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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 3717

02/24/2020 Authored by Elkins, Richardson, Schultz, Howard, Freiberg and others
The bill was read for the first time and referred to the Committee on Commerce

1.1 A bill for an act
1.2 relating to tobacco products; modifying the application of registration and reporting
1.3 requirements for out-of-state retailers of tobacco products; modifying requirements
1.4 for tobacco product delivery sales; modifying the definition of electronic delivery
1.5 device; making changes to criminal penalties; amending Minnesota Statutes 2018,
1.6 sections 297F.01, subdivision 10a; 297F.031; 297F.09, subdivision 4a; 325F.781;
1.7 609.685, subdivision 1; proposing coding for new law in Minnesota Statutes,
1.8 chapter 325F.

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

1.10 Section 1. Minnesota Statutes 2018, section 297F.01, subdivision 10a, is amended to read:

1.11 Subd. 10a. Out-of-state retailer. "Out-of-state retailer" means a person engaged outside
1.12 of this state in the business of selling, or offering to sell, cigarettes or tobacco products to
1.13 consumers distributors or retailers located in this state.

1.14 Sec. 2. Minnesota Statutes 2018, section 297F.031, is amended to read:

1.15 297F.031 REGISTRATION REQUIREMENT.

1.16 Prior to making delivery sales or shipping cigarettes or tobacco products in connection
1.17 with any sales to a distributor or retailer located in this state, an out-of-state retailer shall
1.18 file with the Department of Revenue a statement setting forth the out-of-state retailer's name,
1.19 trade name, and the address of the out-of-state retailer's principal place of business and any
1.20 other place of business.

1.21 Sec. 3. Minnesota Statutes 2018, section 297F.09, subdivision 4a, is amended to read:

1.22 Subd. 4a. Reporting requirements. No later than the 18th day of each calendar month,
1.23 an out-of-state retailer that has made a delivery of cigarettes or tobacco products or shipped

2.1 or delivered cigarettes or tobacco products into the state ~~in a delivery sale~~ in the previous  
 2.2 calendar month shall file with the Department of Revenue reports, in the form and in the  
 2.3 manner prescribed by the commissioner of revenue, that ~~provides~~ provide for each ~~delivery~~  
 2.4 sale; the name and address of the purchaser and the brand or brands and quantity of cigarettes  
 2.5 or tobacco products sold. A tobacco retailer that meets the requirements of United States  
 2.6 Code, title 15, section 375 et seq. satisfies the requirements of this subdivision.

2.7 Sec. 4. Minnesota Statutes 2018, section 325F.781, is amended to read:

2.8 **325F.781 REQUIREMENTS; TOBACCO PRODUCT DELIVERY SALES TO**  
 2.9 **CONSUMERS.**

2.10 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have  
 2.11 the meanings given, unless the language or context clearly provides otherwise.

2.12 (b) "Consumer" means an individual who purchases, receives, or possesses tobacco  
 2.13 products for personal consumption and not for resale.

2.14 (c) "Delivery sale" means:

2.15 ~~(1)~~ a sale of tobacco products by a retailer in this state to a consumer in this state who  
 2.16 resides in the jurisdiction where the retailer is licensed, when:

2.17 ~~(i)~~ (1) the ~~purchaser~~ consumer submits the order for the sale by means of a telephonic  
 2.18 or other method of voice transmission, the mail ~~or any other delivery service~~, or the Internet  
 2.19 or other online service; ~~or~~ and

2.20 ~~(ii)~~ (2) the tobacco products are delivered ~~by use of the mail or other delivery service;~~  
 2.21 ~~or in-person by the retailer to the consumer.~~

2.22 ~~(2) a sale of tobacco products that satisfies the criteria in clause (1), item (i), regardless~~  
 2.23 ~~of whether the seller is located inside or outside of the state.~~

2.24 A sale of tobacco products to an individual in this state must be treated as a sale to a  
 2.25 consumer, unless the individual who purchases the tobacco products is licensed in this state  
 2.26 as a distributor or retailer of tobacco products.

