

SENATE

STATE OF MINNESOTA

EIGHTY-NINTH SESSION

S.F. No. 1192

(SENATE AUTHORS: DZIEDZIC, Dibble and Rest)

DATE	D-PG	OFFICIAL STATUS
02/26/2015	445	Introduction and first reading Referred to Health, Human Services and Housing
03/04/2015	535	Withdrawn and re-referred to Judiciary
03/25/2015	1295a	Comm report: To pass as amended and re-refer to 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 270C.722, subdivision 1; 270C.728,

1.4 by adding a subdivision; 297F.01, subdivision 14; 297F.03, subdivisions 5,

1.5 6; 297F.04, subdivision 1; 297F.13, subdivision 4; 297F.19, by adding a

1.6 subdivision; 297F.20, by adding subdivisions; 297F.21, subdivision 1; 461.12,

1.7 subdivision 8; proposing coding for new law in Minnesota Statutes, chapter

1.8 297F; repealing Minnesota Statutes 2014, section 297F.185.

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

1.10 Section 1. Minnesota Statutes 2014, section 270C.722, subdivision 1, is amended to

1.11 read:

1.12 Subdivision 1. **Notice of revocation; hearings.** (a) If: ~~(1)~~ a person fails to comply

1.13 with chapter 297A or the sales and use tax provisions of chapter 289A or the rules related

1.14 to sales tax, ~~or (2) any retailer purchases for resale from an unlicensed seller more than~~

1.15 ~~20,000 cigarettes or \$500 or more worth of tobacco products, without reasonable cause,~~

1.16 the commissioner may give the person 30 days' notice in writing, specifying the violations,

1.17 and stating that based on the violations the commissioner intends to revoke the person's

1.18 permit issued under section 297A.84. The notice must also advise the person of the right to

1.19 contest the revocation under this subdivision. It must also explain the general procedures

1.20 for a contested case hearing under chapter 14. The notice may be served personally or by

1.21 mail in the manner prescribed for service of an order of assessment.

1.22 (b) If the person does not request a hearing within 30 days after the date of the

1.23 notice of intent, the commissioner may serve a notice of revocation of permit upon the

1.24 person, and the permit is revoked. If a hearing is timely requested, and held, the permit

1.25 is revoked after the commissioner serves an order of revocation of permit under section

1.26 14.62, subdivision 1.

2.1 **EFFECTIVE DATE.** This section is effective August 1, 2015.

2.2 Sec. 2. Minnesota Statutes 2014, section 270C.728, is amended by adding a
2.3 subdivision to read:

2.4 Subd. 8. **Publication of revoked retail cigarette licenses.** (a) Notwithstanding
2.5 any other law, the commissioner may publish a list of persons who have had their retail
2.6 licenses to sell cigarettes or tobacco products revoked under section 297F.186. In the case
2.7 of a license holder that is a business entity, the commissioner may also publish the name
2.8 of responsible persons of the license holder, as defined in section 297F.186, subdivision 1.

2.9 (b) At least 30 days before publishing the name of a license holder or responsible
2.10 person, the commissioner shall mail a written notice to the license holder and to
2.11 responsible persons of the license holder of the commissioner's intent to publish. This
2.12 notice may be included as part of the notice of intent to revoke a license as required under
2.13 section 297F.186, subdivision 3.

2.14 (c) The list may be published by any medium or method. The list must contain the
2.15 name and address of the license holder and name of the responsible person and the date
2.16 the license was revoked.

2.17 (d) The commissioner shall remove the name of a license holder or responsible
2.18 person from the list five years from the date of the license revocation or upon the license
2.19 holder or responsible person receiving a license clearance under section 297F.186.

2.20 **EFFECTIVE DATE.** This section is effective August 1, 2015.

2.21 Sec. 3. Minnesota Statutes 2014, section 297F.01, subdivision 14, is amended to read:

2.22 Subd. 14. **Retailer.** "Retailer" means a person ~~required to be licensed under chapter~~
2.23 ~~461~~ located in this state engaged in this state in the business of selling, or offering to sell,
2.24 cigarettes or tobacco products to consumers.

2.25 **EFFECTIVE DATE.** This section is effective August 1, 2015.

2.26 Sec. 4. Minnesota Statutes 2014, section 297F.03, subdivision 5, is amended to read:

2.27 Subd. 5. **License fees; cigarettes.** Each application for a cigarette distributor's
2.28 license must be accompanied by a fee of ~~\$300~~ \$500. Each application for a cigarette
2.29 subjobber's license must be accompanied by a fee of ~~\$24~~ \$100. A distributor or subjobber
2.30 applying for a license during the second year of a two-year licensing period is required to
2.31 pay only one-half of the license fee.

