

1.1 A bill for an act
1.2 relating to taxation; cigarette and tobacco tax; amending the definition of tobacco
1.3 products to include electronic delivery devices; increasing the cigarette and tobacco
1.4 products excise tax; establishing a tobacco prevention and cessation account in
1.5 the special revenue fund; appropriating money; conforming to federal law changes;
1.6 amending Minnesota Statutes 2020, sections 297F.01, subdivisions 19, 23, by
1.7 adding a subdivision; 297F.031; 297F.05, subdivisions 1, 3, 3a, 4, 4a; 297F.10,
1.8 subdivision 1; 297F.24, subdivision 1; 297F.25, subdivision 1; 325F.781,
1.9 subdivision 1; 609.685, subdivision 1; repealing Minnesota Statutes 2020, section
1.10 297F.01, subdivision 22b.

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

1.12 Section 1. Minnesota Statutes 2020, section 297F.01, is amended by adding a subdivision
1.13 to read:

1.14 Subd. 7a. **Electronic delivery device.** (a) "Electronic delivery device" means any device
1.15 that may be used to deliver aerosolized or vaporized nicotine or any other aerosolized or
1.16 vaporized substance to the person inhaling from the device, including but not limited to an
1.17 e-cigarette, e-cigar, e-pipe, vape pen, e-hookah, advanced refillable personal vaporizer,
1.18 mod, tank system, or any other product name or descriptor.

1.19 (b) Electronic delivery device includes:

1.20 (1) any component, part, or accessory of the device, whether or not marketed or sold
1.21 separately; and

1.22 (2) any substance that may be aerosolized or vaporized by the device, whether or not
1.23 the substance contains nicotine or is marketed or sold separately.

1.24 (c) Electronic delivery device does not include a battery or battery charger when sold
1.25 separately. Electronic delivery device also does not include any drug, device, or combination

2.1 product, as defined by the Federal Food, Drug, and Cosmetic Act, that has been approved
2.2 for sale by the United States Food and Drug Administration as a tobacco cessation product,
2.3 as a tobacco dependence product, or for other therapeutic purposes, and is being marketed
2.4 and sold solely for such an approved purpose.

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

2.6 Sec. 2. Minnesota Statutes 2020, section 297F.01, subdivision 19, is amended to read:

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

2.21 (b) Except for the imposition of tax under section 297F.05, subdivisions 3 and 4, tobacco
2.22 products includes a premium cigar, as defined in subdivision 13a.

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

2.24 Sec. 3. Minnesota Statutes 2020, section 297F.01, subdivision 23, is amended to read:

2.25 Subd. 23. **Wholesale sales price.** ~~(a)~~ "Wholesale sales price" means the price at which
2.26 a distributor purchases a tobacco product.

2.27 ~~(b) When a distributor sells a cartridge, bottle, or other package of a solution containing~~
2.28 ~~nicotine that is part of a kit that also includes a product, device, component, part, or accessory~~
2.29 ~~described in subdivision 22b:~~

2.30 ~~(1) the wholesale sales price is the price at which the distributor purchases the kit; except~~
2.31 ~~that~~

3.1 ~~(2) if the distributor also separately sells the same package of solution containing nicotine~~
3.2 ~~that is sold with the kit and can isolate the cost of the package of solution containing nicotine,~~
3.3 ~~then the wholesale sales price includes only the price at which the distributor separately~~
3.4 ~~purchases the package of the solution containing nicotine and any taxes, charges, and costs~~
3.5 ~~listed in paragraph (e).~~

3.6 (e) Wholesale sales price includes the applicable federal excise tax, freight charges, or
3.7 packaging costs, regardless of whether they were included in the purchase price.

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

3.9 Sec. 4. Minnesota Statutes 2020, section 297F.031, is amended to read:

3.10 **297F.031 REGISTRATION REQUIREMENT.**

3.11 Prior to making delivery sales or shipping cigarettes ~~or~~, tobacco products, or electronic
3.12 delivery devices as defined in section 609.685, subdivision 1, in connection with any sales,
3.13 an out-of-state retailer shall file with the Department of Revenue a statement setting forth
3.14 the out-of-state retailer's name, trade name, telephone number, cell phone number, e-mail
3.15 address, website address, and the street address of the out-of-state retailer's principal place
3.16 of business and any other place of business.