2.27 (d) "Delivery service" means a person, including the United States Postal Service, ~~that~~  
 2.28 who is engaged in the commercial delivery of letters, packages, products, or other containers.

2.29 (e) "Distributor" means a person, whether located inside or outside of this state, other  
 2.30 than a retailer, who ~~sells or distributes tobacco products in the state~~ is required to be licensed  
 2.31 as a cigarette distributor or tobacco products distributor under section 297F.03. Distributor  
 2.32 does not include a tobacco products manufacturer, export warehouse proprietor, or importer

3.1 with a valid permit under United States Code, title 26, section 5712 (1997), if the person  
 3.2 sells or distributes tobacco products in this state only to distributors who hold valid and  
 3.3 current licenses under the laws of a state, or to an export warehouse proprietor or another  
 3.4 manufacturer. Distributor does not include a common or contract carrier that is transporting  
 3.5 tobacco products under a proper bill of lading or freight bill that states the quantity, source,  
 3.6 and destination of tobacco products, or a person who ships tobacco products through this  
 3.7 state by common or contract carrier under a proper bill of lading or freight bill.

3.8 (f) "Retailer" means a person, ~~whether located inside or outside~~ in this state, who ~~sells~~  
 3.9 ~~or distributes~~ is required to be licensed under chapter 461 to sell tobacco products to a  
 3.10 consumer in this state, and who is licensed and engaged in the business of selling or offering  
 3.11 to sell tobacco products to consumers.

3.12 (g) "Tobacco products" means:

3.13 (1) cigarettes, as defined in section 297F.01, subdivision 3;

3.14 ~~(2) smokeless tobacco as defined in section 325F.76; and~~

3.15 ~~(3) premium cigars as defined in section 297F.01, subdivision 13a.~~

3.16 (2) electronic delivery devices, as defined in section 609.685, subdivision 1;

3.17 (3) nicotine or lobelia delivery products, as described in section 609.6855;

3.18 (4) tobacco products, as defined in section 297F.01, subdivision 19; and

3.19 (5) tobacco-related devices, as defined in section 609.685, subdivision 1.

3.20 (h) "Unlicensed seller" means any person who is not licensed under section 297F.03 or  
 3.21 chapter 461 to sell the particular tobacco product to the purchaser or possessor of the product.

3.22 Subd. 2. **Retailer requirements for accepting order consumer orders for delivery**  
 3.23 **sale sales.** (a) This subdivision applies to a retailer's acceptance of an order for a delivery  
 3.24 sale of tobacco products to a consumer in this state who resides in the jurisdiction where  
 3.25 the retailer is licensed.

3.26 (b) When accepting the first order for a delivery sale from a consumer, the ~~tobacco~~  
 3.27 retailer shall obtain the following information from the person placing the order:

3.28 (1) a copy of a valid government-issued document that provides the person's name,  
 3.29 current address, photograph, and date of birth; and

3.30 (2) an original written statement signed by the person documenting that the person:

3.31 (i) is of legal age to purchase tobacco products in the state;

4.1 (ii) has made a choice whether to receive ~~mailings~~ delivery sales from a ~~tobacco~~ the  
4.2 retailer;

4.3 (iii) understands that providing false information may be a violation of law; and

4.4 (iv) understands that it is a violation of law to purchase tobacco products for subsequent  
4.5 resale or for delivery to persons who are under the legal age to purchase tobacco products.

4.6 (c) If an order is made as a result of advertisement over the Internet, the ~~tobacco~~ retailer  
4.7 shall request the e-mail address of the ~~purchaser~~ consumer and shall receive payment only  
4.8 by credit card or check prior to shipping delivery.

4.9 (d) Prior to shipping delivering the tobacco products, the ~~tobacco~~ retailer shall verify  
4.10 the information provided under paragraph (b) against a commercially available database.  
4.11 Any such database or databases may also include age and identity information from other  
4.12 government or validated commercial sources, if that additional information is regularly used  
4.13 by government and businesses for the purpose of identity verification and authentication,  
4.14 and if the additional information is used only to supplement and not to replace the  
4.15 government-issued identification data in the age and identity verification process.

