

**SENATE
STATE OF MINNESOTA
NINETIETH SESSION**

S.F. No. 3748

(SENATE AUTHORS: KORAN)

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OFFICIAL STATUS
Introduction and first reading
Referred to Commerce and Consumer Protection Finance and Policy

1.1 A bill for an act
1.2 relating to liquor; establishing the Minnesota Grape and Wine Council; establishing
1.3 a grant program for promotion, education, and development of Minnesota wines;
1.4 establishing sales and use tax nexus for certain direct shippers; depositing certain
1.5 revenues; requiring direct shipper's license for certain shipments of wine to
1.6 consumers; establishing reporting requirements for direct shippers; appropriating
1.7 money; amending Minnesota Statutes 2016, sections 295.75, subdivisions 1, 2,
1.8 11; 297A.66, subdivision 3; 340A.417; Minnesota Statutes 2017 Supplement,
1.9 section 297A.94; proposing coding for new law in Minnesota Statutes, chapter 17.

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

1.11 Section 1. [17.6901] MINNESOTA GRAPE AND WINE COUNCIL.

1.12 Subdivision 1. Establishment; membership. (a) The Minnesota Grape and Wine Council
1.13 is established. The council is composed of 15 voting members who are Minnesota residents
1.14 as follows:

1.15 (1) five wine producers licensed in the state of Minnesota;

1.16 (2) two commercial grape growers;

1.17 (3) one member of the Minnesota Farm Winery Association;

1.18 (4) one member of the Minnesota Grape Growers Association;

1.19 (5) one member of Explore Minnesota Tourism;

1.20 (6) one member representing the Minnesota grown program;

1.21 (7) one member representing the commissioner of agriculture;

1.22 (8) one member from the Minnesota Licensed Beverage Association;

1.23 (9) one member from the Minnesota Municipal Beverage Association; and

2.1 (10) one member from the Minnesota Cider Guild.

2.2 (b) Council members shall serve three-year terms. After the initial council is appointed,
2.3 subsequent appointments must be staggered so that one-third of council membership is
2.4 replaced each year. Council members must be nominated by their organizations and appointed
2.5 by the commissioner. The council may add ex officio members at its discretion. The council
2.6 must meet at least once per year, with all related expenses reimbursed by members'
2.7 sponsoring organizations or by the members themselves.

2.8 Subd. 2. **Powers and duties.** The council must review applications and select projects
2.9 to receive Minnesota grape and wine program grants, as authorized in section 17.6902. The
2.10 council must establish a program to provide grants for promotion, education, and development
2.11 of Minnesota wine and Minnesota grapes. The commissioner is responsible for all fiscal
2.12 and administrative duties.

2.13 Subd. 3. **Rules.** The commissioner's duties under this section and section 17.6902 are
2.14 not subject to the provisions of chapter 14.

2.15 Sec. 2. **[17.6902] MINNESOTA GRAPE AND WINE PROGRAM.**

2.16 Subdivision 1. **Eligible projects.** Eligible projects must provide promotion, education,
2.17 or development of the Minnesota wine industry, to stimulate economic development through
2.18 value-added, sustainable agriculture. The council may also recommend projects to expand
2.19 grape production in Minnesota by establishing vineyard grower grants. The council may
2.20 recommend funding for a viticultural or an enological extension agent to work with growers
2.21 and wineries in the state.

2.22 Subd. 2. **Awarding grants.** Applications for program grants must be submitted in the
2.23 form prescribed by the Minnesota Grape and Wine Council. Applications must be submitted
2.24 on or before the deadline prescribed by the council. All applications are subject to a thorough
2.25 in-state review by a peer committee established and approved by the council. Each project
2.26 meeting the basic qualifications is subject to a yes or no vote by each council member.
2.27 Projects chosen to receive funding must achieve an affirmative vote from at least ten of the
2.28 15 council members or two-thirds of voting members present. Projects awarded program
2.29 funds must submit an annual progress report in the form prescribed by the council.

2.30 Subd. 3. **Annual audit.** The program must have an annual audit of financial activities
2.31 that the council must file with the commissioner on or before June 1 for the immediately
2.32 preceding year ending December 31.