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

3.18 Sec. 5. Minnesota Statutes 2020, section 297F.05, subdivision 1, is amended to read:

3.19 Subdivision 1. **Rates; cigarettes.** A tax is imposed upon the sale of cigarettes in this
3.20 state, upon having cigarettes in possession in this state with intent to sell, upon any person
3.21 engaged in business as a distributor, and upon the use or storage by consumers, at the rate
3.22 of ~~152~~ 227 mills, or ~~15.2~~ 22.7 cents, on each cigarette.

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

3.24 Sec. 6. Minnesota Statutes 2020, section 297F.05, subdivision 3, is amended to read:

3.25 Subd. 3. **Rates; tobacco products.** (a) Except as provided in paragraphs (b) and (c) and
3.26 subdivision 3a, a tax is imposed upon all tobacco products in this state and upon any person
3.27 engaged in business as a distributor, at the rate of ~~95~~ 97 percent of the wholesale sales price
3.28 of the tobacco products. The tax is imposed at the time the distributor:

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

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

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

4.5 (b) A tax equal to the greater of the tax imposed under paragraph (a) or a minimum tax
4.6 equal to the rate imposed on a pack of 20 cigarettes weighing not more than three pounds
4.7 per thousand, as established under subdivision 1, is imposed on each container of moist
4.8 snuff weighing not more than 1.2 ounces. When more than one container subject to tax
4.9 under this paragraph is packaged together, each container is subject to the minimum tax.

4.10 (c) Except as provided in paragraph (b), a tax equal to the greater of the tax imposed
4.11 under paragraph (a) or a minimum tax equal to the rate imposed on a pack of 20 cigarettes
4.12 weighing not more than three pounds per thousand, as established under subdivision 1,
4.13 multiplied by the number of ounces of moist snuff in the container, divided by 1.2, is imposed
4.14 on each container of moist snuff weighing more than 1.2 ounces.

4.15 (d) For purposes of this subdivision, a "container" means a consumer-size can, package,
4.16 or other container that is marketed or packaged for sale to a retail purchaser.

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

4.18 Sec. 7. Minnesota Statutes 2020, section 297F.05, subdivision 3a, is amended to read:

4.19 Subd. 3a. **Rates; premium cigars.** (a) A tax is imposed upon all premium cigars in this
4.20 state and upon any person engaged in business as a tobacco product distributor, at the lesser
4.21 of:

4.22 (1) the rate of ~~95~~ 97 percent of the wholesale sales price of the premium cigars; or

4.23 (2) ~~\$0.50~~ \$5.00 per premium cigar.

4.24 (b) The tax imposed under paragraph (a) is imposed at the time the tobacco products
4.25 distributor:

4.26 (1) brings, or causes to be brought, into this state from outside the state premium cigars
4.27 for sale;

4.28 (2) makes, manufactures, or fabricates premium cigars in this state for sale in this state;
4.29 or

4.30 (3) ships or transports premium cigars to retailers in this state, to be sold by those retailers.

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

5.1 Sec. 8. Minnesota Statutes 2020, section 297F.05, subdivision 4, is amended to read:

5.2 Subd. 4. **Use tax; tobacco products.** Except as provided in subdivision 4a, a tax is
5.3 imposed upon the use or storage by consumers of tobacco products in this state, and upon
5.4 such consumers, at the rate of 95 97 percent of the cost to the consumer of the tobacco
5.5 products or the minimum tax under subdivision 3, paragraph (b) or (c), whichever is greater.

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

5.7 Sec. 9. Minnesota Statutes 2020, section 297F.05, subdivision 4a, is amended to read:

5.8 Subd. 4a. **Use tax; premium cigars.** A tax is imposed upon the use or storage by
5.9 consumers of all premium cigars in this state, and upon such consumers, at the lesser of:

5.10 (1) the rate of 95 97 percent of the cost to the consumer of the premium cigars; or

5.11 (2) ~~\$0.50~~ \$5.00 per premium cigar.

