

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 209

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| DATE | D-PG | OFFICIAL STATUS |
|------------|------|---|
| 01/31/2013 | 131 | Introduction and first reading Referred to Taxes |

A bill for an act

1.1 relating to taxation; tobacco; increasing the excise tax; repealing the health
 1.2 impact fee; appropriating money; amending Minnesota Statutes 2012, sections
 1.3 270C.56, subdivision 1; 297F.01, subdivisions 3, 19, by adding a subdivision;
 1.4 297F.05, subdivisions 1, 3, 4, by adding a subdivision; 297F.24, subdivision 1;
 1.5 297F.25, subdivision 1; 325D.32, subdivision 2; repealing Minnesota Statutes
 1.6 2012, sections 16A.725; 256.9658.
 1.7

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

1.9 Section 1. Minnesota Statutes 2012, section 270C.56, subdivision 1, is amended to read:

1.10 Subdivision 1. **Liability imposed.** A person who, either singly or jointly with
 1.11 others, has the control of, supervision of, or responsibility for filing returns or reports,
 1.12 paying taxes, or collecting or withholding and remitting taxes and who fails to do so, or a
 1.13 person who is liable under any other law, is liable for the payment of taxes arising under
 1.14 chapters 295, 296A, 297A, 297F, and 297G, or sections ~~256.9658~~, 290.92, and 297E.02,
 1.15 and the applicable penalties and interest on those taxes.

1.16 **EFFECTIVE DATE.** This section is effective July 1, 2013.

1.17 Sec. 2. Minnesota Statutes 2012, section 297F.01, subdivision 3, is amended to read:

1.18 Subd. 3. **Cigarette.** "Cigarette" means any roll for smoking made wholly or in part
 1.19 of tobacco; that weighs 4.5 pounds or less per thousand:

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

1.22 (2) wrapped in any substance containing tobacco, however labeled or named, which,
 1.23 because of its appearance, size, the type of tobacco used in the filler, or its packaging,
 1.24 pricing, marketing, or labeling, is likely to be offered to or purchased by consumers as

2.1 a cigarette, as defined in clause (1), unless it is wrapped in whole tobacco leaf and does
 2.2 not have a cellulose acetate or other cigarette-like filter.

2.3 **EFFECTIVE DATE.** This section is effective July 1, 2013.

2.4 Sec. 3. Minnesota Statutes 2012, section 297F.01, is amended by adding a subdivision
 2.5 to read:

2.6 Subd. 10b. **Moist Snuff.** "Moist snuff" means any finely cut, ground, or powdered
 2.7 smokeless tobacco that is intended to be placed or dipped in the mouth.

2.8 Sec. 4. Minnesota Statutes 2012, section 297F.01, subdivision 19, is amended to read:

2.9 Subd. 19. **Tobacco products.** "Tobacco products" means any product containing,
 2.10 made, or derived from tobacco that is intended for human consumption, whether chewed,
 2.11 smoked, absorbed, dissolved, inhaled, snorted, sniffed, or ingested by any other means,
 2.12 or any component, part, or accessory of a tobacco product, including, but not limited
 2.13 to, cigars; ~~little cigars~~; cheroots; stogies; periques; granulated, plug cut, crimp cut,
 2.14 ready rubbed, and other smoking tobacco; snuff; snuff flour; cavendish; plug and twist
 2.15 tobacco; fine-cut and other chewing tobacco; shorts; refuse scraps, clippings, cuttings
 2.16 and sweepings of tobacco, and other kinds and forms of tobacco; but does not include
 2.17 cigarettes as defined in this section. Tobacco products excludes any tobacco product
 2.18 that has been approved by the United States Food and Drug Administration for sale as
 2.19 a tobacco cessation product, as a tobacco dependence product, or for other medical
 2.20 purposes, and is being marketed and sold solely for such an approved purpose.

2.21 **EFFECTIVE DATE.** This section is effective July 1, 2013.