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

Sec. 5. Minnesota Statutes 2014, section 297F.03, subdivision 6, is amended to read:

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

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

Sec. 6. Minnesota Statutes 2014, section 297F.04, subdivision 1, is amended to read:

Subdivision 1. **Powers of commissioner.** The commissioner may revoke ~~or~~ suspend, or refuse to renew the license or licenses of any distributor or subjobber, or refuse to issue a license to an applicant for a distributor or subjobber license, for violation of this chapter, any other act applicable to the sale of cigarettes or tobacco products, or any rule promulgated by the commissioner, in furtherance of this chapter.

EFFECTIVE DATE. This section is effective August 1, 2015.

Sec. 7. Minnesota Statutes 2014, section 297F.13, subdivision 4, is amended to read:

Subd. 4. **Retailer and subjobber to preserve purchase invoices.** Every retailer and subjobber shall procure itemized invoices of all cigarettes or tobacco products purchased.

The retailer and subjobber shall preserve a legible copy of each invoice for one year from the date of the invoice or as long as the cigarette or tobacco product listed on the invoice is available for sale or in their possession, whichever period is longer. The retailer and subjobber shall preserve copies of the invoices at each retail location or at a central location provided that the invoice must be produced and made available at a retail location within one hour when requested by the commissioner or duly authorized agents and employees. Copies should be numbered and kept in chronological order.

To determine whether the business is in compliance with the provisions of this chapter, at any time during usual business hours, the commissioner, or duly authorized agents and employees, may enter any place of business of a retailer or subjobber without a search warrant and inspect the premises, the records required to be kept under this

chapter, and the packages of cigarettes, tobacco products, and vending devices contained on the premises.

EFFECTIVE DATE. This section is effective for sales and purchases by subjobbers and retailers made on or after August 1, 2015.

Sec. 8. **[297F.186] REVOCATION OF CIGARETTE AND TOBACCO RETAIL LICENSE.**

Subdivision 1. Cigarette and tobacco retail revocation. (a) A licensing authority must not issue, transfer, or renew, and must revoke, a license if the commissioner notifies the licensing authority that the license holder has been in possession of contraband cigarettes or tobacco products under section 297F.21 at the location covered by the license.

(b) Within ten days after receipt of the notification from the commissioner under paragraph (a), the licensing authority must notify the license holder by mail of the revocation of the license. The notice must include a copy of the commissioner's notice to the licensing authority and information, in the form specified by the commissioner, on the licensee's option for receiving a license clearance from the commissioner. The licensing authority must revoke the license within 30 days after receiving the notice from the commissioner, unless it receives a license clearance from the commissioner as provided in subdivision 2, paragraph (b).

(c) For purposes of this section, the following terms have the meanings given.

(1) "License holder" means an individual or legal entity who has a license to sell cigarettes or tobacco products issued under chapter 461.

(2) "License" means a license to sell cigarettes or tobacco products under chapter 461.

(3) "Licensing authority" means a town board, county board, governing body of a home rule charter or statutory city, or state agricultural society authorized to issue licenses under chapter 461.

(4) "Applicant" is any individual, corporation, partnership, or any other legal entity that is a holder of a license or that has filed an application to obtain a license.

(5) "Responsible person" means any individual who, either singly or jointly with others, has the control of, supervision of, or responsibility for filing tax returns or reports, paying taxes, or collecting or withholding and remitting taxes to the commissioner for a license holder, or who has authority to purchase cigarettes or tobacco products, or supervises a person who has authority to purchase cigarettes or tobacco products for the license holder.

Subd. 2. New licenses after revocation. (a) An applicant who has had a license revoked under this section, or an applicant with a responsible person who was

a responsible person for another entity for which a license was revoked under this section, may not apply for a license or seek the reinstatement of a revoked license unless the applicant presents to the licensing authority a license clearance issued by the commissioner. A licensing authority must not issue a new license to an applicant with such a responsible person or to an applicant who has had a license revoked under this section or reinstate a revoked license unless the applicant presents to the authority a license clearance issued by the commissioner.

(b) Except as provided in paragraph (f), the commissioner may issue a license clearance if the applicant and all responsible persons of the applicant:

(1) sign an agreement that acknowledges that the applicant and the responsible person will follow all laws related to the taxation of cigarettes and tobacco products, including the requirements to:

(i) purchase all cigarettes and tobacco products from distributors and subjobbers licensed by the commissioner;

(ii) maintain invoices of all cigarettes or tobacco products purchased as required under section 297F.13, subdivision 4, and produce those invoices within one hour when requested by the commissioner or duly authorized agents and employees; and

(iii) timely file and pay to the commissioner all returns and all sales taxes related to the sale of tobacco products; and

(2) deposit with the commissioner security or a surety bond in an amount equal to ten times the amount of tax on the contraband cigarettes or tobacco products. The commissioner must hold the security deposit for two years.