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

5.13 Sec. 10. Minnesota Statutes 2020, section 297F.10, subdivision 1, is amended to read:

5.14 Subdivision 1. **Tax and use tax on cigarettes.** Revenue received from cigarette taxes,
5.15 as well as related penalties, interest, license fees, and miscellaneous sources of revenue
5.16 shall be deposited by the commissioner in the state treasury and credited as follows:

5.17 (1) \$22,250,000 each year must be credited to the Academic Health Center special
5.18 revenue fund hereby created and is annually appropriated to the Board of Regents at the
5.19 University of Minnesota for Academic Health Center funding at the University of Minnesota;
5.20 ~~and~~

5.21 (2) \$3,937,000 each year must be credited to the medical education and research costs
5.22 account hereby created in the special revenue fund and is annually appropriated to the
5.23 commissioner of health for distribution under section 62J.692, subdivision 4; ~~and~~

5.24 (3) \$15,000,000 each year must be credited to the tobacco use prevention and cessation
5.25 account hereby created in the special revenue fund and is annually appropriated to the
5.26 commissioner of health for tobacco use prevention and cessation projects consistent with
5.27 the duties specified in section 144.392; a public information program under section 144.393;
5.28 the development of health promotion and health education materials about tobacco use
5.29 prevention and cessation; tobacco use prevention activities under section 144.396; and
5.30 statewide tobacco cessation services under section 144.397. In activities funded under this
5.31 clause, the commissioner of health must prioritize preventing youth use of commercial

6.1 tobacco and electronic delivery devices, must promote racial and health equity, and must
6.2 use strategies that are evidence-based or based on promising practices. For purposes of this
6.3 clause, "tobacco" and "electronic delivery device" have the meanings given to those terms
6.4 in section 609.685, subdivision 1;

6.5 (4) \$10,000,000 each year must be credited to the School of Public Health special revenue
6.6 fund hereby created and is annually appropriated to the Board of Regents at the University
6.7 of Minnesota for School of Public Health funding at the University of Minnesota; and

6.8 ~~(3)~~ (5) the balance of the revenues derived from taxes, penalties, and interest (under this
6.9 chapter) and from license fees and miscellaneous sources of revenue shall be credited to
6.10 the general fund.

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

6.12 Sec. 11. Minnesota Statutes 2020, section 297F.24, subdivision 1, is amended to read:

6.13 Subdivision 1. **Fee imposed.** (a) A fee is imposed upon the sale of nonsettlement
6.14 cigarettes in this state, upon having nonsettlement cigarettes in possession in this state with
6.15 intent to sell, upon any person engaged in business as a distributor, and upon the use or
6.16 storage by consumers of nonsettlement cigarettes. The fee equals a rate of ~~2.5~~ 3.25 cents
6.17 per cigarette.

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

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

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

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

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

6.26 Sec. 12. Minnesota Statutes 2020, section 297F.25, subdivision 1, is amended to read:

6.27 Subdivision 1. **Imposition.** (a) A tax is imposed on distributors on the sale of cigarettes
6.28 by a cigarette distributor to a retailer or cigarette subjobber for resale in this state. The tax
6.29 is equal to the combined tax rate under section 297A.62, multiplied by the weighted average
6.30 retail price and must be expressed in cents per pack rounded to the nearest one-tenth of a
6.31 cent. The weighted average retail price must be determined annually, with new rates

7.1 published by November 1, and effective for sales on or after January 1 of the following
7.2 year. The weighted average retail price must be established by surveying cigarette retailers
7.3 statewide in a manner and time determined by the commissioner. The commissioner shall
7.4 make an inflation adjustment in accordance with the Consumer Price Index for all urban
7.5 consumers inflation indicator as published in the most recent state budget forecast. The
7.6 commissioner shall use the inflation factor for the calendar year in which the new tax rate
7.7 takes effect. If the survey indicates that the average retail price of cigarettes has not increased
7.8 relative to the average retail price in the previous year's survey, then the commissioner shall
7.9 not make an inflation adjustment. The determination of the commissioner pursuant to this
7.10 subdivision is not a "rule" and is not subject to the Administrative Procedure Act contained
7.11 in chapter 14. For packs of cigarettes with other than 20 cigarettes, the tax must be adjusted
7.12 proportionally.