3.1 Sec. 3. [17.6903] MINNESOTA GRAPE AND WINE ACCOUNT.

3.2 A Minnesota grape and wine account is established in the agricultural fund. Money in
3.3 the account, including interest earned, is appropriated to the commissioner for grants
3.4 determined by the Minnesota Grape and Wine Council under section 17.6902. The
3.5 commissioner may use money from the account, if approved by vote by the council, to
3.6 provide administrative support to the council as required under section 17.6901, subdivision
3.7 2. The commissioner may also recover associated indirect costs from the account as required
3.8 under section 16A.127.

3.9 Sec. 4. Minnesota Statutes 2016, section 295.75, subdivision 1, is amended to read:

3.10 Subdivision 1. **Definitions.** (a) For purposes of this section, the following terms have
3.11 the meanings given.

3.12 (b) "Commissioner" means the commissioner of revenue.

3.13 (c) "Direct shipper" means a winery holding a direct shipper license under section
3.14 340A.417, subdivision 1.

3.15 (d) "Gross receipts" means the total amount received, in money or by barter or exchange,
3.16 for all liquor sales at retail as measured by the sales price, but does not include any taxes
3.17 imposed directly on the consumer that are separately stated on the invoice, bill of sale, or
3.18 similar document given to the purchaser.

3.19 ~~(d)~~ (e) "Liquor" means:

3.20 (1) intoxicating liquor, as defined in section 340A.101, subdivision 14;

3.21 (2) beverage containing intoxicating liquor; and

3.22 (3) 3.2 percent malt liquor, as defined in section 340A.101, subdivision 19, when sold
3.23 at an on-sale or off-sale municipal liquor store or other establishment licensed to sell any
3.24 type of intoxicating liquor.

3.25 ~~(e)~~ (f) "Liquor retailer" means a retailer that sells liquor.

3.26 ~~(f)~~ (g) "Retail sale" has the meaning given in section 297A.61, subdivision 4.

3.27 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June
3.28 30, 2018.

4.1 Sec. 5. Minnesota Statutes 2016, section 295.75, subdivision 2, is amended to read:

4.2 Subd. 2. **Gross receipts tax imposed.** A tax is imposed on each liquor retailer and direct
4.3 shipper equal to 2.5 percent of gross receipts from retail sales in Minnesota of liquor.

4.4 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June
4.5 30, 2018.

4.6 Sec. 6. Minnesota Statutes 2016, section 295.75, subdivision 11, is amended to read:

4.7 Subd. 11. **Deposit of revenues.** (a) Except as provided in paragraph (b), the commissioner
4.8 shall deposit all revenues, including penalties and interest, derived from the tax imposed
4.9 by this section in the general fund.

4.10 (b) Starting August 1, 2018, and the first day of each month thereafter, the commissioner
4.11 shall deposit an amount of the remittances monthly into the state treasury and credit them
4.12 to the Minnesota grape and wine account established under section 17.6903, as a portion
4.13 of the estimated amount of taxes collected from remittances by wineries holding a direct
4.14 shipper license in that month for sales direct to consumers for personal use. For the
4.15 remittances under this paragraph, the monthly deposit amount is \$.....

4.16 (c) Starting August 1, 2019, and the first day of each month thereafter, the monthly
4.17 deposit amount is one-twelfth of the product of: (1) the estimated percentage of total tax
4.18 revenues attributable to the retail sale of wine shipped direct to consumers for personal use
4.19 by holders of a direct shipper license; and (2) the total tax revenues collected under this
4.20 chapter for the calendar year ending before the start of that fiscal year. By August 1, 2018,
4.21 and August 1 of every second year thereafter, the commissioner shall estimate the percent
4.22 of total tax revenues collected in the previous calendar year that are attributable to retail
4.23 sales of wine shipped direct to consumers for personal use by holders of a direct shipper
4.24 license based on federal data and department of revenue consumption models.

4.25 (d) For purposes of this subdivision, "direct shipper license" has the meaning given in
4.26 section 340A.417, subdivision 1.

