

## HOUSE BILL NO. 670

INTRODUCED BY BUZZAS

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TOBACCO LAWS TO DISCOURAGE YOUTH ACCESS;  
5 RAISING THE RETAILER'S APPLICATION FEE; RAISING CIVIL PENALTIES AND REVISING THE PENALTY  
6 SCHEDULE INCREASING PENALTIES FOR FAILURE TO OBTAIN A RETAIL LICENSE FOR TOBACCO  
7 SALES, FOR FAILURE TO POST SIGNS REGARDING SALES OF TOBACCO PRODUCTS TO YOUTH, OR  
8 FOR THE MANUFACTURE OR SALE OF TOBACCO PRODUCTS IN VIOLATION OF MINIMUM SIZE  
9 REQUIREMENTS; CLARIFYING CERTAIN NOTIFICATION REQUIREMENTS; ELIMINATING A LICENSE  
10 REQUIREMENT THAT CONFLICTS WITH ANOTHER SECTION OF LAW REQUIRING A LICENSE; AMENDING  
11 SECTIONS ~~16-11-122 AND~~ 16-11-144, 16-11-302, 16-11-308, 16-11-309, 16-11-311, AND 16-11-312, MCA;  
12 REPEALING SECTION 16-11-303, MCA; AND PROVIDING AN EFFECTIVE DATE."

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14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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16 ~~Section 1. Section 16-11-122, MCA, is amended to read:~~  
17 ~~"16-11-122. License fees -- renewal. (1) Each application for a wholesaler's license must be~~  
18 ~~accompanied by a fee of \$50.~~  
19 ~~(2) Each application for a subjobber's license must be accompanied by a fee of \$50.~~  
20 ~~(3) Each application for a retailer's license must be accompanied by a fee of \$5 \$50.~~  
21 ~~(4) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be~~  
22 ~~discounted for payment processing charges paid by the department to a third party.~~  
23 ~~(5) These licenses must be renewed annually on or before the anniversary date established by rule by~~  
24 ~~the board of review established in ~~30-16-302~~ and upon payment of the annual fee and are effective for 1 year,~~  
25 ~~without proration, and are not transferable."~~

26  
27 SECTION 1. SECTION 16-11-144, MCA, IS AMENDED TO READ:  
28 "16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the  
29 license of any wholesaler, subjobber, retailer, cigarette vendor, or person licensed under ~~16-11-303~~ 16-11-120  
30 for failure to comply with any provision of this part, The Montana Cigarette Sales Act (Title 16, chapter 10), the

1 Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3), or with any lawful rule of the  
2 department made pursuant to those laws.

3 (2) A person aggrieved by a revocation or suspension may apply to the department for a hearing, which  
4 must be open to the public. If the person is aggrieved by the decision of the department, the person may further  
5 appeal to the court.

6 (3) When a license has been revoked, a license may not be issued to the licensee for a period of 1 year  
7 after revocation. When a license has been suspended, the suspension may be for any period not to exceed 1  
8 year.

9 (4) A person who sells cigarettes after the person's license has been revoked or suspended is guilty  
10 of a misdemeanor and must be punished as provided in this part, and all cigarettes in the person's possession  
11 must be seized and forfeited to the state."

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13 **SECTION 2. SECTION 16-11-302, MCA, IS AMENDED TO READ:**

14 **"16-11-302. Definitions.** For the purposes of 16-11-301, 16-11-302, and 16-11-304 through 16-11-308,  
15 the following definitions apply:

16 (1) "Distribute" means:

17 (a) to give, deliver, sample, or sell;

18 (b) to offer to give, deliver, sample, or sell; or

19 (c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or  
20 sell.

21 (2) "Health warning" means a tobacco product label required by federal law and intended to alert users  
22 of the product to the health risks associated with tobacco use. The term includes warning labels required under  
23 the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health  
24 Education Act of 1986.

25 (3) "License" means a retail tobacco product sales license.