2.22 Sec. 5. Minnesota Statutes 2012, section 297F.05, subdivision 1, is amended to read:

2.23 Subdivision 1. **Rates; cigarettes.** A tax is imposed upon the sale of cigarettes in
 2.24 this state, upon having cigarettes in possession in this state with intent to sell, upon any
 2.25 person engaged in business as a distributor, and upon the use or storage by consumers, at
 2.26 the following rates:

2.27 (1) on cigarettes weighing not more than three pounds per thousand, ~~24~~ 141.5 mills
 2.28 on each such cigarette; and

2.29 (2) on cigarettes weighing more than three pounds per thousand, ~~48~~ 283 mills on
 2.30 each such cigarette.

2.31 **EFFECTIVE DATE.** This section is effective July 1, 2013.

3.1 Sec. 6. Minnesota Statutes 2012, section 297F.05, is amended by adding a subdivision
3.2 to read:

3.3 Subd. 1a. **Annual indexing.** Each year the commissioner shall adjust the dollar
3.4 amounts under subdivision 1 by the annual percentage change that the commissioner
3.5 determines applies to the tax rate under the adjustment procedure in section 297F.25,
3.6 subdivision 1, for the following calendar year. The commissioner shall publish the
3.7 resulting rate by November 1 and the rate applies to sales made on or after January 1 of
3.8 the following year.

3.9 **EFFECTIVE DATE.** This section is effective July 1, 2014.

3.10 Sec. 7. Minnesota Statutes 2012, section 297F.05, subdivision 3, is amended to read:

3.11 Subd. 3. **Rates; tobacco products.** (a) A tax is imposed upon all tobacco products
3.12 in this state and upon any person engaged in business as a distributor, at the rate of ~~35~~
3.13 95 percent of the wholesale sales price of the tobacco products. The tax is imposed at
3.14 the time the distributor:

3.15 (1) brings, or causes to be brought, into this state from outside the state tobacco
3.16 products for sale;

3.17 (2) makes, manufactures, or fabricates tobacco products in this state for sale in
3.18 this state; or

3.19 (3) ships or transports tobacco products to retailers in this state, to be sold by those
3.20 retailers.

3.21 (b) Notwithstanding paragraph (a), a minimum tax equal to the rate imposed on a
3.22 pack of 20 cigarettes weighing not more than three pounds per thousand, as established
3.23 under section 297F.05, subdivision 1, is imposed on:

3.24 (1) each ounce of loose, granulated, plug cut, crimp cut, or other tobacco intended
3.25 for smoking; and

3.26 (2) each container of moist snuff.

3.27 For purposes of this subdivision, a "container" means a container marketed or packaged
3.28 by the manufacturer, distributor, or retailer for separate sale to a retail purchaser.

3.29 **EFFECTIVE DATE.** This section is effective July 1, 2013, except the minimum
3.30 tax under paragraph (b) is effective January 1, 2014.

3.31 Sec. 8. Minnesota Statutes 2012, section 297F.05, subdivision 4, is amended to read:

3.32 Subd. 4. **Use tax; tobacco products.** A tax is imposed upon the use or storage by
3.33 consumers of tobacco products in this state, and upon such consumers, at the rate of ~~35~~ 95

4.1 percent of the cost to the consumer of the tobacco products or the minimum tax under
 4.2 subdivision 3, paragraph (b), whichever is greater.

4.3 **EFFECTIVE DATE.** This section is effective July 1, 2013.

4.4 Sec. 9. Minnesota Statutes 2012, section 297F.24, subdivision 1, is amended to read:

4.5 Subdivision 1. **Fee imposed.** (a) A fee is imposed upon the sale of nonsettlement
 4.6 cigarettes in this state, upon having nonsettlement cigarettes in possession in this state
 4.7 with intent to sell, upon any person engaged in business as a distributor, and upon the use
 4.8 or storage by consumers of nonsettlement cigarettes. The fee equals a rate of ~~1.75~~ 2.5
 4.9 cents per cigarette.

