

1 HOUSE BILL NO. 626

2 INTRODUCED BY T. SCHMIDT

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE TAX ON TOBACCO PRODUCTS; ADJUSTING
5 TAX INSIGNIA DISCOUNTS; REVISING MINIMUM TOBACCO PRODUCT PACKAGE SIZES; REVISING THE
6 DISPOSITION OF TOBACCO PRODUCT TAX REVENUE; CREATING SPECIAL REVENUE ACCOUNTS FOR
7 THE DISPOSITION OF TOBACCO PRODUCT TAX REVENUE; AMENDING SECTIONS 16-11-102, 16-11-111,
8 16-11-114, 16-11-119, 16-11-148, 16-11-307, 16-11-308, AND 53-6-1201, MCA; AND PROVIDING AN
9 EFFECTIVE DATE."

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

12

13 **Section 1.** Section 16-11-102, MCA, is amended to read:14 **"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the context
15 requires otherwise:

16 (a) "Contraband" means:

17 (i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported,
18 imported, or caused to be imported in violation of this part;19 (ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed, held,
20 owned, acquired, transported, imported, or caused to be imported in violation of part 4 or part 5;

21 (iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;

22 (iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or

23 (v) any cigarettes or tobacco products that violate 16-10-306.

24 (b) "Department" means the department of revenue provided for in 2-15-1301.

25 (c) "Person" means an individual, firm, partnership, corporation, association, company, committee, other
26 group or persons, or other business entity, however formed.27 (d) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging, or
28 labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making
29 cigarettes. A cigarette equals 0.0325 ounces of roll-your-own tobacco.

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

- 1 (a) "Cigar" means a roll of tobacco that is wrapped in:
- 2 (i) 100% natural leaf tobacco; or
- 3 (ii) any substance that contains 75% or more tobacco and does not lose its tobacco character, including
4 taste, aroma, and identifiable chemical components, in the reconstitution process, is of a color consistent with
5 that of the natural leaf tobaccos traditionally used as wrappers for American cigars, and does not meet the
6 definition of a cigarette in subsection (2)(b)(ii).
- 7 ~~(a)~~(b) (i) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under
8 ordinary conditions of use, and consists of or contains:
- 9 ~~(i)~~(A) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- 10 ~~(ii)~~(B) tobacco, in any form, that is functional in the product and that, because of its appearance, the type
11 of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers
12 as a cigarette; or any roll for smoking containing tobacco wrapped in any substance and weighing 4.5 pounds
13 or less per thousand sticks, except those rolls wrapped entirely in tobacco leaf and without a filter; or
- 14 ~~(iii)~~(C) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance
15 or the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or
16 purchased by consumers as a cigarette described in ~~subsection (2)(a)(i)~~ subsections (2)(b)(i)(A) or (2)(b)(i)(B).
- 17 (ii) A tobacco product labeled as anything other than a cigarette or not bearing a label may be considered
18 a cigarette if it meets two or more of the following criteria:
- 19 (A) the product is sold in packs containing 20 or 25 sticks;
- 20 (B) the product is available for sale in cartons or 10-packs;
- 21 (C) the product is sold in soft packs, hard packs, flip-top boxes, clamshells, or other cigarette-type boxes;
- 22 (D) the product is of a length and diameter found in commercially manufactured cigarettes;
- 23 (E) the product has a cellulose acetate or other integrated filter;
- 24 (F) the product weighs less than 4.5 pounds per thousand sticks;
- 25 (G) the product is marketed or advertised to consumers as a cigarette or cigarette substitute; or
- 26 (H) other evidence that the product fits within the definition of cigarette in subsection (2)(b)(i).
- 27 ~~(b)~~(c) "Controlling person" means a person who owns an equity interest of 10% or more of a business
28 or the equivalent.
- 29 ~~(e)~~(d) "Directory" means the tobacco product directory as provided in 16-11-504.
- 30 ~~(d)~~(e) "Full face value of insignia" means the total amount of the tax levied under this part.