26 (4) "Person" means a natural person, company, corporation, firm, partnership, organization, or other  
27 legal entity.

28 (5) "Tobacco product" means a substance intended for human consumption that contains tobacco. The  
29 term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

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1           **Section 3.** Section 16-11-308, MCA, is amended to read:

2           "**16-11-308. Civil penalties -- consequences for noncompliance -- license suspension -- tobacco**  
3 **education fee enforcement fine.** (1) Failure to obtain a license, as required by ~~16-11-303~~ 16-11-120, failure  
4 to post signs, as provided in 16-11-304, or the manufacture or sale of cigarettes or rolling tobacco in violation  
5 of the minimum package size requirements of 16-11-111 or 16-11-307 is punishable by a civil penalty of ~~\$400~~  
6 \$1,000. The department may collect the penalty in the manner provided for the collection of other debts.

7           (2) A person who violates 16-11-305(1) or 16-11-307(1) at any one location within a ~~3-year~~ 1-year  
8 period shall be punished as follows:

9           (a) A first ~~through third~~ offense is punishable by a ~~verbal~~ written notification of violation:

10 ~~—— (b) A fourth offense is punishable by a written notice of violation to be sent by the department of public~~  
11 ~~health and human services to the owner of the establishment~~ LICENSEE.

12 ~~—— (c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco~~  
13 ~~education fee of \$500. The employee or other person who sold the tobacco product, the establishment manager,~~  
14 ~~and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the tobacco~~  
15 ~~education material.~~

16 ~~—— (d) A sixth offense under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2) is~~  
17 ~~punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.~~

18 ~~—— (e) A seventh and subsequent offense under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent~~  
19 ~~offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and 16-11-303~~  
20 ~~for 1 year.~~

21 ~~—— (3) After 2 years from the first violation, if a person has not received notice of any further violations, a~~  
22 ~~second violation is considered a first violation for the purposes of subsection (2).~~

23           **(b)** A second offense is punishable by a civil penalty of \$1,000.

24           **(c)** A third or subsequent offense is punishable by suspension of the licenses LICENSE required by  
25 16-11-120 and 16-11-303 for 3 months and a civil penalty of \$5,000.

26           **(4)(3)** A license may not be reissued REINSTATED for 3 months after suspension under subsection (2)(d)  
27 or (2)(e) and may not be reissued REINSTATED unless tobacco education fees or civil penalties are paid in full.

28           **(5)** ~~Tobacco education fees must be assessed and collected by the department of public health and~~  
29 ~~human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the~~  
30 ~~department of public health and human services within 30 days of the alleged violation by certified letter~~

1 ~~addressed to the establishment owner or manager. The notice of assessment against the owner of the~~  
2 ~~establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic~~  
3 ~~equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days~~  
4 ~~from the date on which the notice of assessment was mailed, the owner or manager shall notify the department~~  
5 ~~of public health and human services that the owner or manager objects to the assessment and request a hearing~~  
6 ~~pursuant to this subsection.~~

7 ~~(6)(4)~~ In addition to the penalty provided for in subsection (2), a first and subsequent violation of  
8 16-11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco ~~education fee~~ enforcement fine of  
9 \$25 against the employee who sold the tobacco product if the employee is not the ~~owner of the establishment~~  
10 LICENSEE. The tobacco ~~education fee~~ enforcement fine must be assessed and collected by the department of  
11 public health and human services. ~~Within 30 days of the alleged violation, notice of assessment pursuant to this~~  
12 ~~subsection must be made by the department of public health and human services by certified letter addressed~~  
13 ~~to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be~~  
14 ~~conducted using electronic equipment and must comply with the provisions of the Montana Administrative~~  
15 ~~Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall~~  
16 ~~notify the department of public health and human services that the employee objects to the assessment and~~  
17 ~~requests a hearing pursuant to this subsection.~~

18 ~~(7)~~ The tobacco education material referred to in this section must be provided by the department of  
19 public health and human services in the form of written and video self-teaching materials. The education  
20 materials may be used only for the purposes provided in this section. Upon completion of the self-teaching  
21 materials, the establishment owner or manager shall execute a written statement on a form provided by the  
22 department of public health and human services verifying that the employee, owner, or manager, as appropriate,  
23 has read and viewed the self-teaching material and shall return the statement and the self-teaching video to the  
24 department of public health and human services.