4.10 (b) The purpose of this fee is to:

4.11 (1) ensure that manufacturers of nonsettlement cigarettes pay fees to the state that
 4.12 are comparable to costs attributable to the use of the cigarettes;

4.13 (2) prevent manufacturers of nonsettlement cigarettes from undermining the state's
 4.14 policy of discouraging underage smoking by offering nonsettlement cigarettes at prices
 4.15 substantially below the cigarettes of other manufacturers; and

4.16 (3) fund such other purposes as the legislature determines appropriate.

4.17 Sec. 10. Minnesota Statutes 2012, section 297F.25, subdivision 1, is amended to read:

4.18 Subdivision 1. **Imposition.** (a) A tax is imposed on distributors on the sale of
 4.19 cigarettes by a cigarette distributor to a retailer or cigarette subjobber for resale in this
 4.20 state. The tax is equal to ~~6.5 percent of~~ the combined tax rate under section 297A.62,
 4.21 multiplied by the weighted average retail price and must be expressed in cents per pack
 4.22 rounded to the nearest one-tenth of a cent. The weighted average retail price must be
 4.23 determined annually, with new rates published by November 1, and effective for sales
 4.24 on or after January 1 of the following year. The weighted average retail price must be
 4.25 established by surveying cigarette retailers statewide in a manner and time determined by
 4.26 the commissioner. The commissioner shall make an inflation adjustment in accordance
 4.27 with the Consumer Price Index for all urban consumers inflation indicator as published in
 4.28 the most recent state budget forecast. The commissioner shall use the inflation factor for
 4.29 the calendar year in which the new tax rate takes effect. If the survey indicates that the
 4.30 average retail price of cigarettes has not increased relative to the average retail price in
 4.31 the previous year's survey, then the commissioner shall not make an inflation adjustment.
 4.32 The determination of the commissioner pursuant to this subdivision is not a "rule" and is
 4.33 not subject to the Administrative Procedure Act contained in chapter 14. For packs of
 4.34 cigarettes with other than 20 cigarettes, the tax must be adjusted proportionally.

5.1 (b) Notwithstanding paragraph (a), and in lieu of a survey of cigarette retailers, the
 5.2 tax calculation of the weighted average retail price for the sales of cigarettes from August
 5.3 1, 2011, through December 31, 2011, shall be calculated by: (1) increasing the average
 5.4 retail price per pack of 20 cigarettes from the most recent survey by the percentage change
 5.5 in a weighted average of the presumed legal prices for cigarettes during the year after
 5.6 completion of that survey, as reported and published by the Department of Commerce
 5.7 under section 325D.371; (2) subtracting the sales tax included in the retail price; and (3)
 5.8 adjusting for expected inflation. The rate must be published by May 1 and is effective for
 5.9 sales after July 31. If the weighted average of the presumed legal prices indicates that the
 5.10 average retail price of cigarettes has not increased relative to the average retail price in the
 5.11 most recent survey, then no inflation adjustment must be made. For packs of cigarettes
 5.12 with other than 20 cigarettes, the tax must be adjusted proportionally.

5.13 **EFFECTIVE DATE.** This section is effective July 1, 2013.

5.14 Sec. 11. Minnesota Statutes 2012, section 325D.32, subdivision 2, is amended to read:

5.15 Subd. 2. **Cigarettes.** "Cigarettes" means and includes any roll for smoking, made
 5.16 wholly or in part of tobacco, irrespective of size and shape and whether or not such
 5.17 tobacco is flavored, adulterated or mixed with any other ingredient, the wrapper or cover
 5.18 of which is made of paper or any other substance or material except whole tobacco leaf,
 5.19 and includes any cigarette as defined in section 297F.01, subdivision 3.

5.20 **EFFECTIVE DATE.** This section is effective July 1, 2013.

5.21 Sec. 12. **FLOOR STOCKS TAX.**

5.22 Subdivision 1. **Cigarettes.** (a) A floor stocks tax is imposed on every person
 5.23 engaged in the business in this state as a distributor, retailer, subjobber, vendor,
 5.24 manufacturer, or manufacturer's representative of cigarettes, on the stamped cigarettes and
 5.25 unaffixed stamps in the person's possession or under the person's control at 12:01 a.m. on
 5.26 July 1, 2013. The tax is imposed at the rate of 80 mills on each cigarette.