4.16 **Subd. 2a. Prohibited sales to consumers.** A delivery sale of any tobacco product to a  
4.17 consumer in this state by any person other than a retailer is prohibited. A retailer must not  
4.18 offer to deliver, attempt to deliver, or deliver any tobacco product to a consumer in this state  
4.19 in any manner other than by delivery sale. A retailer must not use a delivery service to  
4.20 deliver tobacco products purchased by a consumer in a delivery sale. A retailer must not  
4.21 offer to deliver, attempt to deliver, or deliver tobacco products to a consumer who resides  
4.22 outside the jurisdiction where the retailer is licensed.

4.23 **Subd. 3. Requirements for shipping delivery of a delivery sale.** (a) This subdivision  
4.24 applies to a ~~tobacco~~ retailer shipping delivering tobacco products to a consumer in this state  
4.25 who resides in the jurisdiction where the retailer is licensed, pursuant to a delivery sale.

4.26 (b) The ~~tobacco~~ retailer shall clearly mark the outside of the package of tobacco products  
4.27 to be ~~shipped~~ delivered "tobacco products - adult signature required" and to show the name  
4.28 and address of the ~~tobacco~~ retailer.

4.29 (c) ~~The tobacco~~ A retailer engaging in in-person delivery of tobacco products shall utilize  
4.30 a delivery service that imposes comply with the following requirements:

4.31 (1) an adult of legal age to purchase tobacco products in this state must sign for the  
4.32 delivery; and

5.1 (2) the person signing for the delivery must show valid government-issued identification  
5.2 that contains a photograph of the person signing for the delivery and indicates that the person  
5.3 signing for the delivery is of legal age to purchase tobacco products and resides at the  
5.4 delivery address.

5.5 (d) The retailer must provide to the retailer's delivery employees delivery instructions  
5.6 that clearly indicate the requirements of this subdivision and must declare to the retailer's  
5.7 delivery employees that state law requires compliance with the requirements.

5.8 (e) No criminal penalty may be imposed on a ~~person~~ retailer, distributor, or unlicensed  
5.9 seller for a violation of this section other than a violation described in paragraph (f) or (g).  
5.10 Whenever it appears to the commissioner that ~~any person~~ a retailer, distributor, or unlicensed  
5.11 seller has engaged in any act or practice constituting a violation of this section, and the  
5.12 violation is not within ~~two~~ three years of any previous violation of this section, the  
5.13 commissioner shall issue and cause to be served upon the ~~person~~ retailer, distributor, or  
5.14 unlicensed seller an order requiring ~~the~~ that person to cease and desist from violating this  
5.15 section. The order must give reasonable notice of the rights of the ~~person~~ retailer, distributor,  
5.16 or unlicensed seller to request a hearing and must state the reason for the entry of the order.  
5.17 Unless otherwise agreed between the parties, a hearing shall be held not later than seven  
5.18 days after the request for the hearing is received by the commissioner after which and within  
5.19 20 days after the receipt of the administrative law judge's report and subsequent exceptions  
5.20 and argument, the commissioner shall issue an order vacating the cease and desist order,  
5.21 modifying it, or making it permanent as the facts require. If no hearing is requested within  
5.22 30 days of the service of the order, the order becomes final and remains in effect until  
5.23 modified or vacated by the commissioner. All hearings shall be conducted in accordance  
5.24 with the provisions of chapter 14. If the ~~person~~ retailer, distributor, or unlicensed seller to  
5.25 whom a cease and desist order is issued fails to appear at the hearing after being duly notified,  
5.26 the ~~person~~ retailer, distributor, or unlicensed seller shall be deemed in default, and the  
5.27 proceeding may be determined against the ~~person~~ retailer, distributor, or unlicensed seller  
5.28 upon consideration of the cease and desist order, the allegations of which may be deemed  
5.29 to be true.

5.30 (f) Any ~~person~~ retailer, distributor, or unlicensed seller who violates this section within  
5.31 ~~two~~ three years of a violation for which a cease and desist order was issued under paragraph  
5.32 (e); is guilty of a misdemeanor.