4.27 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June
4.28 30, 2018.

4.29 Sec. 7. Minnesota Statutes 2016, section 297A.66, subdivision 3, is amended to read:

4.30 Subd. 3. **Retailer not maintaining place of business in this state.** (a) To the extent
4.31 allowed by the United States Constitution and in accordance with the terms and conditions
4.32 of federal remote seller law, a retailer making retail sales from outside this state to a

5.1 destination within this state and not maintaining a place of business in this state shall collect
5.2 sales and use taxes and remit them to the commissioner under section 297A.77.

5.3 (b) To the extent allowed by the United States Constitution and the laws of the United
5.4 States, a retailer making retail sales from outside this state to a destination within this state
5.5 and not maintaining a place of business in this state shall collect sales and use taxes and
5.6 remit them to the commissioner under section 297A.77, if the retailer engages in the regular
5.7 or systematic soliciting of sales from potential customers in this state by:

5.8 (1) distribution, by mail or otherwise, of catalogs, periodicals, advertising flyers, or other
5.9 written solicitations of business to customers in this state;

5.10 (2) display of advertisements on billboards or other outdoor advertising in this state;

5.11 (3) advertisements in newspapers published in this state;

5.12 (4) advertisements in trade journals or other periodicals the circulation of which is
5.13 primarily within this state;

5.14 (5) advertisements in a Minnesota edition of a national or regional publication or a
5.15 limited regional edition in which this state is included as part of a broader regional or national
5.16 publication which are not placed in other geographically defined editions of the same issue
5.17 of the same publication;

5.18 (6) advertisements in regional or national publications in an edition which is not by its
5.19 contents geographically targeted to Minnesota but which is sold over the counter in Minnesota
5.20 or by subscription to Minnesota residents;

5.21 (7) advertisements broadcast on a radio or television station located in Minnesota; ~~or~~

5.22 (8) any other solicitation by telegraphy, telephone, computer database, cable, optic,
5.23 microwave, or other communication system; or

5.24 (9) obtaining a direct shipper license under section 340A.417, subdivision 1.

5.25 This paragraph must be construed without regard to the state from which distribution
5.26 of the materials originated or in which they were prepared.

5.27 (c) The location within or without this state of independent vendors that provide products
5.28 or services to the retailer in connection with its solicitation of customers within this state,
5.29 including such products and services as creation of copy, printing, distribution, and recording,
5.30 is not considered in determining whether the retailer is required to collect tax.

6.1 (d) A retailer not maintaining a place of business in this state is presumed, subject to
6.2 rebuttal, to be engaged in regular solicitation within this state if it engages in any of the
6.3 activities in paragraph (b), clauses (1) to (8), and:

6.4 (1) makes 100 or more retail sales from outside this state to destinations in this state
6.5 during a period of 12 consecutive months; or

6.6 (2) makes ten or more retail sales totaling more than \$100,000 from outside this state
6.7 to destinations in this state during a period of 12 consecutive months.

6.8 (e) A retailer not maintaining a place of business in this state who has obtained a direct
6.9 shipper license under paragraph (b), clause (9), is presumed, subject to rebuttal, to be engaged
6.10 in regular solicitation within this state.

6.11 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June
6.12 30, 2018.

6.13 Sec. 8. Minnesota Statutes 2017 Supplement, section 297A.94, is amended to read:

6.14 **297A.94 DEPOSIT OF REVENUES.**

6.15 (a) Except as provided in this section, the commissioner shall deposit the revenues,
6.16 including interest and penalties, derived from the taxes imposed by this chapter in the state
6.17 treasury and credit them to the general fund.

6.18 (b) The commissioner shall deposit taxes in the Minnesota agricultural and economic
6.19 account in the special revenue fund if:

6.20 (1) the taxes are derived from sales and use of property and services purchased for the
6.21 construction and operation of an agricultural resource project; and

6.22 (2) the purchase was made on or after the date on which a conditional commitment was
6.23 made for a loan guaranty for the project under section 41A.04, subdivision 3.