5.27 (b) Each distributor, on or before July 11, 2013, shall file a return with the
 5.28 commissioner of revenue, in the form the commissioner prescribes, showing the stamped
 5.29 cigarettes and unaffixed stamps on hand at 12:01 a.m. on July 1, 2013, and the amount
 5.30 of tax due on the cigarettes and unaffixed stamps. Each retailer, subjobber, vendor,
 5.31 manufacturer, or manufacturer's representative, on or before July 11, 2013, shall file
 5.32 a return with the commissioner, in the form the commissioner prescribes, showing the
 5.33 cigarettes on hand at 12:01 a.m. on July 1, 2013, and the amount of tax due on the

6.1 cigarettes. The tax imposed by this section is due and payable on or before August 8,
6.2 2013, and after that date bears interest at the rate of one percent per month.

6.3 Subd. 2. **Audit and enforcement.** The tax imposed by this section is subject to
6.4 the audit, assessment, interest, appeal, refund, penalty, enforcement, administrative, and
6.5 collection provisions of Minnesota Statutes, chapters 270C and 297F. The commissioner
6.6 of revenue may require a distributor to receive and maintain copies of floor stocks fee
6.7 returns filed by all persons requesting a credit for returned cigarettes.

6.8 Subd. 3. **Deposit of proceeds.** The commissioner of revenue shall deposit the
6.9 revenues from the tax under this section in the state treasury and credit them to the
6.10 general fund.

6.11 **EFFECTIVE DATE.** This section is effective July 1, 2013.

6.12 Sec. 13. **INTERIM SALES TAX RATE.**

6.13 Notwithstanding the provisions of Minnesota Statutes, section 297F.25, the
6.14 commissioner shall adjust the weighted average retail price in section 297F.25, subdivision
6.15 1, on July 1, 2013, to reflect the price changes under this act. This weighted average
6.16 shall be used to compute cigarette sales tax under Minnesota Statutes, section 297F.25,
6.17 subdivision 1, until December 31, 2013, when the commissioner shall resume annual
6.18 adjustments to the weighted average sales price. The commissioner's determination of
6.19 the adjustment that takes effect on January 1, 2014, must be limited to the change in the
6.20 weighted average retail that occurs during calendar year 2013 but after July 15, 2013.

6.21 **EFFECTIVE DATE.** This section is effective July 1, 2013.

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

6.23 Subdivision 1. **Report to legislature.** (a) The commissioner of revenue shall report
6.24 to the 2014 legislature on the tobacco tax collection system, including recommendations
6.25 to improve compliance under the excise tax for both cigarettes and other tobacco products.
6.26 The purpose of the report is to provide information and guidance to the legislature on
6.27 improvements to the tobacco tax collection system to:

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

6.31 (2) discourage tax evasion; and

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

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

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

7.8 (2) survey the methods of collection and enforcement used by other states or nations,
7.9 including identifying and discussing emerging best practices that ensure tracking of both
7.10 cigarettes and other tobacco products and result in the highest rates of tax collection and
7.11 compliance. These best practices must consider high-technology alternatives, such as use
7.12 of bar codes, radio-frequency identification tags, or similar mechanisms for tracking
7.13 compliance;

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

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

7.18 (5) make recommendations on implementation of a comprehensive tobacco tax
7.19 collection system for Minnesota that can be implemented by January 1, 2014, including:

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

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

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

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

7.30 Subd. 2. **Due date.** The report required by subdivision 1 is due January 1, 2014.

7.31 Subd. 3. **Procedure.** The report required under this section must be made in the
7.32 manner provided under Minnesota Statutes, section 3.195. In addition, copies must be
7.33 provided to the chairs and ranking minority members of the legislative committees and
7.34 divisions with jurisdiction over taxation.

