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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-THIRD SESSION

H. F. No. 3788

02/14/2024 Authored by Hanson, J.; Gomez and Garofalo
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; repealing the tax on illegal cannabis and controlled substances;
1.3 making related technical changes; amending Minnesota Statutes 2022, section
1.4 609.902, subdivision 4; Minnesota Statutes 2023 Supplement, section 609A.02,
1.5 subdivision 3; repealing Minnesota Statutes 2022, sections 13.4967, subdivision
1.6 5; 297D.02; 297D.03; 297D.05; 297D.09, subdivisions 1, 2; 297D.12; 297D.13;
1.7 Minnesota Statutes 2023 Supplement, sections 297D.01; 297D.04; 297D.06;
1.8 297D.07; 297D.08; 297D.085; 297D.09, subdivision 1a; 297D.10; 297D.11.

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

1.10 Section 1. Minnesota Statutes 2022, section 609.902, subdivision 4, is amended to read:

1.11 Subd. 4. Criminal act. "Criminal act" means conduct constituting, or a conspiracy or
1.12 attempt to commit, a felony violation of chapter 152, or a felony violation of section ~~297D.09~~;
1.13 299F.79; 299F.80; 299F.82; 609.185; 609.19; 609.195; 609.20; 609.205; 609.221; 609.222;
1.14 609.223; 609.2231; 609.228; 609.235; 609.245; 609.25; 609.27; 609.322; 609.342; 609.343;
1.15 609.344; 609.345; 609.42; 609.48; 609.485; 609.495; 609.496; 609.497; 609.498; 609.52,
1.16 subdivision 2, if the offense is punishable under subdivision 3, clause (1), if the property is
1.17 a firearm, clause (3)(b), or clause (3)(d)(v); section 609.52, subdivision 2, paragraph (a),
1.18 clause (1) or (4); 609.527, if the crime is punishable under subdivision 3, clause (4); 609.528,
1.19 if the crime is punishable under subdivision 3, clause (4); 609.53; 609.561; 609.562; 609.582,
1.20 subdivision 1 or 2; 609.668, subdivision 6, paragraph (a); 609.67; 609.687; 609.713; 609.86;
1.21 609.894, subdivision 3 or 4; 609.895; 624.713; 624.7191; or 626A.02, subdivision 1, if the
1.22 offense is punishable under section 626A.02, subdivision 4, paragraph (a). "Criminal act"
1.23 also includes conduct constituting, or a conspiracy or attempt to commit, a felony violation
1.24 of section 609.52, subdivision 2, clause (3), (4), (15), or (16), if the violation involves an
1.25 insurance company as defined in section 60A.02, subdivision 4, a nonprofit health service

2.1 plan corporation regulated under chapter 62C, a health maintenance organization regulated
2.2 under chapter 62D, or a fraternal benefit society regulated under chapter 64B.

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

2.4 Sec. 2. Minnesota Statutes 2023 Supplement, section 609A.02, subdivision 3, is amended
2.5 to read:

2.6 Subd. 3. **Certain criminal proceedings.** (a) A petition may be filed under section
2.7 609A.03 to seal all records relating to an arrest, indictment or information, trial, or verdict
2.8 if the records are not subject to section 299C.11, subdivision 1, paragraph (b), and if:

2.9 (1) all pending actions or proceedings were resolved in favor of the petitioner. For
2.10 purposes of this chapter, a verdict of not guilty by reason of mental illness is not a resolution
2.11 in favor of the petitioner. For the purposes of this chapter, an action or proceeding is resolved
2.12 in favor of the petitioner, if the petitioner received an order under section 590.11 determining
2.13 that the petitioner is eligible for compensation based on exoneration;

2.14 (2) the petitioner has successfully completed the terms of a diversion program or stay
2.15 of adjudication and has not been charged with a new crime for at least one year since
2.16 completion of the diversion program or stay of adjudication;

2.17 (3) the petitioner was convicted of a petty misdemeanor or misdemeanor or the sentence
2.18 imposed was within the limits provided by law for a misdemeanor and the petitioner has
2.19 not been convicted of a new crime for at least two years since discharge of the sentence for
2.20 the crime;

