission is entitled to add or decline the amenities, and the  
 8.11 amenities are not otherwise taxable.

8.12 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
 8.13 30, 2021.

8.14 Sec. 7. Minnesota Statutes 2018, section 297A.67, subdivision 2, is amended to read:

8.15 Subd. 2. **Food and food ingredients.** Except as otherwise provided in this subdivision,  
 8.16 food and food ingredients are exempt. For purposes of this subdivision, "food" and "food  
 8.17 ingredients" mean substances, whether in liquid, concentrated, solid, frozen, dried, or  
 8.18 dehydrated form, that are sold for ingestion or chewing by humans and are consumed for  
 8.19 their taste or nutritional value. Food and food ingredients exempt under this subdivision do  
 8.20 not include candy, soft drinks, dietary supplements, and prepared foods. Food and food  
 8.21 ingredients do not include cannabinoid products as defined in section 295.81, subdivision  
 8.22 2. Food and food ingredients do not include alcoholic beverages and tobacco. For purposes  
 8.23 of this subdivision, "alcoholic beverages" means beverages that are suitable for human  
 8.24 consumption and contain one-half of one percent or more of alcohol by volume. For purposes  
 8.25 of this subdivision, "tobacco" means cigarettes, cigars, chewing or pipe tobacco, or any  
 8.26 other item that contains tobacco. For purposes of this subdivision, "dietary supplements"  
 8.27 means any product, other than tobacco, intended to supplement the diet that:

8.28 (1) contains one or more of the following dietary ingredients:

8.29 (i) a vitamin;

8.30 (ii) a mineral;

8.31 (iii) an herb or other botanical;

8.32 (iv) an amino acid;

9.1 (v) a dietary substance for use by humans to supplement the diet by increasing the total  
9.2 dietary intake; and

9.3 (vi) a concentrate, metabolite, constituent, extract, or combination of any ingredient  
9.4 described in items (i) to (v);

9.5 (2) is intended for ingestion in tablet, capsule, powder, softgel, gelcap, or liquid form,  
9.6 or if not intended for ingestion in such form, is not represented as conventional food and is  
9.7 not represented for use as a sole item of a meal or of the diet; and

9.8 (3) is required to be labeled as a dietary supplement, identifiable by the supplement facts  
9.9 box found on the label and as required pursuant to Code of Federal Regulations, title 21,  
9.10 section 101.36.

9.11 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
9.12 30, 2021.

9.13 Sec. 8. Minnesota Statutes 2018, section 297A.67, subdivision 7, is amended to read:

9.14 Subd. 7. **Drugs; medical devices.** (a) Sales of the following drugs and medical devices  
9.15 for human use are exempt:

9.16 (1) drugs, including over-the-counter drugs;

9.17 (2) single-use finger-pricking devices for the extraction of blood and other single-use  
9.18 devices and single-use diagnostic agents used in diagnosing, monitoring, or treating diabetes;

9.19 (3) insulin and medical oxygen for human use, regardless of whether prescribed or sold  
9.20 over the counter;

9.21 (4) prosthetic devices;

9.22 (5) durable medical equipment for home use only;

9.23 (6) mobility enhancing equipment;

9.24 (7) prescription corrective eyeglasses; and

9.25 (8) kidney dialysis equipment, including repair and replacement parts.

9.26 (b) Items purchased in transactions covered by:

9.27 (1) Medicare as defined under title XVIII of the Social Security Act, United States Code,  
9.28 title 42, section 1395, et seq.; or

9.29 (2) Medicaid as defined under title XIX of the Social Security Act, United States Code,  
9.30 title 42, section 1396, et seq.

10.1 (c) For purposes of this subdivision:

10.2 (1) "Drug" means a compound, substance, or preparation, and any component of a  
10.3 compound, substance, or preparation, other than food and food ingredients, dietary  
10.4 supplements, cannabinoid products, or alcoholic beverages that is:

10.5 (i) recognized in the official United States Pharmacopoeia, official Homeopathic  
10.6 Pharmacopoeia of the United States, or official National Formulary, and supplement to any  
10.7 of them;

10.8 (ii) intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease;  
10.9 or

10.10 (iii) intended to affect the structure or any function of the body.

10.11 (2) "Durable medical equipment" means equipment, including repair and replacement  
10.12 parts, including single-patient use items, but not including mobility enhancing equipment,  
10.13 that:

10.14 (i) can withstand repeated use;

10.15 (ii) is primarily and customarily used to serve a medical purpose;

10.16 (iii) generally is not useful to a person in the absence of illness or injury; and

10.17 (iv) is not worn in or on the body.

10.18 For purposes of this clause, "repair and replacement parts" includes all components or  
10.19 attachments used in conjunction with the durable medical equipment, including repair and  
10.20 replacement parts which are for single patient use only.

10.21 (3) "Mobility enhancing equipment" means equipment, including repair and replacement  
10.22 parts, but not including durable medical equipment, that:

10.23 (i) is primarily and customarily used to provide or increase the ability to move from one  
10.24 place to another and that is appropriate for use either in a home or a motor vehicle;

10.25 (ii) is not generally used by persons with normal mobility; and

10.26 (iii) does not include any motor vehicle or equipment on a motor vehicle normally  
10.27 provided by a motor vehicle manufacturer.

10.28 (4) "Over-the-counter drug" means a drug that contains a label that identifies the product  
10.29 as a drug as required by Code of Federal Regulations, title 21, section 201.66. The label  
10.30 must include a "drug facts" panel or a statement of the active ingredients with a list of those  
10.31 ingredients contained in the compound, substance, or preparation. Over-the-counter drugs

11.1 do not include grooming and hygiene products, regardless of whether they otherwise meet  
11.2 the definition. "Grooming and hygiene products" are soaps, cleaning solutions, shampoo,  
11.3 toothpaste, mouthwash, antiperspirants, and suntan lotions and sunscreens.

11.4 (5) "Prescribed" and "prescription" means a direction in the form of an order, formula,  
11.5 or recipe issued in any form of oral, written, electronic, or other means of transmission by  
11.6 a duly licensed health care professional.

11.7 (6) "Prosthetic device" means a replacement, corrective, or supportive device, including  
11.8 repair and replacement parts, worn on or in the body to:

11.9 (i) artificially replace a missing portion of the body;

11.10 (ii) prevent or correct physical deformity or malfunction; or

11.11 (iii) support a weak or deformed portion of the body.

11.12 Prosthetic device does not include corrective eyeglasses.

11.13 (7) "Kidney dialysis equipment" means equipment that:

11.14 (i) is used to remove waste products that build up in the blood when the kidneys are not  
11.15 able to do so on their own; and

11.16 (ii) can withstand repeated use, including multiple use by a single patient, notwithstanding  
11.17 the provisions of clause (2).

11.18 (8) A transaction is covered by Medicare or Medicaid if any portion of the cost of the  
11.19 item purchased in the transaction is paid for or reimbursed by the federal government or  
11.20 the state of Minnesota pursuant to the Medicare or Medicaid program, by a private insurance  
11.21 company administering the Medicare or Medicaid program on behalf of the federal  
11.22 government or the state of Minnesota, or by a managed care organization for the benefit of  
11.23 a patient enrolled in a prepaid program that furnishes medical services in lieu of conventional  
11.24 Medicare or Medicaid coverage pursuant to agreement with the federal government or the  
11.25 state of Minnesota.

11.26 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June  
11.27 30, 2021.