7.13 (b) Notwithstanding paragraph (a), and in lieu of a survey of cigarette retailers, the tax
7.14 calculation of the weighted average retail price for the sales of cigarettes from August 1,
7.15 ~~2011~~ 2021, through December 31, ~~2011~~ 2021, shall be calculated by: (1) increasing the
7.16 average retail price per pack of 20 cigarettes from the most recent survey by the percentage
7.17 change in a weighted average of the presumed legal prices for cigarettes during the year
7.18 after completion of that survey, as reported and published by the Department of Commerce
7.19 under section 325D.371; (2) subtracting the sales tax included in the retail price; and (3)
7.20 adjusting for expected inflation. The rate must be published by May 1 and is effective for
7.21 sales after July 31. If the weighted average of the presumed legal prices indicates that the
7.22 average retail price of cigarettes has not increased relative to the average retail price in the
7.23 most recent survey, then no inflation adjustment must be made. For packs of cigarettes with
7.24 other than 20 cigarettes, the tax must be adjusted proportionally.

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

7.26 Sec. 13. Minnesota Statutes 2020, section 325F.781, subdivision 1, is amended to read:

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

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

7.31 (c) "Delivery sale" means:

7.32 (1) a sale of tobacco products to a consumer in this state when:

8.1 (i) the purchaser submits the order for the sale by means of a telephonic or other method
8.2 of voice transmission, the mail or any other delivery service, or the Internet or other online
8.3 service, or the retailer is otherwise not in the physical presence of the purchaser when the
8.4 request for purchase or order is made; or

8.5 (ii) the tobacco products are delivered to the consumer by use of the mail or other delivery
8.6 service, or the retailer is otherwise not in the physical presence of the consumer when the
8.7 consumer obtains possession of the tobacco products; or

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

8.10 A sale of tobacco products to an individual in this state must be treated as a sale to a
8.11 consumer, unless the individual is licensed as a distributor or retailer of tobacco products.

8.12 (d) "Delivery service" means a person, including the United States Postal Service, that
8.13 is engaged in the commercial delivery of letters, packages, or other containers to a consumer.

8.14 (e) "Distributor" means a person, whether located inside or outside of this state, other
8.15 than a retailer, who sells or distributes tobacco products in the state. Distributor does not
8.16 include a tobacco products manufacturer, export warehouse proprietor, or importer with a
8.17 valid permit under United States Code, title 26, section 5712 (1997), if the person sells or
8.18 distributes tobacco products in this state only to distributors who hold valid and current
8.19 licenses under the laws of a state, or to an export warehouse proprietor or another
8.20 manufacturer. Distributor does not include a common or contract carrier that is transporting
8.21 tobacco products under a proper bill of lading or freight bill that states the quantity, source,
8.22 and destination of tobacco products, or a person who ships tobacco products through this
8.23 state by common or contract carrier under a bill of lading or freight bill.

8.24 (f) "Retailer" means a person, whether located inside or outside this state, who sells or
8.25 distributes tobacco products to a consumer in this state.

8.26 (g) "Tobacco products" means:

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

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

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

8.30 (1) electronic delivery devices as defined in section 609.685, subdivision 1; and

8.31 (2) tobacco as defined in section 609.685, subdivision 1.