2.21 (4) the petitioner was convicted of a gross misdemeanor or the sentence imposed was
2.22 within the limits provided by law for a gross misdemeanor and the petitioner has not been
2.23 convicted of a new crime for at least three years since discharge of the sentence for the
2.24 crime;

2.25 (5) the petitioner was convicted of a gross misdemeanor that is deemed to be for a
2.26 misdemeanor pursuant to section 609.13, subdivision 2, clause (2), and has not been convicted
2.27 of a new crime for at least three years since discharge of the sentence for the crime;

2.28 (6) the petitioner was convicted of a felony violation of section 152.025 and has not
2.29 been convicted of a new crime for at least four years since discharge of the sentence for the
2.30 crime;

2.31 (7) the petitioner was convicted of a felony that is deemed to be for a gross misdemeanor
2.32 or misdemeanor pursuant to section 609.13, subdivision 1, clause (2), and has not been

3.1 convicted of a new crime for at least five years since discharge of the sentence for the crime;
 3.2 or

3.3 (8) the petitioner was convicted of a felony violation of an offense listed in paragraph
 3.4 (b), and has not been convicted of a new crime for at least four years since discharge of the
 3.5 sentence for the crime.

3.6 (b) Paragraph (a), clause (7), applies to the following offenses:

3.7 (1) section 35.824 (altering livestock certificate);

3.8 (2) section 62A.41 (insurance regulations);

3.9 (3) section 86B.865, subdivision 1 (certification for title on watercraft);

3.10 (4) section 152.023, subdivision 2 (possession of a controlled substance in the third
 3.11 degree); 152.024, subdivision 2 (possession of a controlled substance in the fourth degree);
 3.12 152.025 (controlled substance in the fifth degree); or 152.097 (sale of simulated controlled
 3.13 substance);

3.14 (5) section 168A.30, subdivision 1 (certificate of title false information); or 169.09,
 3.15 subdivision 14, paragraph (a), clause (2) (accident resulting in great bodily harm);

3.16 (6) chapter 201; 203B; or 204C (voting violations);

3.17 (7) section 228.45; 228.47; 228.49; 228.50; or 228.51 (false bill of lading);

3.18 (8) section 256.984 (false declaration in assistance application);

3.19 (9) section 296A.23, subdivision 2 (willful evasion of fuel tax);

3.20 ~~(10) section 297D.09, subdivision 1 (failure to affix stamp on scheduled substances);~~

3.21 ~~(11)~~ (10) section 297G.19 (liquor taxation); or 340A.701 (unlawful acts involving liquor);

3.22 ~~(12)~~ (11) section 325F.743 (precious metal dealers); or 325F.755, subdivision 7 (prize
 3.23 notices and solicitations);

3.24 ~~(13)~~ (12) section 346.155, subdivision 10 (failure to control regulated animal);

3.25 ~~(14)~~ (13) section 349.2127; or 349.22 (gambling regulations);

3.26 ~~(15)~~ (14) section 588.20 (contempt);

3.27 ~~(16)~~ (15) section 609.27, subdivision 1, clauses (2) to (5) (coercion);

3.28 ~~(17)~~ (16) section 609.31 (leaving state to evade establishment of paternity);

