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State of Minnesota

HOUSE OF REPRESENTATIVES

NINETY-FIRST SESSION

H. F. No. 1909

02/28/2019 Authored by Lesch and Davids
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 liquor; regulating direct shippers of wine; imposing sales and use taxes,
1.3 liquor gross receipts taxes, and excise taxes on direct shipments of wine; providing
1.4 for licensing and required reports; providing for classification of data; prohibiting
1.5 bootlegging; amending Minnesota Statutes 2018, sections 13.6905, by adding a
1.6 subdivision; 295.75, subdivision 4; 297A.83, subdivision 1; 297G.07, subdivision
1.7 1; 299A.706; 340A.304; 340A.417; proposing coding for new law in Minnesota
1.8 Statutes, chapter 340A.

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

1.10 Section 1. Minnesota Statutes 2018, section 13.6905, is amended by adding a subdivision
1.11 to read:

1.12 Subd. 36. Direct wine shipments. Data obtained and shared by the commissioner of
1.13 public safety relating to direct shipments of wine are governed by sections 340A.550 and
1.14 340A.555.

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

1.16 Sec. 2. Minnesota Statutes 2018, section 295.75, subdivision 4, is amended to read:

1.17 Subd. 4. Tax collection required. A liquor retailer with nexus in Minnesota or a direct
1.18 ship winery as defined in section 340A.550, who is not subject to tax under subdivision 2,
1.19 is required to collect the tax imposed under subdivision 3 from the purchaser of the liquor
1.20 and give the purchaser a receipt for the tax paid. The tax collected must be remitted to the
1.21 commissioner in the same manner prescribed for the taxes imposed under chapter 297A.

1.22 EFFECTIVE DATE. This section is effective for sales and purchases occurring on or
1.23 after July 1, 2019.

2.1 Sec. 3. Minnesota Statutes 2018, section 297A.83, subdivision 1, is amended to read:

2.2 Subdivision 1. **Persons applying.** (a) A retailer required to collect and remit sales taxes
2.3 under section 297A.66 or a direct ship winery as defined in section 340A.550 shall file with
2.4 the commissioner an application for a permit under this section.

2.5 (b) A retailer making retail sales from outside this state to a destination within this state
2.6 who is not required to obtain a permit under paragraph (a) may nevertheless voluntarily file
2.7 an application for a permit.

2.8 (c) The commissioner may require any person or class of persons obligated to file a use
2.9 tax return under section 289A.11, subdivision 3, to file an application for a permit.

2.10 **EFFECTIVE DATE.** This section is effective for permits applied for after June 30,
2.11 2019.

2.12 Sec. 4. Minnesota Statutes 2018, section 297G.07, subdivision 1, is amended to read:

2.13 Subdivision 1. **Exemptions.** The following are not subject to the excise tax:

2.14 (1) Sales by a manufacturer, brewer, or wholesaler for shipment outside the state in
2.15 interstate commerce.

2.16 (2) Alcoholic beverages sold or transferred between Minnesota wholesalers.

2.17 (3) Sales to common carriers engaged in interstate transportation of passengers, except
2.18 as provided in this chapter.

2.19 (4) Malt beverages served by a brewery for on-premise consumption at no charge, or
2.20 distributed to brewery employees for on-premise consumption under a labor contract.

2.21 ~~(5) Shipments of wine to Minnesota residents under section 340A.417.~~

2.22 ~~(6)~~ Fruit juices naturally fermented or beer naturally brewed in the home for family use
2.23 and not sold or offered for sale.

2.24 ~~(7)~~ (6) Sales of wine for sacramental purposes under section 340A.316.

2.25 ~~(8)~~ (7) Alcoholic beverages sold to authorized manufacturers of food products or
2.26 pharmaceutical firms. The alcoholic beverage must be used exclusively in the manufacture
2.27 of food products or medicines. For purposes of this clause, "manufacturer" means a person
2.28 who manufactures food products intended for sale to wholesalers or retailers for ultimate
2.29 sale to the consumer.

2.30 ~~(9)~~ (8) Liqueur-filled candy.

3.1 ~~(10)~~ (9) Sales to a federal agency, that the state of Minnesota is prohibited from taxing
 3.2 under the Constitution or laws of the United States or under the Constitution of Minnesota.

