

MCA CODIFICATION OF BALLOT MEASURES APPROVED NOV. 2, 2004

This pamphlet contains a list and the full text of all MCA sections that were affected by ballot measures that were approved by the electorate on November 2, 2004.

Code Sections Affected List

Section	Action
Constitution, Article IX, section 6	enacted
Constitution, Article IX, section 7	enacted
Constitution, Article XIII, section 7.....	enacted
10-2-417	amended
16-11-111	amended
16-11-114	amended
16-11-119	amended
16-11-202	amended
16-11-206	amended
37-1-136	amended
45-9-101	amended
45-9-102	amended
45-9-103	amended
45-9-110	amended
45-9-127	amended
45-10-107	amended
50-46-101.....	enacted
50-46-102.....	enacted
50-46-103.....	enacted
50-46-201.....	enacted
50-46-202.....	enacted
50-46-205.....	enacted
50-46-206.....	enacted
50-46-207.....	enacted
50-46-210.....	enacted
53-6-1201.....	enacted

THE CONSTITUTION OF THE STATE OF MONTANA

ARTICLE IX ENVIRONMENT AND NATURAL RESOURCES

Section 6. Noxious weed management trust fund. (1) The legislature shall provide for a fund, to be known as the noxious weed management trust of the state of Montana, to be funded as provided by law.

(2) The principal of the noxious weed management trust fund shall forever remain inviolate in an amount of ten million dollars (\$10,000,000) unless appropriated by vote of three-fourths (3/4) of the members of each house of the legislature.

(3) The interest and income generated from the noxious weed management trust fund may be appropriated by a majority vote of each house of the legislature. Appropriations of the interest and income shall be used only to fund the noxious weed management program, as provided by law.

(4) The principal of the noxious weed management trust fund in excess of ten million dollars (\$10,000,000) may be appropriated by a majority vote of each house of the legislature. Appropriations of the principal in excess of ten million dollars (\$10,000,000) shall be used only to fund the noxious weed management program, as provided by law.

History: En. Sec. 1, Const. Amend. No. 40, approved Nov. 2, 2004.

Section 7. Preservation of harvest heritage. The opportunity to harvest wild fish and wild game animals is a heritage that shall forever be preserved to the individual citizens of the state and does not create a right to trespass on private property or diminution of other private rights.

History: En. Sec. 1, Const. Amend. No. 41, approved Nov. 2, 2004.

ARTICLE XIII GENERAL PROVISIONS

Section 7. Marriage. Only a marriage between one man and one woman shall be valid or recognized as a marriage in this state.

History: En. Sec. 1, Const. Initiative No. 96, approved Nov. 2, 2004.

TITLE 10 MILITARY AFFAIRS AND DISASTER AND EMERGENCY SERVICES

CHAPTER 2 VETERANS

Part 4 Montana Veterans' Homes

10-2-417. Use of funds generated by taxation on cigarettes. (1) Revenue generated by 16-11-119 and allocated to the department of public health and human services must be used to support the operation and maintenance of the Montana veterans' homes programs or for the health and medicaid initiatives specified by 53-6-1201.

(2) The legislature shall appropriate from the account established in 16-11-119 the funds required for the operation and maintenance of the Montana veterans' homes or required for the health and medicaid initiatives specified by 53-6-1201.

History: En. Sec. 2, Ch. 548, L. 1993; amd. Sec. 41, Ch. 546, L. 1995; amd. Sec. 1, I.M. No. 149, approved Nov. 2, 2004.

TITLE 16 ALCOHOL AND TOBACCO

CHAPTER 11 TAXATION OF TOBACCO PRODUCTS

Part 1 Tax on Cigarettes

16-11-111. Cigarette sales tax — exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

History: En. Sec. 6, Ch. 289, L. 1947; amd. Sec. 16, Initiative No. 54 (L. 1951, p. 781); amd. Sec. 1, Ch. 123, L. 1953; amd. Sec. 3, Ch. 18, L. 1957; amd. Sec. 7, Ch. 44, L. 1957; amd. Sec. 1, Ch. 222, L. 1957; amd. Sec. 1, Ch. 97, L. 1963; amd. Sec. 6, Ch. 270, L. 1963; amd. Sec. 5, Ch. 318, L. 1967; amd. Sec. 4, Ch. 222, L. 1971; R.C.M. 1947, 84-5606(2) thru (4); amd. Sec. 1, Ch. 267, L. 1981; amd. Sec. 1, Ch. 608, L. 1983; amd. Sec. 1, Ch. 450, L. 1985; amd. Sec. 1, Ch. 704, L. 1985; amd. Sec. 2, Ch. 681, L. 1989; amd. Sec. 2, Ch. 130, L. 1991; amd. Sec. 25, Ch. 15, Sp. L. July 1992; amd. Sec. 8, Ch. 352, L. 1993; amd. Sec. 13, Ch. 578, L. 1995; amd. Sec. 1, Ch. 56, L. 2001; amd. Sec. 49, Ch. 544, L. 2003; amd. Sec. 2, I.M. No. 149, approved Nov. 2, 2004.

