

HOUSE BILL NO. 224

INTRODUCED BY F. SMITH

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A BILL FOR AN ACT ENTITLED: "AN ACT EXTENDING THE TAX ON TOBACCO PRODUCTS TO THE SALE FOR CONSUMPTION OF CIGARETTE ROLLING PAPERS AND PROHIBITING THE SALE OR DISTRIBUTION OF CIGARETTE ROLLING PAPERS TO PERSONS UNDER 18 YEARS OF AGE BY REVISING THE DEFINITION OF "TOBACCO PRODUCT" TO INCLUDE CIGARETTE ROLLING PAPERS; AMENDING SECTIONS 16-11-102 AND 16-11-302, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 16-11-102, MCA, is amended to read:

"16-11-102. Definitions. (1) As used in this chapter, the following definitions apply, unless the context requires otherwise:

- (a) "Contraband" means:
 - (i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of this part;
 - (ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or part 5;
 - (iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;
 - (iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or
 - (v) any cigarettes or tobacco products that violate 16-10-306.
- (b) "Department" means the department of revenue provided for in 2-15-1301.
- (c) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group or persons, or other business entity, however formed.

(2) As used in this part, the following definitions apply, unless the context requires otherwise:

- (a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:
 - (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;



1 (ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the type
2 of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers
3 as a cigarette; or

4 (iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance or
5 the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or
6 purchased by consumers as a cigarette described in subsection (2)(a)(i).

7 (b) "Controlling person" means a person who owns an equity interest of 10% or more of a business or
8 the equivalent.

9 (c) "Directory" means the tobacco product directory as provided in 16-11-504.

10 (d) "Full face value of insignia" means the total amount of the tax levied under this part.

11 (e) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the
12 provisions of this part.

13 (f) "Licensed retailer" means any person, other than a wholesaler, subjobber, or tobacco product vendor,
14 who is licensed under the provisions of this part.

15 (g) "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person must
16 be treated as a wholesaler.

17 (h) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

18 (i) "Manufacturer" means any person who fabricates tobacco products from raw materials for the purpose
19 of resale.

20 (j) "Manufacturer's original container" means the original master shipping case or original shipping case
21 used by the tobacco product manufacturer to ship multipack units, such as boxes, cartons, and sleeves, to
22 warehouse distribution points.

23 (k) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended
24 to be placed in the oral cavity.

25 (l) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

26 (m) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling
27 tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco
28 product vending machines.

29 (n) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging, or
30 labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making

1 cigarettes.

2 (o) "Sale" or "sell" means any transfer of tobacco products for consideration, exchange, barter, gift, offer
3 for sale, or distribution in any manner or by any means.

4 (p) "Sole distributor" means a person who either causes a unique brand of tobacco products to be
5 manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco products
6 or is the exclusive distributor of a brand of tobacco products within the continental United States.

7 (q) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana
8 cigarette tax insignia affixed and sells or offers to sell tobacco products to a licensed retailer or tobacco product
9 vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers
10 as subjobbers.

11 (r) "Tobacco product" means cigarettes and all other products;

12 (i) containing tobacco that are intended for human consumption or use; or

13 (ii) that are customarily consumed in conjunction with tobacco, including cigarette rolling papers.

14 (s) (i) "Tobacco product vendor" means a person doing business in the state who purchases tobacco
15 products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines that the
16 person operates for a profit in premises or locations other than the person's own.

17 (ii) A tobacco product vendor must be treated as a wholesaler.

18 (t) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to
19 a wholesaler or any other person before any discount or reduction.

20 (u) "Wholesaler" means a person who:

21 (i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to
22 subjobbers, tobacco product vendors, wholesalers, or retailers; or

23 (ii) purchases tobacco products from a sole distributor, another wholesaler, or any other person for the
24 purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers."
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26 **Section 2.** Section 16-11-302, MCA, is amended to read:

27 **"16-11-302. Definitions.** For the purposes of 16-11-301 through 16-11-308, the following definitions
28 apply:

29 (1) "Distribute" means:

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

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

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

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

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

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

11 (5) "Tobacco product" means a substance intended for human consumption that contains tobacco or
12 is customarily consumed in conjunction with tobacco. The term includes cigarettes, cigarette rolling papers,
13 cigars, snuff, smoking tobacco, and smokeless tobacco."
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15 **NEW SECTION. Section 3. Notification to tribal governments.** The secretary of state shall send a
16 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
17 Chippewa tribe.

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19 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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21 **NEW SECTION. Section 5. Applicability.** [This act] applies to cigarette rolling papers in the possession
22 of wholesalers on July 1, 2011.

23 - END -