(c) The commissioner must pay interest on any money deposited as security. The interest is calculated from the date of deposit to the date of refund, or date of application to any outstanding tax liability, at a rate specified in section 270C.405. The commissioner must refund the security deposit to the applicant at the end of the two-year period unless the applicant has any unpaid tax liabilities payable to the commissioner. The commissioner may apply the security deposit to any unpaid tax liabilities of the applicant owed to the commissioner as well as the tax on any contraband cigarettes or tobacco products owned, possessed, sold, or offered for sale by the applicant after the license clearance has been issued.

(d) The commissioner may refund the security deposit before the end of the two-year holding period if the license holder no longer has a license to sell cigarettes or tobacco products issued by any licensing authority in the state.

(e) If the commissioner determines that a licensing authority has issued a new license or reinstated a revoked license without the applicant submitting a license clearance, the

commissioner may notify the licensing authority to revoke the license. Revocations under this subdivision are controlled by the provisions of subdivision 1, paragraph (b), and subdivision 3. Notice of intent to require revocation from the commissioner must be sent to the license holder and to the responsible person of the license holder.

(f) If an applicant has had, or if a person has been a responsible person to, a cumulative number of two licenses revoked under this subdivision in a five-year period by all licensing authorities within the state, the commissioner may refuse to issue a license clearance until 24 months have elapsed after the last revocation and the applicant has satisfied the conditions for reinstatement of a revoked license or issuance of a new license imposed by this subdivision.

Subd. 3. Notice and hearing. (a) Prior to notifying a licensing authority pursuant to subdivision 1 to revoke a license, the commissioner must send a notice to the license holder and to any known responsible person of the license holder of the commissioner's intent to require revocation of the license and of the license holder's or responsible person's right to a hearing. If the license holder or responsible person requests a hearing in writing within 30 days of the date of the notice, a contested case hearing must be held. The hearing must be held within 45 days of the date the commissioner refers the case to the Office of Administrative Hearings. Notwithstanding any law to the contrary, the license holder or responsible person must be served within 20 days' notice in writing specifying the time and place of the hearing and the allegations against the license holder or responsible person. The notice may be served personally or by mail. A license is subject to revocation when 30 days have passed following the date of the notice in this paragraph without the license holder requesting a hearing, or, if a hearing is timely requested, upon final determination of the hearing under section 14.62, subdivision 1.

(b) The commissioner may notify a licensing authority under subdivision 1 only after the requirements of paragraph (a) have been satisfied.

(c) A hearing under this subdivision is in lieu of any other hearing or proceeding provided by law arising from any action taken under subdivision 1.

EFFECTIVE DATE. This section is effective August 1, 2015.

Sec. 9. Minnesota Statutes 2014, section 297F.19, is amended by adding a subdivision to read:

Subd. 10. Penalty for retailers who fail to comply. (a) A retailer who fails to produce an itemized invoice from a licensed seller within one hour of being requested by the commissioner to do so as required under section 297F.13, subdivision 4, or who offers for sale or holds in inventory cigarettes or tobacco products without a license required

under chapter 461 is subject to a penalty of \$1,000 for the first violation, \$2,000 for the second violation, and \$5,000 for the third and each subsequent violation occurring during any 36-month period.

(b) A retailer who offers for sale or holds in inventory untaxed cigarettes or tobacco products is subject to a penalty equal to the greater of \$2,000, or 150 percent of the tax due on the cigarettes or tobacco products.

EFFECTIVE DATE. This section is effective for violations occurring on or after August 1, 2015.

Sec. 10. Minnesota Statutes 2014, section 297F.20, is amended by adding a subdivision to read:

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

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

EFFECTIVE DATE. This section is effective for offenses committed on or after August 1, 2015.

Sec. 11. Minnesota Statutes 2014, section 297F.20, is amended by adding a subdivision to read:

Subd. 13. Aggregation and consolidation of venue. In any prosecution under this section, the number of unstamped cigarettes or the value of the untaxed tobacco products possessed, received, transported, sold, offered to be sold, or purchased in violation of this section within any six-month period may be aggregated and the defendant charged accordingly in applying the provisions of this section. When two or more offenses are committed by the same individual in two or more counties, the accused may be prosecuted in any county in which one of the offenses was committed.

EFFECTIVE DATE. This section is effective for offenses committed on or after August 1, 2015.

Sec. 12. Minnesota Statutes 2014, section 297F.21, subdivision 1, is amended to read:

Subdivision 1. **Contraband defined.** The following are declared to be contraband and therefore subject to civil and criminal penalties under this chapter:

(a) Cigarette packages which do not have stamps affixed to them as provided in this chapter, including but not limited to (i) packages with illegible stamps and packages with stamps that are not complete or whole even if the stamps are legible, and (ii) all devices for the vending of cigarettes in which packages as defined in item (i) are found, including all contents contained within the devices.