3.3 ~~(11)~~ (10) Sales to Indian tribes as defined in section 297G.08.

3.4 ~~(12)~~ (11) Shipments of intoxicating liquor from foreign countries to diplomatic personnel
 3.5 of foreign countries assigned to service in this state.

3.6 ~~(13)~~ (12) Shipments of bulk distilled spirits or bulk wine to farm wineries licensed under
 3.7 section 340A.315 for input to the final product.

3.8 **EFFECTIVE DATE.** This section is effective July 1, 2019.

3.9 Sec. 5. Minnesota Statutes 2018, section 299A.706, is amended to read:

3.10 **299A.706 ALCOHOL ENFORCEMENT ACCOUNT; APPROPRIATION.**

3.11 An alcohol enforcement account is created in the special revenue fund, consisting of
 3.12 money credited to the account by law. Money in the account may be appropriated by law
 3.13 for (1) costs of the Alcohol and Gambling Division related to administration and enforcement
 3.14 of sections 340A.403, subdivision 4; 340A.414, subdivision 1a; ~~and~~ 340A.504, subdivision
 3.15 7; 340A.550, subdivisions 2, 4, 5, and 6; and 340A.560; and (2) costs of the State Patrol.

3.16 **EFFECTIVE DATE.** This section is effective July 1, 2019.

3.17 Sec. 6. Minnesota Statutes 2018, section 340A.304, is amended to read:

3.18 **340A.304 LICENSE SUSPENSION AND REVOCATION.**

3.19 The commissioner shall revoke, or suspend for up to 60 days, a license issued under
 3.20 section 340A.301 ~~or~~, 340A.302, or 340A.550, or impose a fine of up to \$2,000 for each
 3.21 violation, on a finding that the licensee has violated a state law or rule of the commissioner
 3.22 relating to the possession, sale, transportation, or importation of alcoholic beverages. A
 3.23 license revocation or suspension under this section is a contested case under sections 14.57
 3.24 to 14.69 of the Administrative Procedure Act.

3.25 **EFFECTIVE DATE.** This section is effective July 1, 2019.

3.26 Sec. 7. Minnesota Statutes 2018, section 340A.417, is amended to read:

3.27 **340A.417 SHIPMENTS INTO MINNESOTA.**

3.28 (a) Notwithstanding section 297G.07, subdivision 2, or any provision of this chapter
 3.29 except for section 340A.550, a winery licensed in a state other than Minnesota, or a winery
 3.30 located in Minnesota, may ship, for personal use and not for resale, not more than ~~two cases~~

4.1 12 cases of wine, containing a maximum of nine liters per case, in any calendar year to any
4.2 resident of Minnesota age 21 or over. ~~Delivery of a shipment under this section may not be~~
4.3 ~~deemed a sale in this state.~~

4.4 (b) The shipping container of any wine sent under this section must be clearly marked
4.5 "Alcoholic Beverages: adult signature (over 21 years of age) required."

4.6 (c) It is not the intent of this section to impair the distribution of wine through distributors
4.7 or importing distributors, but only to permit shipments of wine for personal use.

4.8 (d) Except for a violation of section 295.75 or chapters 297A and 297G, no criminal
4.9 penalty may be imposed on a person for a violation of this section or section 340A.550 or
4.10 340A.560 other than a violation described in paragraph (e) or (f). Whenever it appears to
4.11 the commissioner that any person has engaged in any act or practice constituting a violation
4.12 of this section, or section 340A.550 or 340A.560 and the violation is not within two years
4.13 of any previous violation of this section, the commissioner shall issue and cause to be served
4.14 upon the person an order requiring the person to cease and desist from violating this section.
4.15 The order must give reasonable notice of the rights of the person to request a hearing and
4.16 must state the reason for the entry of the order. Unless otherwise agreed between the parties,
4.17 a hearing shall be held not later than ~~seven~~ 20 days after the request for the hearing is
4.18 received by the commissioner after which and within 20 days after the receipt of the
4.19 administrative law judge's report and subsequent exceptions and argument, the commissioner
4.20 shall issue an order vacating the cease and desist order, modifying it, or making it permanent
4.21 as the facts require. If no hearing is requested within 30 days of the service of the order, the
4.22 order becomes final and remains in effect until modified or vacated by the commissioner.
4.23 All hearings shall be conducted in accordance with the provisions of chapter 14. If the
4.24 person to whom a cease and desist order is issued fails to appear at the hearing after being
4.25 duly notified, the person shall be deemed in default, and the proceeding may be determined
4.26 against the person upon consideration of the cease and desist order, the allegations of which
4.27 may be deemed to be true.