1 ~~(e)~~(f) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under
2 the provisions of this part.

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

5 ~~(g)~~(h) "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person
6 must be treated as a wholesaler.

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

8 (j) "Loose tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling,
9 is suitable for use and likely to be offered to or purchased by consumers as tobacco to be smoked in a pipe or
10 used to make cigars.

11 ~~(i)~~(k) "Manufacturer" means any person who fabricates tobacco products from raw materials for the
12 purpose of resale.

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

16 ~~(k)~~(m) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is
17 intended to be placed in the oral cavity without being combusted and is not offered or consumed in individual
18 single-dose tablets, lozenges, pills, or other discrete single-use or single-dose units.

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

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

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

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

28 (q) "Single-unit tobacco product" means any tobacco product other than a cigarette or cigar that is
29 offered in discrete single-use tablets, lozenges, pouches, pills, any kind of stick, or other single-dose or single-use
30 unit or in packages of single-use units.

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

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

8 ~~(r)~~(t) (i) "Tobacco product" means cigarettes and all other products containing tobacco that are intended
 9 for human consumption or use including any product containing tobacco or nicotine that is intended or expected
 10 to be consumed without being combusted.

11 (ii) The term does not include products approved by the U.S. food and drug administration for sale for
 12 tobacco use cessation or for other medical purposes and that are being marketed and sold solely for that
 13 approved purpose.

14 ~~(s)~~(u) (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)~~(v) "Wholesale price" means the established price for which a manufacturer sells a tobacco product
 19 to a wholesaler or any other person before any discount or reduction.

20 ~~(u)~~(w) "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 16-11-111, MCA, is amended to read:

27 **"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal**
 28 **member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in
 29 the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of
 30 Montana. The tax is ~~\$4.70~~ \$3.20 on each package containing 20 cigarettes. Whenever packages contain other

1 than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

2 (b) The tax for 0.65 ounces of roll-your-own tobacco is equal to the tax for a package containing 20
3 cigarettes as provided in subsection (1)(a). For packages of roll-your-own tobacco other than 0.65 ounces, the
4 tax must be proportional to the net weight of the package.

5 (b)(c) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes and
6 roll-your-own tobacco under 16-11-307.

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

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

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

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

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

30 (7) ~~There~~ For all tobacco products other than cigarettes and roll-your-own tobacco, there must be

1 collected and paid to the state of Montana the following taxes:

2 (a) The tax for 1.2 ounces of moist snuff or 0.65 ounces of loose tobacco, based upon the net weight of
3 the package, is the higher of a tax of 50% 90% of the wholesale price; to the wholesaler; of all tobacco products
4 other than cigarettes and moist snuff. The tax on moist snuff is 85 cents an ounce based upon the net weight of
5 the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce,
6 the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined
7 for retail sale and consumption outside the state are not subject to this tax. or a tax equal to the tax on a package
8 of 20 cigarettes as provided in subsection (1)(a). For each package of moist snuff other than 1.2 ounces or loose
9 tobacco other than 0.65 ounces, the tax must be proportional to the net weight of the package.

10 (b) (i) The tax for a package of five cigars with a wholesale price to the wholesaler of less than \$1 per
11 cigar is equal to the tax on a package of 20 cigarettes as provided in subsection (1)(a).

12 (ii) The tax for cigars sold in packages of more than five cigars and with a wholesale price to the
13 wholesaler of less than \$1 per cigar is proportional to the tax in subsection (7)(b)(i).

14 (iii) The tax for all other cigars is 90% of the wholesale price to the wholesaler.

15 (c) The tax per single-unit tobacco product is the higher of 90% of the wholesale price to the wholesaler
16 or 1/20 of the tax on a package containing 20 cigarettes as provided in subsection (1)(a).

17 (d) The tax per container or package of all other tobacco products intended or expected for final sale to
18 consumers is the higher of 90% of the wholesale price to the wholesaler or the tax on a package of cigarettes
19 as provided in subsection (1)(a). The tax must be applied to the smallest package or container in any package
20 or container that contains multiple smaller packages or containers.