5.33 (g) Any ~~person~~ retailer, distributor, or unlicensed seller who commits a third or subsequent  
5.34 violation of this section, including a violation for which a cease and desist order was issued

6.1 under paragraph ~~(e)~~, (e) within any subsequent ~~two-year~~ three-year period is guilty of a  
6.2 gross misdemeanor.

6.3 (h) Each incidence of a sale, offer to sell, or attempt to sell a tobacco product in violation  
6.4 of this section is a separate violation. Each incidence of a delivery or shipment, offer to  
6.5 deliver or ship, or attempt to deliver or ship a tobacco product in violation of this section  
6.6 is a separate violation.

6.7 Subd. 4. **Common carriers.** This section may not be construed as imposing liability  
6.8 upon any common carrier, or officers or employees of the common carrier, when acting  
6.9 within the legal scope of business of the common carrier.

6.10 ~~Subd. 5. **Registration requirement.** Prior to making delivery sales or shipping tobacco~~  
6.11 ~~products in connection with any sales, an out-of-state retailer must meet the requirements~~  
6.12 ~~of section 297F.031.~~

6.13 ~~Subd. 6. **Collection of taxes.** (a) Prior to shipping any tobacco products to a purchaser~~  
6.14 ~~in this state, the out-of-state retailer shall comply with all requirements of chapter 297F and~~  
6.15 ~~shall ensure that all state excise taxes and fees that apply to such tobacco products have~~  
6.16 ~~been collected and paid to the state and that all related state excise tax stamps or other~~  
6.17 ~~indicators of state excise tax payment have been properly affixed to those tobacco products.~~

6.18 ~~(b) In addition to any penalties under chapter 297F, a distributor who fails to pay any~~  
6.19 ~~tax due according to paragraph (a) shall pay, in addition to any other penalty, a penalty of~~  
6.20 ~~50 percent of the tax due but unpaid.~~

6.21 ~~Subd. 7. **Application of state laws.** All state laws that apply to in-state tobacco product~~  
6.22 ~~retailers shall apply to Internet and mail-order sellers that sell into this state.~~

6.23 Subd. 8. **Forfeiture.** Any tobacco product sold or attempted to be sold to a consumer  
6.24 in this state in a delivery sale that does not meet the requirements of this section is deemed  
6.25 to be contraband and is subject to forfeiture in the same manner as and in accordance with  
6.26 the provisions of section 297F.21.

6.27 Subd. 9. **Civil penalties.** A ~~tobacco~~ retailer or distributor, or unlicensed seller who  
6.28 violates this section or rules adopted under this section or section 325F.782 is subject to the  
6.29 following fines:

6.30 (1) for the first violation, a fine of not more than \$1,000; and

6.31 (2) for the second and any subsequent violation, a fine of not more than \$5,000.

7.1 Each incidence of a sale, offer to sell, or attempt to sell a tobacco product in violation of  
 7.2 this section or section 325F.782 is a separate violation. Each incidence of a delivery or  
 7.3 shipment, offer to deliver or ship, or attempt to deliver or ship a tobacco product in violation  
 7.4 of this section or section 325F.782 is a separate violation.

7.5 Subd. 10. **Enforcement.** The attorney general may bring an action to enforce this section  
 7.6 and section 325F.782 and may seek injunctive relief, including a preliminary or final  
 7.7 injunction, and fines, penalties, and equitable relief and may seek to prevent or restrain  
 7.8 actions in violation of this section by any person or any person controlling such person. In  
 7.9 addition, a violation of this section is a violation of the Unlawful Trade Practices Act,  
 7.10 sections 325D.09 to 325D.16.

7.11 Sec. 5. **[325F.782] REQUIREMENTS FOR OUT-OF-STATE RETAILERS AND**  
 7.12 **DISTRIBUTORS SHIPPING OR DELIVERING TOBACCO PRODUCTS TO**  
 7.13 **IN-STATE RETAILERS OR DISTRIBUTORS.**

7.14 Subdivision 1. Definitions. For purposes of this section:

7.15 (1) "distributor" and "tobacco products" have the meanings given in section 325F.781,  
 7.16 subdivision 1;

7.17 (2) "out-of-state retailer" has the meaning given in section 297F.01, subdivision 10a;  
 7.18 and

7.19 (3) "retailer in this state" has the meaning given to "retailer" in section 325F.781,  
 7.20 subdivision 1.