4.28 (e) Any person who violates this section or section 340A.550 or 340A.560 within two
4.29 years of a violation for which a cease and desist order was issued under paragraph (d), is
4.30 guilty of a misdemeanor.

4.31 (f) Any person who commits a third or subsequent violation of this section or section
4.32 340A.550 or 340A.560 within any subsequent two-year period is guilty of a gross
4.33 misdemeanor.

4.34 **EFFECTIVE DATE.** This section is effective July 1, 2019.

5.1 Sec. 8. [340A.550] DIRECT SHIPMENTS OF WINE; LICENSING, TAXATION,
5.2 AND RESTRICTIONS.

5.3 Subdivision 1. Definitions. (a) "Direct ship purchaser" means a person who purchases
5.4 wine for personal use and not for resale from a winery located in a state other than Minnesota
5.5 for delivery to a Minnesota address.

5.6 (b) "Direct ship winery" means a winery licensed in a state other than Minnesota that
5.7 manufactures and makes a retail sale of wine and ships the wine to a direct ship purchaser
5.8 as authorized under section 340A.417.

5.9 Subd. 2. License requirements. (a) A direct ship winery must apply to the commissioner
5.10 for a direct ship license. The commissioner must not issue a license under this section unless
5.11 the applicant:

5.12 (1) is a licensed winery in a state other than Minnesota and provides a copy of its current
5.13 license in any state in which it is licensed to manufacture wine;

5.14 (2) provides a shipping address list, including all addresses from which it intends to ship
5.15 wine;

5.16 (3) agrees to comply with the requirements of subdivision 4; and

5.17 (4) consents to the jurisdiction of the Departments of Public Safety and Revenue, the
5.18 courts of this state, and any statute, law, or rule in this state related to the administration or
5.19 enforcement of this section, including any provision authorizing the commissioners of public
5.20 safety and revenue to audit a direct ship winery for compliance with this and any related
5.21 section.

5.22 (b) A direct ship winery obtaining a license under this section must annually renew its
5.23 license by January 1 of each year and must inform the commissioner at the time of renewal
5.24 of any changes to the information previously provided in paragraph (a).

5.25 (c) The application fee for a license is \$50. The fee for a license renewal is \$50. The
5.26 commissioner must deposit all fees received under this subdivision in the alcohol enforcement
5.27 account in the special revenue fund established under section 299A.706.

5.28 Subd. 3. Direct ship wineries; restrictions. (a) A direct ship winery may only ship
5.29 wine from an address provided to the commissioner as required in subdivision 2, paragraph
5.30 (a), clause (2), or through a third-party provider whose name and address the licensee
5.31 provided to the commissioner in its application for a license.

6.1 (b) A direct ship winery or its third-party provider may only ship wine from the direct
6.2 ship winery's own production.

6.3 Subd. 4. **Taxation.** A direct ship winery must:

6.4 (1) collect and remit the liquor gross receipts tax as required in section 295.75;

6.5 (2) apply for a permit as required in section 297A.83 and collect and remit the sales and
6.6 use tax imposed as required in chapter 297A;

6.7 (3) remit the tax as required in chapter 297G; and

6.8 (4) provide a statement to the commissioner, on a form prescribed by the commissioner,
6.9 detailing each shipment of wine made to a resident of this state and any other information
6.10 required by the commissioner.

6.11 Subd. 5. **Private or nonpublic data; classification and sharing.** (a) Data collected,
6.12 created, or maintained by the commissioner as required under this section are classified as
6.13 private data on individuals or nonpublic data, as defined in section 13.02, subdivisions 9
6.14 and 12.

6.15 (b) The commissioner must share data classified as private or nonpublic under this
6.16 section with the commissioner of revenue for purposes of administering section 295.75 and
6.17 chapters 289A, 297A, and 297G.