21 (8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department
22 upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be
23 assessed penalty and interest as provided in 15-1-216. Tobacco products shipped from Montana and destined
24 for retail sale and consumption outside the state are not subject to the tax imposed by subsection (7).

25 (9) A retailer who purchases tobacco products for resale on which the tobacco products tax has not been
26 collected and paid to the department shall comply with all the provisions of this part and the rules adopted to
27 implement this part as if it were a wholesaler.

28 (10) A retailer must assume that the tobacco products tax has not been collected and paid to the
29 department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states
30 that the applicable Montana tobacco products tax is included in the total billing cost.

1 (11) (a) A wholesaler, subjobber, retailer, or any other person in the business of distributing or selling
 2 tobacco products who is in the possession of cigarettes or other tobacco products on which a tax pursuant to this
 3 chapter has already been paid or in the possession of any tax insignia or stamp that has not been affixed to a
 4 tobacco product package on the effective date of an increase in the tobacco tax rate to which the tobacco
 5 products are subject shall make a tax payment equal to the difference in the new tax rate on the cigarettes or
 6 other tobacco products and the tax rate paid, and for each tax insignia or stamp shall make a tax payment equal
 7 to the difference in the new price of the cigarette tax insignia or stamp and the price paid for the insignia or stamp.

8 (b) The payment must be made to the department within 30 days of the effective date of the tobacco tax
 9 rate increase and must be submitted along with a report, in a form prescribed by the department, describing the
 10 tobacco products in the possession of the distributor, wholesaler, retailer, or person on the effective date of the
 11 tax increase and subject to the increased tax and showing the payment due.

12 (c) A wholesaler, subjobber, retailer, or other person whose tax payments pursuant to this subsection
 13 are made more than 30 days after the effective date of the tax increase shall pay interest at a rate of 2% per
 14 month or fraction of a month from the date the tax payment was due until the date the tax payment is received
 15 by the department."

16
 17 **Section 3.** Section 16-11-114, MCA, is amended to read:

18 **"16-11-114. Insignia discount.** (1) Each licensed wholesaler is entitled to purchase an insignia at full
 19 face value less the following ~~percentage of the face value amount~~ upon payment for the insignia as defrayment
 20 of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

21 (a) ~~0.90%~~ 1.5 cents per carton for the first 2,580 cartons or portion of 2,580 cartons purchased in any
 22 calendar month;

23 (b) ~~0.60%~~ 1 cent per carton for the next 2,580 cartons or portion of 2,580 cartons purchased in any
 24 calendar month; and

25 (c) ~~0.45%~~ 0.76 cent per carton for purchases in excess of 5,160 cartons in any calendar month.

26 (2) The taxes for tobacco products, other than cigarettes, that are paid by the wholesaler must be paid
 27 to the department in full less a ~~4.5%~~ 0.94% defrayment for the wholesaler's collection and administrative
 28 expenses and must, in accordance with the provisions of 17-2-124, be deposited by the department in the state
 29 general fund except as provided in 16-11-119. Refunds of the tax paid must be made as provided in 15-1-503
 30 in cases in which the tobacco products purchased become unsalable."

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Section 4. Section 16-11-119, MCA, is amended to read:

"16-11-119. (Temporary) Disposition of taxes. (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

(a) ~~8.3% or \$2 million, whichever is greater, 6%~~ in an account 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. The department of public health and human services may not expend more money from the account than is appropriated by the legislature. Subject to subsection (2) of this section, the department may not transfer funds in the account or expenditure authority related to the account pursuant to 17-7-139, 17-7-301, or 17-8-101.

~~(b) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state veterans' home in southwestern Montana;~~

~~(e)(b)~~ 2.6% 1.9% in the long-range building program account provided for in 17-7-205;

~~(d)(c)~~ 44% 32.1% in the health and medicaid initiatives account provided for in 53-6-1201; and

(d) 6.3% in the tobacco disease prevention account provided for in [section 9];

(e) 2.9% in the obesity prevention account provided for in [section 10];

(f) 5.3% in the targeted rural underserved track program account provided for in [section 11];

(g) 4% in the maternal child health block grant program account provided for in [section 12];

(h) 9.7% in the senior and long-term care account provided for in [section 13]; and

~~(e)(i)~~ the remainder to the state general fund.