(b) A device for the vending of cigarettes and all packages of cigarettes, where the device does not afford at least partial visibility of contents. Where any package exposed to view does not carry the stamp required by this chapter, it shall be presumed that all packages contained in the device are unstamped and contraband.

(c) A device for the vending of cigarettes to which the commissioner or authorized agents have been denied access for the inspection of contents. In lieu of seizure, the commissioner or an agent may seal the device to prevent its use until inspection of contents is permitted.

(d) A device for the vending of cigarettes which does not carry the name and address of the owner, plainly marked and visible from the front of the machine.

(e) A device including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used with the knowledge of the owner or of a person operating with the consent of the owner for the storage or transportation of more than 5,000 cigarettes which are contraband under this subdivision. When cigarettes are being transported in the course of interstate commerce, or are in movement from either a public warehouse to a distributor upon orders from a manufacturer or distributor, or from one distributor to another, the cigarettes are not contraband, notwithstanding the provisions of clause (a).

(f) A device including, but not limited to, motor vehicles, trailers, snowmobiles, airplanes, and boats used with the knowledge of the owner, or of a person operating with the consent of the owner, for the storage or transportation of untaxed tobacco products intended for sale in Minnesota other than those in the possession of a licensed distributor on or before the due date for payment of the tax under section 297F.09, subdivision 2.

(g) Cigarette packages or tobacco products obtained from an unlicensed seller.

(h) Cigarette packages offered for sale or held as inventory in violation of section 297F.20, subdivision 7.

(i) Tobacco products on which the tax has not been paid by a licensed distributor.

(j) Any cigarette packages or tobacco products offered for sale or held as inventory for which ~~there is not an invoice from a licensed seller~~ the retailer or subjobber does not

9.1 produce an itemized invoice from a licensed seller within one hour after being requested
9.2 by the commissioner to do so as required under section 297F.13, subdivision 4.

9.3 (k) Cigarette packages which have been imported into the United States in violation
9.4 of United States Code, title 26, section 5754. All cigarettes held in violation of that section
9.5 shall be presumed to have entered the United States after December 31, 1999, in the
9.6 absence of proof to the contrary.

9.7 (l) Cigarettes subject to forfeiture under section 299F.854, subdivision 5, and
9.8 cigarette packaging and markings, including the cigarettes contained therein, which do not
9.9 meet the requirements under section 299F.853, paragraph (a).

9.10 (m) All cigarettes and tobacco products, including those for which the tax has been
9.11 paid, offered for sale or held as inventory by a retailer operating without a license required
9.12 under chapter 461.

9.13 **EFFECTIVE DATE.** This section is effective August 1, 2015.

9.14 Sec. 13. Minnesota Statutes 2014, section 461.12, subdivision 8, is amended to read:

9.15 Subd. 8. **Notice to commissioner.** The licensing authority under this section shall,
9.16 within 30 days of the issuance or renewal of a license, ~~inform~~ provide the commissioner of
9.17 revenue ~~of~~, on a form prescribed by the commissioner and completed by the applicant,
9.18 the licensee's name, address, trade name, Minnesota business identification number, the
9.19 name of the individual or individuals who will be responsible for purchasing cigarettes or
9.20 tobacco products for the licensee, and the effective and expiration dates of the license.
9.21 The commissioner of revenue must also be informed of a license ~~renewal~~, transfer,
9.22 cancellation, suspension, or revocation during the license period.

9.23 **EFFECTIVE DATE.** This section is effective for licenses issued, renewed,
9.24 transferred, canceled, suspended, or revoked after December 31, 2015.

9.25 Sec. 14. **APPROPRIATIONS.**

9.26 \$1,421,000 in fiscal year 2016, \$1,036,000 in fiscal year 2017, \$1,036,000 in fiscal
9.27 year 2018, and \$1,036,000 in fiscal year 2019 are appropriated from the general fund to
9.28 the commissioner of revenue to carry out the provisions of this act. This is an ongoing
9.29 appropriation and shall be added to the base.

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

9.31 Sec. 15. **REPEALER.**

9.32 Minnesota Statutes 2014, section 297F.185, is repealed.

10.1

EFFECTIVE DATE. This section is effective August 1, 2015.

APPENDIX
Repealed Minnesota Statutes: S1192-1

297F.185 REVOCATION OF SALES AND USE TAX PERMITS.

(a) If a retailer purchases for resale from an unlicensed seller more than 20,000 cigarettes or \$500 or more worth of tobacco products, the commissioner may revoke the person's sales and use tax permit as provided in section 270C.722.

(b) The commissioner may revoke a retailer's sales or use permit as provided in section 270C.722 if the retailer, directly or indirectly, purchases for resale cigarettes without the proper stamp affixed.