6.24 The commissioner of management and budget shall certify to the commissioner the date on
6.25 which the project received the conditional commitment. The amount deposited in the loan
6.26 guaranty account must be reduced by any refunds and by the costs incurred by the Department
6.27 of Revenue to administer and enforce the assessment and collection of the taxes.

6.28 (c) The commissioner shall deposit the revenues, including interest and penalties, derived
6.29 from the taxes imposed on sales and purchases included in section 297A.61, subdivision 3,
6.30 paragraph (g), clauses (1) and (4), in the state treasury, and credit them as follows:

7.1 (1) first to the general obligation special tax bond debt service account in each fiscal
7.2 year the amount required by section 16A.661, subdivision 3, paragraph (b); and

7.3 (2) after the requirements of clause (1) have been met, the balance to the general fund.

7.4 (d) Beginning with sales taxes remitted after July 1, 2017, the commissioner shall deposit
7.5 in the state treasury the revenues collected under section 297A.64, subdivision 1, including
7.6 interest and penalties and minus refunds, and credit them to the highway user tax distribution
7.7 fund.

7.8 (e) The commissioner shall deposit the revenues, including interest and penalties,
7.9 collected under section 297A.64, subdivision 5, in the state treasury and credit them to the
7.10 general fund. By July 15 of each year the commissioner shall transfer to the highway user
7.11 tax distribution fund an amount equal to the excess fees collected under section 297A.64,
7.12 subdivision 5, for the previous calendar year.

7.13 (f) Beginning with sales taxes remitted after July 1, 2017, in conjunction with the deposit
7.14 of revenues under paragraph (d), the commissioner shall deposit into the state treasury and
7.15 credit to the highway user tax distribution fund an amount equal to the estimated revenues
7.16 derived from the tax rate imposed under section 297A.62, subdivision 1, on the lease or
7.17 rental for not more than 28 days of rental motor vehicles subject to section 297A.64. The
7.18 commissioner shall estimate the amount of sales tax revenue deposited under this paragraph
7.19 based on the amount of revenue deposited under paragraph (d).

7.20 (g) Starting after July 1, 2017, the commissioner shall deposit an amount of the
7.21 remittances monthly into the state treasury and credit them to the highway user tax
7.22 distribution fund as a portion of the estimated amount of taxes collected from the sale and
7.23 purchase of motor vehicle repair parts in that month. For the remittances between July 1,
7.24 2017, and June 30, 2019, the monthly deposit amount is \$2,628,000. For remittances in
7.25 each subsequent fiscal year, the monthly deposit amount is \$12,137,000. For purposes of
7.26 this paragraph, "motor vehicle" has the meaning given in section 297B.01, subdivision 11,
7.27 and "motor vehicle repair and replacement parts" includes (i) all parts, tires, accessories,
7.28 and equipment incorporated into or affixed to the motor vehicle as part of the motor vehicle
7.29 maintenance and repair, and (ii) paint, oil, and other fluids that remain on or in the motor
7.30 vehicle as part of the motor vehicle maintenance or repair. For purposes of this paragraph,
7.31 "tire" means any tire of the type used on highway vehicles, if wholly or partially made of
7.32 rubber and if marked according to federal regulations for highway use.

8.1 (h) 72.43 percent of the revenues, including interest and penalties, transmitted to the
8.2 commissioner under section 297A.65, must be deposited by the commissioner in the state
8.3 treasury as follows:

8.4 (1) 50 percent of the receipts must be deposited in the heritage enhancement account in
8.5 the game and fish fund, and may be spent only on activities that improve, enhance, or protect
8.6 fish and wildlife resources, including conservation, restoration, and enhancement of land,
8.7 water, and other natural resources of the state;

8.8 (2) 22.5 percent of the receipts must be deposited in the natural resources fund, and may
8.9 be spent only for state parks and trails;

8.10 (3) 22.5 percent of the receipts must be deposited in the natural resources fund, and may
8.11 be spent only on metropolitan park and trail grants;

8.12 (4) three percent of the receipts must be deposited in the natural resources fund, and
8.13 may be spent only on local trail grants; and

8.14 (5) two percent of the receipts must be deposited in the natural resources fund, and may
8.15 be spent only for the Minnesota Zoological Garden, the Como Park Zoo and Conservatory,
8.16 and the Duluth Zoo.