8.1 Subd. 4. **Appropriation.** (a) \$100,000 is appropriated from the general fund to the
8.2 commissioner of revenue for fiscal year 2014 for the cost of preparing the report under
8.3 subdivision 1.

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

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

8.7 Sec. 15. **REPEALER.**

8.8 Minnesota Statutes 2012, sections 16A.725; and 256.9658, are repealed.

8.9 **EFFECTIVE DATE.** This section is effective July 1, 2013.

16A.725 HEALTH IMPACT FUND AND FUND REIMBURSEMENTS.

Subdivision 1. **Health impact fund.** There is created in the state treasury a health impact fund to which must be credited all revenue from the health impact fee under section 256.9658 and any floor stocks fee enacted into law.

Subd. 2. **Certified tobacco expenditures.** By April 30 of each year, the commissioner of human services shall certify to the commissioner of management and budget the state share, by fund, of tobacco use attributable costs for the previous fiscal year in Minnesota health care programs, including medical assistance, general assistance medical care, and MinnesotaCare, or other applicable expenditures.

Subd. 3. **Fund reimbursements.** (a) Each fiscal year, the commissioner of management and budget shall first transfer from the health impact fund to the general fund an amount sufficient to offset the general fund cost of the certified expenditures under subdivision 2 or the balance of the fund, whichever is less.

(b) If any balance remains in the health impact fund after the transfer in paragraph (a), the commissioner of management and budget shall transfer to the health care access fund the amount sufficient to offset the health care access fund cost of the certified expenditures in subdivision 2, or the balance of the fund, whichever is less.

256.9658 TOBACCO HEALTH IMPACT FEE.

Subdivision 1. **Purpose.** A tobacco use health impact fee is imposed on and collected from cigarette distributors and tobacco products distributors to recover for the state health costs related to or caused by tobacco use and to reduce tobacco use, particularly by youths.

Subd. 2. **Definitions.** The definitions under section 297F.01 apply to this section.

Subd. 3. **Fee imposed.** (a) A fee is imposed upon the sale of cigarettes in this state, upon having cigarettes in possession in this state with intent to sell, upon any person engaged in business as a distributor, and upon the use or storage by consumers of cigarettes. The fee is imposed at the following rates:

(1) on cigarettes weighing not more than three pounds per thousand, 37.5 mills on each cigarette; and

(2) on cigarettes weighing more than three pounds per thousand, 75 mills on each cigarette.

(b) A fee is imposed upon all tobacco products in this state and upon any person engaged in business as a distributor in an amount equal to the liability for tax under section 297F.05, subdivision 3, or on a consumer of tobacco products equal to the tax under section 297F.05, subdivision 4. Liability for the fee is in addition to the tax under section 297F.05, subdivision 3 or 4.

Subd. 4. **Payment.** A distributor must pay the fee at the same time and in the same manner as provided for payment of tax under chapter 297F.

Subd. 5. **Fee on use of unstamped cigarettes.** Any person, other than a distributor, that purchases or possesses cigarettes that have not been stamped and on which the fee imposed under this section has not been paid is liable for the fee under this section on the possession or use of those cigarettes.

Subd. 6. **Administration.** The audit, assessment, interest, appeal, refund, penalty, enforcement, administrative, and collection provisions of chapters 270C and 297F apply to the fee imposed under this section.

Subd. 7. **Cigarette stamp.** (a) The stamp in section 297F.08 must be affixed to each package and is prima facie evidence that the fee imposed by this section has been paid.

(b) Notwithstanding any other provisions of this section, the fee due on the return is based upon actual stamps purchased during the reporting period.

Subd. 8. **License revocation.** The commissioner of revenue may revoke or suspend the license of a distributor for failure to pay the fee or otherwise comply with the requirements under this section. The provisions and procedures under section 297F.04 apply to a suspension or revocation under this subdivision.

Subd. 9. **Deposit of revenues.** The commissioner of revenue shall deposit the revenues from the fee under this section in the state treasury and credit them to the health impact fund.