25 (5) THE DEPARTMENT OF REVENUE SHALL NOTIFY THE LICENSEE OF AN ALLEGED VIOLATION OF THIS SECTION  
26 BY CERTIFIED LETTER ADDRESSED TO THE LICENSEE. THE NOTICE MUST STATE EACH PENALTY OR SANCTION THAT IS  
27 APPLICABLE TO THE VIOLATION UNDER THIS SECTION. THE NOTICE MUST STATE THAT THE LICENSEE MAY WITHIN 30 DAYS  
28 AFTER RECEIPT OF THE NOTICE REQUEST A HEARING UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT. THE  
29 HEARING MAY BE HELD BY ELECTRONIC TELECONFERENCE.

30 ~~(8)(5)(6)~~ Upon the ~~sixth~~ third and subsequent violation of this section, the department of public health

1 and human services shall notify the department of revenue in writing to initiate suspension of the licenses  
 2 LICENSE required by 16-11-120 and ~~16-11-303~~ and shall notify the licensee in writing of the alleged violation and  
 3 of the referral of the licensee's record of violations to the department of revenue for suspension of the licenses  
 4 pursuant to ~~16-11-144~~ and this section. The department of revenue shall review the record of violations and may  
 5 initiate license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of  
 6 violations, the department of revenue declines to initiate suspension proceedings, the violation may not be  
 7 charged against the licensee for the purposes of this section.

8 ~~(9)(6)(7)~~ Fees Civil penalties and tobacco enforcement fines assessed pursuant to this section must  
 9 be deposited in the state general fund as follows:

10 (a) 75% 50% to an account in the state special revenue fund to the credit of the department of public  
 11 health and human services for enforcement of this section; and

12 (b) 25% 50% to the department of revenue for suspension of licenses pursuant to 16-11-144."  
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14 **SECTION 4. SECTION 16-11-309, MCA, IS AMENDED TO READ:**

15 **"16-11-309. Inspection and notification of violation required.** (1) The department of public health  
 16 and human services shall conduct inspections of persons selling or distributing tobacco products to determine  
 17 compliance with ~~16-11-303~~ 16-11-120, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307. Inspections may  
 18 be conducted directly by the department of public health and human services or may be provided for by contract  
 19 let by the department of public health and human services. Persons found to be in violation of the requirements  
 20 of this part or the rules of the department of public health and human services a fourth and subsequent time  
 21 must be notified in writing by the department of public health and human services of the facts of the violation and  
 22 the penalties provided by this part.

23 (2) The department of public health and human services shall provide documentation of alleged  
 24 violations of ~~16-11-303~~ 16-11-120, 16-11-305, and 16-11-307 to the department of revenue."  
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26 **SECTION 5. SECTION 16-11-311, MCA, IS AMENDED TO READ:**

27 **"16-11-311. Local regulations.** A local government may by ordinance adopt regulations on the subjects  
 28 of 16-11-301, 16-11-302, and 16-11-304 through 16-11-308 that are no more stringent than 16-11-301,  
 29 16-11-302, and 16-11-304 through 16-11-308."  
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1           **SECTION 6. SECTION 16-11-312, MCA, IS AMENDED TO READ:**  
2           **"16-11-312. Rulemaking authority.** The department of revenue may adopt rules to implement  
3 16-11-301, 16-11-302, and 16-11-304 through 16-11-308."  
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5           **NEW SECTION. SECTION 7. REPEALER. SECTION 16-11-303, MCA, IS REPEALED.**  
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7           **NEW SECTION. Section 8. Effective date.** [This act] is effective July 1, 2003.  
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