7.21 Subd. 2. **License requirement.** Prior to delivering or shipping any tobacco products to  
 7.22 a distributor or retailer in this state in connection with any sales to a distributor or retailer  
 7.23 in this state, a distributor or any other person outside this state must meet the license  
 7.24 requirements of section 297F.03.

7.25 Subd. 3. **Collection of taxes.** (a) Prior to shipping any tobacco products to a distributor  
 7.26 or a retailer in this state, an out-of-state retailer must: (1) comply with all requirements of  
 7.27 chapter 297F; (2) ensure all state excise taxes and fees that apply to such tobacco products  
 7.28 have been collected and paid to the state; and (3) ensure all related state excise tax stamps  
 7.29 or other indicators of state excise tax payments have been properly affixed to the tobacco  
 7.30 products.

7.31 (b) In addition to any penalties under chapter 297F, a distributor who fails to pay any  
 7.32 tax due according to paragraph (a) must pay a penalty of 50 percent of the tax due but  
 7.33 unpaid.

8.1 Subd. 4. **Application of state laws.** All state laws that apply to in-state distributors also  
 8.2 apply to out-of-state distributors who sell or ship tobacco products into this state.

8.3 Sec. 6. Minnesota Statutes 2018, section 609.685, subdivision 1, is amended to read:

8.4 Subdivision 1. **Definitions.** For the purposes of this section, the following terms shall  
 8.5 have the meanings respectively ascribed to them in this section.

8.6 (a) "Tobacco" means cigarettes and any product containing, made, or derived from  
 8.7 tobacco that is intended for human consumption, whether chewed, smoked, absorbed,  
 8.8 dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component,  
 8.9 part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies;  
 8.10 perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff;  
 8.11 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts;  
 8.12 refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of  
 8.13 tobacco. Tobacco excludes any tobacco product that has been approved by the United States  
 8.14 Food and Drug Administration for sale as a tobacco-cessation product, as a  
 8.15 tobacco-dependence product, or for other medical purposes, and is being marketed and sold  
 8.16 solely for such an approved purpose.

8.17 (b) "Tobacco-related devices" means cigarette papers or pipes for smoking or other  
 8.18 devices intentionally designed or intended to be used in a manner which enables the chewing,  
 8.19 sniffing, smoking, or inhalation of vapors of tobacco or tobacco products. Tobacco-related  
 8.20 devices include components of tobacco-related devices which may be marketed or sold  
 8.21 separately.

8.22 (c) "Electronic delivery device" means any product containing or delivering nicotine,  
 8.23 lobelia, or any other substance, whether natural or synthetic, intended for human consumption  
 8.24 ~~that can be used by a person to simulate smoking in the delivery of nicotine or any other~~  
 8.25 ~~substance~~ through inhalation of aerosol or vapor from the product. Electronic delivery device  
 8.26 includes but is not limited to devices manufactured, marketed, or sold as electronic cigarettes,  
 8.27 electronic cigars, electronic pipes, vape pens, mods, tank systems, or any other product  
 8.28 name or descriptor. Electronic delivery device includes any component part of a product,  
 8.29 whether or not marketed or sold separately. Electronic delivery device ~~does not include any~~  
 8.30 ~~product that has been approved or certified by the United States Food and Drug~~  
 8.31 ~~Administration for sale as a tobacco-cessation product, as a tobacco-dependence product,~~  
 8.32 ~~or for other medical purposes, and is marketed and sold for such an approved purpose.~~  
 8.33 excludes drugs, devices, or combination products, as those terms are defined in the federal

- 9.1 Food, Drug, and Cosmetic Act, that are authorized for sale by the United States Food and
- 9.2 Drug Administration.