16-11-114. Insignia discount. Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(1) 0.90% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar month;

(2) 0.60% for the next 2,580 cartons or portion of 2,580 cartons purchased in any calendar month; and

(3) 0.45% for purchases in excess of 5,160 cartons in any calendar month.

History: En. Sec. 11, Ch. 140, L. 1969; R.C.M. 1947, 84-5606.12; amd. Sec. 2, Ch. 267, L. 1981; amd. Sec. 1, Ch. 600, L. 1983; amd. Sec. 15, Ch. 578, L. 1995; amd. Sec. 50, Ch. 544, L. 2003; amd. Sec. 3, I.M. No. 149, approved Nov. 2, 2004.

16-11-119. Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 15-1-501, be deposited as follows:

(a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) 2.6% in the long-range building program account provided for in 17-7-205;

(c) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(d) the remainder to the state general fund.

(2) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

History: En. Sec. 29, Ch. 140, L. 1969; amd. Sec. 5, Ch. 222, L. 1971; amd. Sec. 222, Ch. 516, L. 1973; R.C.M. 1947, 84-5606.30(part); amd. Sec. 3, Ch. 267, L. 1981; amd. Sec. 7, Ch. 281, L. 1983; amd. Sec. 2, Ch. 608, L. 1983; amd. Sec. 2, Ch. 704, L. 1985; amd. Sec. 3, Ch. 681, L. 1989; amd. Sec. 1, Ch. 3, Sp. L. July 1992; amd. Sec. 26, Ch. 15, Sp. L. July 1992; amd. Sec. 29, Ch. 455, L. 1993; amd. Sec. 1, Ch. 548, L. 1993; amd. Sec. 29, Ch. 18, L. 1995; amd. Sec. 2, Ch. 456, L. 1995; amd. Sec. 54, Ch. 546, L. 1995; amd. Sec. 17, Ch. 422, L. 1997; amd. Sec. 51, Ch. 544, L. 2003; amd. Sec. 4, I.M. No. 149, approved Nov. 2, 2004.

Part 2

Tax on Tobacco Products Other Than Cigarettes

16-11-202. Tax on sale of tobacco other than cigarettes — imposed on retail consumer — rate of tax. (1) All taxes paid pursuant to the provisions of this section are considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and facility only. When the tax is paid by any other person, the payment is considered as an advance payment and must be added to the price of tobacco products and recovered from the ultimate consumer or user. A person selling tobacco products at retail shall state or separately display in the premises where the products are sold a notice of the tax included in the selling price and charged or payable pursuant to this section. The provisions of this section do not affect the method of collection of the tax as provided in this part.

(2) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price, to the wholesaler, of all tobacco products, other than moist snuff. The tax on moist snuff is 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

History: En. Sec. 2, Ch. 12, Ex. L. 1969; R.C.M. 1947, 84-6802; amd. Sec. 27, Ch. 15, Sp. L. July 1992; amd. Sec. 30, Ch. 578, L. 1995; amd. Sec. 53, Ch. 544, L. 2003; amd. Sec. 5, I.M. No. 149, approved Nov. 2, 2004.

16-11-206. Wholesaler's discount — disposition of taxes. (1) The taxes specified in this part that are paid by the wholesaler must be paid to the department in full less a 1.5% defrayment for the wholesaler's collection and administrative expense and must, in accordance with the provisions of 15-1-501, be deposited by the department as follows:

(a) one-half in the state general fund; and
(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201.

(2) Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable.

History: En. Sec. 6, Ch. 12, Ex. L. 1969; amd. Sec. 253, Ch. 516, L. 1973; R.C.M. 1947, 84-6806; amd. Sec. 8, Ch. 281, L. 1983; amd. Sec. 30, Ch. 455, L. 1993; amd. Sec. 30, Ch. 18, L. 1995; amd. Sec. 18, Ch. 422, L. 1997; amd. Sec. 54, Ch. 544, L. 2003; amd. Sec. 6, I.M. No. 149, approved Nov. 2, 2004.

TITLE 37

PROFESSIONS AND OCCUPATIONS

CHAPTER 1 GENERAL PROVISIONS

Part 1

Duties and Authority of Department, Director, and Boards

37-1-136. Disciplinary authority of boards — injunctions. (1) Subject to 37-1-138, each licensing board allocated to the department has the authority, in addition to any other penalty or disciplinary action provided by law, to adopt rules specifying grounds for disciplinary action and rules providing for:

TITLE 53

SOCIAL SERVICES AND INSTITUTIONS

CHAPTER 6 HEALTH CARE SERVICES

Part 12 Health and Medicaid Initiatives Account

53-6-1201. Special revenue fund — health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

- (a) money from cigarette taxes deposited under 16-11-119(1)(c); and
- (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-206(1)(b).

(3) This account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

(4) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).

(5) The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

(6) The department of public health and human services may adopt rules to implement this section.

History: En. Sec. 7, I.M. No. 149, approved Nov. 2, 2004.