(2) If money in the state special revenue account 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.

(3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the provisions of 17-2-124 be deposited as follows:

~~(a) one-half 32.9%~~ in the state general fund; and

~~(b) one-half 39.6% in the state special revenue fund account for health and medicaid initiatives state special revenue account~~ provided for in 53-6-1201;

(c) 16.5% in the tobacco disease prevention state special revenue account provided for in [section 9];

1 and

2 (d) 11% in the obesity prevention state special revenue account provided for in [section 10]. (Terminates
3 June 30, 2011--sec. 35(1), Ch. 486, L. 2009.)

4 **16-11-119. (Effective July 1, 2011) Disposition of taxes.** (1) Cigarette taxes collected under the
5 provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:

6 (a) ~~8.3% or \$2 million, whichever is greater~~ 6%, in the state special revenue fund to the credit of the
7 department of public health and human services for the operation and maintenance of state veterans' nursing
8 homes;

9 ~~(b) for fiscal years ending June 30, 2010, and June 30, 2011, 1.2% in the state special revenue fund to~~
10 ~~the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the state~~
11 ~~veterans' home in southwestern Montana;~~

12 ~~(c)(b) 2.6%~~ 1.9% in the long-range building program account provided for in 17-7-205;

13 ~~(d)(c) 44%~~ 32.1% in the ~~state special revenue fund to the credit of the~~ health and medicaid initiatives
14 account provided for in 53-6-1201; ~~and~~

15 (d) 6.3% in the tobacco disease prevention account provided for in [section 9];

16 (e) 2.9% in the obesity prevention account provided for in [section 10];

17 (f) 5.3% in the targeted rural underserved track program account provided for in [section 11];

18 (g) 4% in the maternal child health block grant program account provided for in [section 12];

19 (h) 9.7% in the senior and long-term care account provided for in [section 13]; and

20 ~~(e)(i)~~ the remainder to the state general fund.

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

24 (3) The taxes collected on tobacco products, other than cigarettes, must in accordance with the
25 provisions of 17-2-124 be deposited as follows:

26 (a) ~~one-half 32.9%~~ in the state general fund; ~~and~~

27 (b) ~~one-half 39.6%~~ in the ~~state special revenue fund account for health and medicaid initiatives~~ state
28 special revenue account provided for in 53-6-1201;

29 (c) 16.5% in the tobacco disease prevention state special revenue account provided for in [section 9];

30 and

1 (d) 11% in the obesity prevention state special revenue account provided for in [section 10]."

2
3 **Section 5.** Section 16-11-148, MCA, is amended to read:

4 **"16-11-148. Penalties and other remedies.** (1) Unless otherwise provided, the purposeful, knowing,
5 or negligent violation of any provision of this part constitutes a misdemeanor punishable by imprisonment for a
6 term of up to 1 year or by a fine of up to \$1,000, or both. For a first offense, if a violation of this part involves
7 contraband the value of which does not exceed \$1,000, the offense is punishable by a fine of not less than \$100
8 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months, or both.
9 Second and subsequent purposeful, knowing, or negligent violations of any provision of this part constitute a
10 felony punishable by imprisonment for a term exceeding 1 year or a fine not to exceed \$50,000, or both.

11 (2) In addition to any other civil or criminal remedy provided by law, upon a determination that a license
12 holder under this part has violated any section in this part or any rule adopted pursuant to this part, the license
13 may be suspended or revoked in the manner provided in 16-11-144 in a proceeding brought by the department
14 or the attorney general.