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

9.1 Sec. 14. Minnesota Statutes 2020, section 609.685, subdivision 1, is amended to read:

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

9.4 (a) "Tobacco" means cigarettes and any product containing, made, or derived from
9.5 tobacco that is intended for human consumption, whether chewed, smoked, absorbed,
9.6 dissolved, inhaled, snorted, sniffed, or ingested by any other means, or any component,
9.7 part, or accessory of a tobacco product including but not limited to cigars; cheroots; stogies;
9.8 perique; granulated, plug cut, crimp cut, ready rubbed, and other smoking tobacco; snuff;
9.9 snuff flour; cavendish; plug and twist tobacco; fine cut and other chewing tobaccos; shorts;
9.10 refuse scraps, clippings, cuttings and sweepings of tobacco; and other kinds and forms of
9.11 tobacco. Tobacco excludes any drugs, devices, or combination products, as those terms are
9.12 defined in the Federal Food, Drug, and Cosmetic Act, that are authorized for sale by the
9.13 United States Food and Drug Administration.

9.14 (b) "Tobacco-related devices" means cigarette papers or pipes for smoking or other
9.15 devices intentionally designed or intended to be used in a manner which enables the chewing,
9.16 sniffing, smoking, or inhalation of aerosol or vapor of tobacco or tobacco products.
9.17 Tobacco-related devices include components of tobacco-related devices which may be
9.18 marketed or sold separately.

9.19 (c) "Electronic delivery device" means any product containing or delivering nicotine,
9.20 lobelia, or any other substance, whether natural or synthetic, intended for human consumption
9.21 through inhalation of aerosol or vapor from the product. Electronic delivery device includes
9.22 but is not limited to devices manufactured, marketed, or sold as electronic cigarettes,
9.23 electronic cigars, electronic ~~pipe~~ pipes, electronic hookahs, vape pens, ~~mod~~ advanced
9.24 refillable personal vaporizers, mods, tank systems, or under any other product name or
9.25 descriptor. Electronic delivery device includes any component, liquid, part, or accessory of
9.26 a product, whether or not marketed or sold separately. Electronic delivery device excludes
9.27 drugs, devices, or combination products any drug, device, or combination product, as those
9.28 terms are defined in by the Federal Food, Drug, and Cosmetic Act, that are authorized for
9.29 sale by the United States Food and Drug Administration has been approved for sale by the
9.30 United States Food and Drug Administration as a tobacco cessation product, as a tobacco
9.31 dependence product, or for other therapeutic purposes, and is being marketed and sold solely
9.32 for such an approved purpose.

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

10.1 Sec. 15. **FLOOR STOCKS TAX.**

10.2 Subdivision 1. Cigarettes. (a) A floor stocks tax is imposed on every person engaged
10.3 in business in this state as a distributor, retailer, subjobber, vendor, manufacturer, or
10.4 manufacturer's representative of cigarettes on the stamped cigarettes and unaffixed stamps
10.5 in the person's possession or under the person's control at 12:01 a.m. on July 1, 2021.

10.6 (b) Each distributor, on or before July 11, 2021, shall file a return with the commissioner
10.7 of revenue, in the form prescribed by the commissioner, showing the stamped cigarettes
10.8 and unaffixed stamps on hand at 12:01 a.m. on July 1, 2021, and the amount of tax due on
10.9 the cigarettes and unaffixed stamps.

10.10 (c) Each retailer, subjobber, vendor, manufacturer, or manufacturer's representative, on
10.11 or before July 11, 2021, shall file a return with the commissioner of revenue, in the form
10.12 prescribed by the commissioner, showing the cigarettes on hand at 12:01 a.m. on July 1,
10.13 2021, and the amount of tax due on the cigarettes.

10.14 (d) The tax imposed by this section is at the rate of 75 mills on each cigarette plus the
10.15 additional cigarette sales tax determined by an adjustment to the weighted average retail
10.16 price which reflects the price including the increased tax. The tax is due and payable on or
10.17 before August 8, 2021, after which it bears interest at the rate of one percent per month.

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

10.23 Subd. 3. Deposit of proceeds. The commissioner of revenue shall deposit the revenues
10.24 from the tax under this section in the general fund.

10.25 EFFECTIVE DATE. This section is effective July 1, 2021.

10.26 Sec. 16. **REPEALER.**

10.27 Minnesota Statutes 2020, section 297F.01, subdivision 22b, is repealed.

10.28 EFFECTIVE DATE. This section is effective July 1, 2021.