- 4.1 ~~(18)~~ (17) section 609.485, subdivision 4, paragraph (a), clause (2) or (4) (escape from
4.2 civil commitment for mental illness);
- 4.3 ~~(19)~~ (18) section 609.49 (failure to appear in court);
- 4.4 ~~(20)~~ (19) section 609.52, subdivision 2, when sentenced pursuant to section 609.52,
4.5 subdivision 3, clause (3)(a) (theft of \$5,000 or less) or 609.52, subdivision 3a, clause (1)
4.6 (theft of \$1,000 or less with risk of bodily harm); or any other offense sentenced pursuant
4.7 to section 609.52, subdivision 3, clause (3)(a);
- 4.8 ~~(21)~~ (20) section 609.521 (possession of shoplifting gear);
- 4.9 ~~(22)~~ (21) section 609.525 (bringing stolen goods into state);
- 4.10 ~~(23)~~ (22) section 609.526, subdivision 2, clause (2) (metal dealer receiving stolen goods);
- 4.11 ~~(24)~~ (23) section 609.527, subdivision 5b (possession or use of scanning device or
4.12 reencoder); 609.528, subdivision 3, clause (3) (possession or sale of stolen or counterfeit
4.13 check); or 609.529 (mail theft);
- 4.14 ~~(25)~~ (24) section 609.53 (receiving stolen goods);
- 4.15 ~~(26)~~ (25) section 609.535, subdivision 2a, paragraph (a), clause (1) (dishonored check
4.16 over \$500);
- 4.17 ~~(27)~~ (26) section 609.54, clause (1) (embezzlement of public funds \$2,500 or less);
- 4.18 ~~(28)~~ (27) section 609.551 (rustling and livestock theft);
- 4.19 ~~(29)~~ (28) section 609.5641, subdivision 1a, paragraph (a) (wildfire arson);
- 4.20 ~~(30)~~ (29) section 609.576, subdivision 1, clause (3), item (iii) (negligent fires);
- 4.21 ~~(31)~~ (30) section 609.582, subdivision 3 (burglary in the third degree);
- 4.22 ~~(32)~~ (31) section 609.59 (possession of burglary or theft tools);
- 4.23 ~~(33)~~ (32) section 609.595, subdivision 1, clauses (3) to (5), and subdivision 1a, paragraph
4.24 (a) (criminal damage to property);
- 4.25 ~~(34)~~ (33) section 609.597, subdivision 3, clause (3) (assaulting or harming police horse);
- 4.26 ~~(35)~~ (34) section 609.625 (aggravated forgery); 609.63 (forgery); 609.631, subdivision
4.27 4, clause (3)(a) (check forgery \$2,500 or less); 609.635 (obtaining signature by false
4.28 pretense); 609.64 (recording, filing forged instrument); or 609.645 (fraudulent statements);
- 4.29 ~~(36)~~ (35) section 609.65, clause (1) (false certification by notary); or 609.651, subdivision
4.30 4, paragraph (a) (lottery fraud);

- 5.1 ~~(37)~~ (36) section 609.652 (fraudulent driver's license and identification card);
- 5.2 ~~(38)~~ (37) section 609.66, subdivision 1a, paragraph (a) (discharge of firearm; silencer);
- 5.3 or 609.66, subdivision 1b (furnishing firearm to minor);
- 5.4 ~~(39)~~ (38) section 609.662, subdivision 2, paragraph (b) (duty to render aid);
- 5.5 ~~(40)~~ (39) section 609.686, subdivision 2 (tampering with fire alarm);
- 5.6 ~~(41)~~ (40) section 609.746, subdivision 1, paragraph (g) (interference with privacy;
- 5.7 subsequent violation or minor victim);
- 5.8 ~~(42)~~ (41) section 609.80, subdivision 2 (interference with cable communications system);
- 5.9 ~~(43)~~ (42) section 609.821, subdivision 2 (financial transaction card fraud);
- 5.10 ~~(44)~~ (43) section 609.822 (residential mortgage fraud);
- 5.11 ~~(45)~~ (44) section 609.825, subdivision 2 (bribery of participant or official in contest);
- 5.12 ~~(46)~~ (45) section 609.855, subdivision 2, paragraph (c), clause (1) (interference with
- 5.13 transit operator);
- 5.14 ~~(47)~~ (46) section 609.88 (computer damage); or 609.89 (computer theft);
- 5.15 ~~(48)~~ (47) section 609.893, subdivision 2 (telecommunications and information services
- 5.16 fraud);
- 5.17 ~~(49)~~ (48) section 609.894, subdivision 3 or 4 (cellular counterfeiting);
- 5.18 ~~(50)~~ (49) section 609.895, subdivision 3, paragraph (a) or (b) (counterfeited intellectual
- 5.19 property);
- 5.20 ~~(51)~~ (50) section 609.896 (movie pirating);
- 5.21 ~~(52)~~ (51) section 624.7132, subdivision 15, paragraph (b) (transfer pistol to minor);
- 5.22 624.714, subdivision 1a (pistol without permit; subsequent violation); or 624.7141,
- 5.23 subdivision 2 (transfer of pistol to ineligible person); or
- 5.24 ~~(53)~~ (52) section 624.7181 (rifle or shotgun in public by minor).