15 (3) (a) Except as provided in subsection (3)(b), in addition to the criminal penalties provided in subsection
16 (1), the department or the department of justice may assess a person who violates any provision of this part a
17 civil penalty of \$250 for the first full or partial pack of contraband cigarettes and \$10 for each additional full or
18 partial pack of contraband cigarettes. For purposes of this definition of cigarette, ~~0-09~~ 0.0325 ounces of
19 roll-your-own tobacco constitutes one individual cigarette. Each tax insignia affixed and each offer to sell, sale,
20 or possession for sale of cigarettes in violation of this part constitutes a separate violation.

21 (b) A civil penalty may not be assessed to a person for a first violation of subsection (1) if the offense
22 involves contraband with a value of \$1,000 or less.

23 (4) The department or the department of justice shall determine the amount of the penalty provided in
24 subsection (3) and notify the person who unlawfully possessed or transported the contraband cigarettes of the
25 amount. The penalty is due and payable on the date of the notice. A penalty not paid when due is subject to
26 interest at the rate of 10% a year."

27
28 **Section 6.** Section 16-11-307, MCA, is amended to read:

29 **"16-11-307. Distribution of tobacco products in other than sealed packages prohibited -- minimum**
30 **package size.** (1) A person may not distribute a tobacco product for commercial purposes in other than a sealed

1 package that is provided by the manufacturer and that contains the health warning required by federal law. Single
2 cigarettes may not be sold.

3 (2) A person may not knowingly manufacture or distribute for commercial purposes:

4 (a) cigarettes in a package containing fewer than 20 cigarettes;

5 (b) ~~or rolling roll-your-own or loose~~ tobacco in a package containing less than ~~0.6~~ 0.65 ounces net weight
6 of tobacco. ~~For purposes of 16-11-308 and this section, "rolling tobacco" means any tobacco that, because of~~
7 ~~its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by~~
8 ~~consumers as tobacco for making cigarettes;~~

9 (c) moist snuff in a package containing less than 1 ounce of moist snuff;

10 (d) single-unit tobacco products in a package containing fewer than 20 individual single-unit tobacco
11 products; or

12 (e) cigars with a wholesale price of less than \$1 per cigar in a package of fewer than five cigars."

13

14 **Section 7.** Section 16-11-308, MCA, is amended to read:

15 **"16-11-308. Civil penalties -- license suspension -- tobacco education fee.** (1) Failure to obtain a
16 license, as required by 16-11-303, failure to post signs, as provided in 16-11-304, or the manufacture or sale of
17 cigarettes or ~~rolling roll-your-own~~ tobacco in violation of the minimum package size requirements of 16-11-111
18 or 16-11-307 is punishable by a civil penalty of \$100. The department may collect the penalty in the manner
19 provided for the collection of other debts.

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

22 (a) A first through third offense is punishable by a verbal notification of violation.

23 (b) A fourth offense is punishable by a written notice of violation to be sent by the department of public
24 health and human services to the owner of the establishment.

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

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

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

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

6 (4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco
7 education fees or civil penalties are paid in full.

8 (5) Tobacco education fees must be assessed and collected by the department of public health and
9 human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the
10 department of public health and human services within 30 days of the alleged violation by certified letter
11 addressed to the establishment owner or manager. The notice of assessment against the owner of the
12 establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic
13 equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days
14 from the date on which the notice of assessment was mailed, the owner or manager shall notify the department
15 of public health and human services that the owner or manager objects to the assessment and request a hearing
16 pursuant to this subsection.

17 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of
18 16-11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of \$25 against the
19 employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco
20 education fee must be assessed and collected by the department of public health and human services. Within
21 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the
22 department of public health and human services by certified letter addressed to the employee. The notice of
23 assessment must provide an opportunity for a hearing. The hearing may be conducted using electronic equipment
24 and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days from the date
25 on which the notice of assessment was mailed, the employee shall notify the department of public health and
26 human services that the employee objects to the assessment and requests a hearing pursuant to this subsection.