6.18 Subd. 6. **Enforcement; penalties.** Section 340A.417, paragraphs (d), (e), and (f), apply
6.19 to this section.

6.20 **EFFECTIVE DATE.** This section is effective July 1, 2019.

6.21 Sec. 9. **[340A.555] COMMON CARRIER REGULATIONS FOR DIRECT**
6.22 **SHIPMENTS OF WINE.**

6.23 Subdivision 1. **Monthly report required.** Each common carrier that contracts with a
6.24 winery under section 340A.417 for delivery of wine into this state must file with the
6.25 commissioner a monthly report of known wine shipments made by the carrier. The report
6.26 must be made in a form and manner as prescribed by the commissioner and must contain:

6.27 (1) the name of the common carrier making the report;

6.28 (2) the period of time covered by the report;

6.29 (3) the name and business address of the party requesting shipment;

6.30 (4) the name and address of each recipient;

7.1 (5) the weight of the package delivered to each recipient;

7.2 (6) a unique tracking number; and

7.3 (7) the date of delivery.

7.4 Subd. 2. **Record availability and retention.** Upon written request by the commissioner,
7.5 any records supporting the report in subdivision 1 must be made available to the
7.6 commissioner within 30 days of the request. Any records containing information relating
7.7 to a required report must be retained and preserved for a period of two years, unless
7.8 destruction of the records prior to the end of the two-year period is authorized in writing
7.9 by the commissioner. All retained records must be open and available for inspection by the
7.10 commissioner upon written request. The commissioner must make the required reports
7.11 available to any law enforcement agency or regulatory body of any local government in
7.12 this state in which the common carrier making the report resides or does business.

7.13 Subd. 3. **Penalty.** If a common carrier willfully violates the requirement to report a
7.14 delivery as required under this section or violates any rule related to the administration and
7.15 enforcement of this section, the commissioner must notify the common carrier in writing
7.16 of the violation. The commissioner may impose a fine in an amount not to exceed \$500 for
7.17 each subsequent violation.

7.18 Subd. 4. **Exemptions.** This section does not apply to common carriers regulated as
7.19 provided by United States Code, title 49, section 10101, et. seq., or to rail
7.20 trailer-on-flatcar/container-on-flatcar (TOFC/COFC) service, as provided by Code of Federal
7.21 Regulations, title 49, section 1090.1, or highway TOFC/COFC service provided by a rail
7.22 carrier, either itself or jointly with a motor carrier, as part of continuous intermodal freight
7.23 transportation, including, without limitation, any other TOFC/COFC transportation as
7.24 defined under federal law.

7.25 Subd. 5. **Private or nonpublic data; classification and sharing.** (a) Data collected,
7.26 created, or maintained by the commissioner as required under subdivision 1, clauses (4) to
7.27 (6), are classified as private data on individuals or nonpublic data, as defined in section
7.28 13.02, subdivisions 9 and 12.

7.29 (b) The commissioner must share data classified as private or nonpublic under this
7.30 section with the commissioner of revenue for purposes of administering section 295.75 and
7.31 chapters 289A, 297A, and 297G.

7.32 **EFFECTIVE DATE.** This section is effective July 1, 2019.

8.1 Sec. 10. **[340A.560] BOOTLEGGING PROHIBITED.**

8.2 Subdivision 1. **Unlicensed direct shipments prohibited.** (a) No person may ship an
8.3 alcoholic beverage for personal use, and not for resale, to a Minnesota address unless:

8.4 (1) the person shipping the alcoholic beverage obtains a license as required in section
8.5 340A.405 or 340A.550; or

8.6 (2) the shipment originates from a person holding a license as required in clause (1).

8.7 (b) A person making a shipment under paragraph (a) must provide a statement to the
8.8 commissioner, on a form prescribed by the commissioner, detailing each shipment of an
8.9 alcoholic beverage made to a resident of this state and any other information required by
8.10 the commissioner.

8.11 (c) Nothing in this section prohibits a person from shipping an alcoholic beverage to a
8.12 wholesaler licensed in section 340A.3021.

8.13 Subd. 2. **Enforcement; penalties.** Section 340A.417, paragraphs (d), (e), and (f), apply
8.14 to this section.

8.15 **EFFECTIVE DATE.** This section is effective July 1, 2019.