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

5.26 **Sec. 3. REPEALER.**

5.27 (a) Minnesota Statutes 2022, sections 13.4967, subdivision 5; 297D.02; 297D.03;

5.28 297D.05; 297D.09, subdivisions 1 and 2; 297D.12; and 297D.13, are repealed.

- 6.1 (b) Minnesota Statutes 2023 Supplement, sections 297D.01; 297D.04; 297D.06; 297D.07;
- 6.2 297D.08; 297D.085; 297D.09, subdivision 1a; 297D.10; and 297D.11, are repealed.
- 6.3 **EFFECTIVE DATE.** This section is effective the day following final enactment.

13.4967 OTHER TAX DATA CODED ELSEWHERE.

Subd. 5. **Marijuana and controlled substance tax information.** Disclosure of information obtained under chapter 297D is governed by section 297D.13, subdivisions 1 to 3.

297D.01 DEFINITIONS.

Subdivision 1. **Illegal cannabis.** "Illegal cannabis" means any taxable cannabis product as defined in section 295.81, subdivision 1, paragraph (r), whether real or counterfeit, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of chapter 342 or Minnesota criminal laws.

Subd. 2. **Controlled substance.** "Controlled substance" means any drug or substance, whether real or counterfeit, as defined in section 152.01, subdivision 4, that is held, possessed, transported, transferred, sold, or offered to be sold in violation of Minnesota laws. "Controlled substance" does not include illegal cannabis.

Subd. 3. **Tax obligor or obligor.** "Tax obligor" or "obligor" means a person who in violation of Minnesota law manufactures, produces, ships, transports, or imports into Minnesota or in any manner acquires or possesses more than 42-1/2 grams of illegal cannabis, or seven or more grams of any controlled substance, or ten or more dosage units of any controlled substance which is not sold by weight. A quantity of illegal cannabis or other controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the tax obligor's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

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

297D.02 ADMINISTRATION.

The commissioner of revenue shall administer this chapter. The commissioner shall prescribe the content, format, and manner of all forms and other documents required to be filed under this chapter pursuant to section 270C.30. Payments required by this chapter must be made to the commissioner on the form provided by the commissioner. Tax obligors are not required to give their name, address, Social Security number, or other identifying information on the form. The commissioner shall collect all taxes under this chapter.

297D.03 RULES.

The commissioner may adopt rules necessary to enforce this chapter. The commissioner shall adopt a uniform system of providing, affixing, and displaying official stamps, official labels, or other official indicia for marijuana and controlled substances on which a tax is imposed.

297D.04 TAX PAYMENT REQUIRED FOR POSSESSION.

No tax obligor may possess any illegal cannabis or controlled substance upon which a tax is imposed by section 297D.08 unless the tax has been paid on the illegal cannabis or a controlled substance as evidenced by a stamp or other official indicia.

297D.05 NO IMMUNITY.

Nothing in this chapter may in any manner provide immunity for a tax obligor from criminal prosecution pursuant to Minnesota law.

297D.06 PHARMACEUTICALS.

Nothing in this chapter requires persons registered under chapter 151 or otherwise lawfully in possession of illegal cannabis or a controlled substance to pay the tax required under this chapter.

297D.07 MEASUREMENT.

For the purpose of calculating the tax under section 297D.08, a quantity of illegal cannabis or a controlled substance is measured by the weight of the substance whether pure or impure or dilute, or by dosage units when the substance is not sold by weight, in the tax obligor's possession. A quantity of a controlled substance is dilute if it consists of a detectable quantity of pure controlled substance and any excipients or fillers.

297D.08 TAX RATE.

A tax is imposed on illegal cannabis and controlled substances as defined in section 297D.01 at the following rates:

- (1) on each gram of illegal cannabis, or each portion of a gram, \$3.50; and
- (2) on each gram of controlled substance, or portion of a gram, \$200; or
- (3) on each ten dosage units of a controlled substance that is not sold by weight, or portion thereof, \$400.

297D.085 CREDIT FOR PREVIOUSLY PAID TAXES.

If another state or local unit of government has previously assessed an excise tax on the illegal cannabis or controlled substances, the taxpayer must pay the difference between the tax due under section 297D.08 and the tax previously paid. If the tax previously paid to the other state or local unit of government was equal to or greater than the tax due under section 297D.08, no tax is due. The burden is on the taxpayer to show that an excise tax on the illegal cannabis or controlled substances has been paid to another state or local unit of government.