8.17 (i) The revenue dedicated under paragraph (h) may not be used as a substitute for
8.18 traditional sources of funding for the purposes specified, but the dedicated revenue shall
8.19 supplement traditional sources of funding for those purposes. Land acquired with money
8.20 deposited in the game and fish fund under paragraph (h) must be open to public hunting
8.21 and fishing during the open season, except that in aquatic management areas or on lands
8.22 where angling easements have been acquired, fishing may be prohibited during certain times
8.23 of the year and hunting may be prohibited. At least 87 percent of the money deposited in
8.24 the game and fish fund for improvement, enhancement, or protection of fish and wildlife
8.25 resources under paragraph (h) must be allocated for field operations.

8.26 (j) The commissioner must deposit the revenues, including interest and penalties minus
8.27 any refunds, derived from the sale of items regulated under section 624.20, subdivision 1,
8.28 that may be sold to persons 18 years old or older and that are not prohibited from use by
8.29 the general public under section 624.21, in the state treasury and credit:

8.30 (1) 25 percent to the volunteer fire assistance grant account established under section
8.31 88.068;

8.32 (2) 25 percent to the fire safety account established under section 297I.06, subdivision
8.33 3; and

9.1 (3) the remainder to the general fund.

9.2 For purposes of this paragraph, the percentage of total sales and use tax revenue derived
9.3 from the sale of items regulated under section 624.20, subdivision 1, that are allowed to be
9.4 sold to persons 18 years old or older and are not prohibited from use by the general public
9.5 under section 624.21, is a set percentage of the total sales and use tax revenues collected in
9.6 the state, with the percentage determined under section 39.

9.7 (k) The revenues deposited under paragraphs (a) to ~~(j)~~ (n) do not include the revenues,
9.8 including interest and penalties, generated by the sales tax imposed under section 297A.62,
9.9 subdivision 1a, which must be deposited as provided under the Minnesota Constitution,
9.10 article XI, section 15.

9.11 (l) Starting August 1, 2018, and the first day of each month thereafter, the commissioner
9.12 shall deposit an amount of the remittances monthly into the state treasury and credit them
9.13 to the Minnesota grape and wine account established under section 17.6903, as a portion
9.14 of the estimated amount of taxes collected from remittances by wineries holding a direct
9.15 shipper license in that month for sales direct to consumers for personal use. For the
9.16 remittances under this paragraph, the monthly deposit amount is \$.....

9.17 (m) Starting August 1, 2019, and the first day of each month thereafter, the monthly
9.18 deposit amount is one-twelfth of the product of: (1) the estimated percentage of total sales
9.19 tax revenues attributable to the sale and purchase of wine shipped direct to consumers for
9.20 personal use by holders of a direct shipper license; and (2) the total sales tax revenues
9.21 collected under this chapter for the calendar year ending before the start of that fiscal year.
9.22 By August 1, 2019, and August 1 of every second year thereafter, the commissioner shall
9.23 estimate the percent of total sales tax revenues collected in the previous calendar year that
9.24 are attributable to the sale and purchase of wine shipped direct to consumers for personal
9.25 use based on federal data and department consumption models.

9.26 (n) For purposes of this subdivision, "direct shipper license" has the meaning given in
9.27 section 340A.417, subdivision 1.

9.28 **EFFECTIVE DATE.** This section is effective for sales and purchases made after June
9.29 30, 2018.