297D.09 PENALTIES; CRIMINAL PROVISIONS.

Subdivision 1. **Penalties.** Any tax obligor violating this chapter is subject to a penalty of 100 percent of the tax in addition to the tax imposed by section 297D.08. The penalty will be collected as part of the tax.

Subd. 1a. **Criminal penalty; sale without affixed stamps.** In addition to the tax penalty imposed, a tax obligor distributing or possessing illegal cannabis or controlled substances without affixing the appropriate stamps, labels, or other indicia is guilty of a crime and, upon conviction, may be sentenced to imprisonment for not more than seven years or to payment of a fine of not more than \$14,000, or both.

Subd. 2. **Statute of limitations.** Notwithstanding section 628.26, or any other provision of the criminal laws of this state, an indictment may be found and filed, or a complaint filed, upon any criminal offense specified in this section, in the proper court within six years after the commission of this offense.

297D.10 STAMP PRICE.

Official stamps, labels, or other indicia to be affixed to all illegal cannabis or controlled substances shall be purchased from the commissioner. The purchaser shall pay 100 percent of face value for each stamp, label, or other indicia at the time of the purchase.

297D.11 PAYMENT DUE.

Subdivision 1. **Stamps affixed.** When a tax obligor purchases, acquires, transports, or imports into this state illegal cannabis or controlled substances on which a tax is imposed by section 297D.08, and if the indicia evidencing the payment of the tax have not already been affixed, the tax obligor shall have them permanently affixed on the illegal cannabis or controlled substance immediately after receiving the substance. Each stamp or other official indicia may be used only once.

Subd. 2. **Payable on possession.** Taxes imposed upon illegal cannabis or controlled substances by this chapter are due and payable immediately upon acquisition or possession in this state by a tax obligor.

297D.12 ALL ASSESSMENTS ARE JEOPARDY.

Subdivision 1. **Assessment procedure.** An assessment for a tax obligor not possessing valid stamps or other official indicia showing that the tax has been paid shall be considered a jeopardy assessment or collection, as provided in section 270C.36. The commissioner shall assess a tax and applicable penalties based on personal knowledge or information available to the commissioner; mail the taxpayer at the taxpayer's last known address or serve in person, a written notice of the amount of tax and penalty; demand its immediate payment; and, if payment is not immediately made, collect the tax and penalty by any method prescribed in chapter 270C, except that the commissioner need not await the expiration of the times specified in chapter 270C.

Subd. 2. **Injunction prohibited.** No person may bring suit to enjoin the assessment or collection of any taxes, interest, or penalties imposed by this chapter.

Subd. 3. **Standard of proof.** The tax and penalties assessed by the commissioner are presumed to be valid and correctly determined and assessed. The burden is upon the taxpayer to show their incorrectness or invalidity. Any statement filed by the commissioner with the court administrator, or any other certificate by the commissioner of the amount of tax and penalties determined or assessed is admissible in evidence and is prima facie evidence of the facts it contains.

297D.13 CONFIDENTIAL NATURE OF INFORMATION.

Subdivision 1. **Disclosure prohibited.** Notwithstanding any law to the contrary, neither the commissioner nor a public employee may reveal facts contained in a report or return required by this chapter or any information obtained from a tax obligor; nor can any information contained in such a report or return or obtained from a tax obligor be used against the tax obligor in any criminal proceeding, unless independently obtained, except in connection with a proceeding involving taxes due under this chapter from the tax obligor making the return.

Subd. 2. **Penalty for disclosure.** Any person violating this section is guilty of a gross misdemeanor.

Subd. 3. **Statistics.** This section does not prohibit the commissioner from publishing statistics that do not disclose the identity of tax obligors or the contents of particular returns or reports.

Subd. 4. **Possession of stamps.** A stamp denoting payment of the tax imposed under this chapter must not be used against the taxpayer in a criminal proceeding, except that the stamp may be used against the taxpayer in connection with the administration or civil or criminal enforcement of the tax imposed under this chapter or any similar tax imposed by another state or local unit of government.