9.30 Sec. 9. Minnesota Statutes 2016, section 340A.417, is amended to read:

9.31 **340A.417 DIRECT WINE SHIPMENTS INTO MINNESOTA; LICENSE**
9.32 **REQUIRED.**

10.1 Subdivision 1. **Direct shipper license.** (a) Notwithstanding section 297G.07, subdivision
 10.2 2, or any provision of this chapter, a winery licensed in a state other than Minnesota, or a
 10.3 winery located in Minnesota, ~~may~~ must obtain a direct shipper license in order to ship, for
 10.4 personal use and not for resale, not more than two cases of wine, containing a maximum of
 10.5 nine liters per case, in any calendar year to any resident of Minnesota age 21 or over. ~~Delivery~~
 10.6 ~~of a shipment under this section may not be deemed a sale in this state.~~

10.7 (b) A winery applicant for an initial or renewal direct shipper license shall:

10.8 (1) file an application with the department on a form prescribed by the department;

10.9 (2) pay a license fee of \$50;

10.10 (3) submit a copy of the applicant's current federal basic wine manufacturing permit;

10.11 (4) hold a Minnesota sales and use tax license issued by the Department of Revenue;

10.12 and

10.13 (5) be current on the remittance of all required state taxes.

10.14 (c) A direct shipper license under this section is valid for a calendar year.

10.15 (d) A holder of a direct shipper license may only ship wine that was produced by the
 10.16 direct shipper in accordance with the direct shipper's federal basic wine manufacturing
 10.17 permit.

10.18 (e) A holder of a direct shipper license is deemed to have consented to the jurisdiction
 10.19 of the department and the courts of this state with respect to the enforcement of this section.

10.20 (f) Any sale and shipment of wine directly to a person in this state from a winery that
 10.21 does not hold a valid direct shipper license is prohibited.

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

10.24 ~~(e)~~ (h) It is not the intent of this section to impair the distribution of wine through
 10.25 distributors or importing distributors, but only to permit shipments of wine for personal use.

10.26 Subd. 2. **Reporting.** A holder of a direct shipper's license shall file quarterly reports
 10.27 with the department on or before the 15th day of the month following each quarterly period.
 10.28 The holder of a direct shipper's license may file an annual report if the amount owed under
 10.29 chapters 295 and 297A is less than \$500. The report shall include:

10.30 (1) the business name, address, and direct shipper license number of the holder of the
 10.31 direct shipper license;

11.1 (2) the total liters of wine shipped to residents of this state during the quarterly period;
11.2 and
11.3 (3) the date, quantity, and purchase price of each shipment, along with any taxes paid
11.4 by the purchaser, during the quarterly period.

11.5 **Subd. 3. Penalties.** ~~(d)~~ (a) No criminal penalty may be imposed on a person for a violation
11.6 of this section other than a violation described in paragraph ~~(e)~~ (b) or ~~(f)~~ (c). Whenever it
11.7 appears to the commissioner that any person has engaged in any act or practice constituting
11.8 a violation of this section, and the violation is not within two years of any previous violation
11.9 of this section, the commissioner shall issue and cause to be served upon the person an order
11.10 requiring the person to cease and desist from violating this section. The order must give
11.11 reasonable notice of the rights of the person to request a hearing and must state the reason
11.12 for the entry of the order. Unless otherwise agreed between the parties, a hearing shall be
11.13 held not later than seven days after the request for the hearing is received by the commissioner
11.14 after which and within 20 days after the receipt of the administrative law judge's report and
11.15 subsequent exceptions and argument, the commissioner shall issue an order vacating the
11.16 cease and desist order, modifying it, or making it permanent as the facts require. If no hearing
11.17 is requested within 30 days of the service of the order, the order becomes final and remains
11.18 in effect until modified or vacated by the commissioner. All hearings shall be conducted in
11.19 accordance with the provisions of chapter 14. If the person to whom a cease and desist order
11.20 is issued fails to appear at the hearing after being duly notified, the person shall be deemed
11.21 in default, and the proceeding may be determined against the person upon consideration of
11.22 the cease and desist order, the allegations of which may be deemed to be true.

11.23 ~~(e)~~ (b) Any person who violates this section within two years of a violation for which a
11.24 cease and desist order was issued under paragraph ~~(d)~~ (a), is guilty of a misdemeanor.

11.25 ~~(f)~~ (c) Any person who commits a third or subsequent violation of this section within
11.26 any subsequent two-year period is guilty of a gross misdemeanor.

11.27 **EFFECTIVE DATE.** This section is effective January 1, 2019.