27 (7) The tobacco education material referred to in this section must be provided by the department of
28 public health and human services in the form of written and video self-teaching materials. The education materials
29 may be used only for the purposes provided in this section. Upon completion of the self-teaching materials, the
30 establishment owner or manager shall execute a written statement on a form provided by the department of public

1 health and human services verifying that the employee, owner, or manager, as appropriate, has read and viewed
 2 the self-teaching material and shall return the statement and the self-teaching video to the department of public
 3 health and human services.

4 (8) Upon the sixth and subsequent violation of this section, the department of public health and human
 5 services shall notify the department of revenue in writing to initiate suspension of the licenses required by
 6 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the
 7 licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144
 8 and this section. The department of revenue shall review the record of violations and may initiate license
 9 suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the
 10 department of revenue declines to initiate suspension proceedings, the violation may not be charged against the
 11 licensee for the purposes of this section.

12 (9) Fees assessed pursuant to this section must be deposited in the state general fund."
 13

14 **Section 8.** Section 53-6-1201, MCA, is amended to read:

15 **"53-6-1201. (Temporary) Special revenue fund -- health and medicaid initiatives.** (1) There is a
 16 health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account
 17 is to be administered by the department of public health and human services.

18 (2) There must be deposited in the account:

- 19 (a) money from cigarette taxes deposited under ~~16-11-119(1)(d)~~ 16-11-119(1)(c);
 20 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and
 21 (c) any interest and income earned on the account.

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

23 (a) the state funds necessary to take full advantage of available federal matching funds in order to
 24 administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided
 25 for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

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

29 (c) increased medicaid services and medicaid provider rates;

30 (d) an offset to loss of revenue to the general fund as a result of new tax credits;

1 (e) funding new programs to assist eligible small employers with the costs of providing health insurance
2 benefits to eligible employees;

3 (f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and
4 premium assistance payments as provided in Title 33, chapter 22, part 20; and

5 (g) providing a state match for the medicaid program for premium incentive payments or premium
6 assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

7 (4) (a) On or before July 1, the budget director shall calculate a balance required to sustain each
8 program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve
9 balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the
10 budget director determines that the reserve balance of the revenue will not support the level of appropriation, the
11 budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating
12 budget for the program to reflect the available revenue as determined by the budget director.

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

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

16 (6) Unspent funds in this account may not be transferred to the state general fund and must remain in
17 the account to cover increases in program costs resulting from inflation. (Terminates June 30, 2011--sec. 82, Ch.
18 489, L. 2009.)

19 **53-6-1201. (Effective July 1, 2011) Special revenue fund -- health and medicaid initiatives.** (1) There
20 is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This
21 account is to be administered by the department of public health and human services.

22 (2) There must be deposited in the account:

23 (a) money from cigarette taxes deposited under ~~16-11-119(1)(d)~~ 16-11-119(1)(c);

24 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(b); and

25 (c) any interest and income earned on the account.

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

27 (a) the state funds necessary to take full advantage of available federal matching funds in order to
28 administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided
29 for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

30 (b) a new need-based prescription drug program established by the legislature for children, seniors,

1 chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

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

5 (d) an offset to loss of revenue to the general fund as a result of new tax credits;

6 (e) funding new programs to assist eligible small employers with the costs of providing health insurance
7 benefits to eligible employees;

8 (f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and
9 premium assistance payments as provided in Title 33, chapter 22, part 20; and

10 (g) providing a state match for the medicaid program for premium incentive payments or premium
11 assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216.

12 (4) (a) On or before July 1, the budget director shall calculate a balance required to sustain each
13 program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve
14 balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the
15 budget director determines that the reserve balance of the revenue will not support the level of appropriation, the
16 budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating
17 budget for the program to reflect the available revenue as determined by the budget director.

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

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

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

24 (7) Unspent funds in this account may not be transferred to the state general fund and must remain in
25 the account to cover increases in program costs resulting from inflation."

26
27 **NEW SECTION. Section 9. Tobacco disease prevention account.** (1) There is a tobacco disease
28 prevention account in the state special revenue fund established by 17-2-102. This account is to be administered
29 by the department of public health and human services.

30 (2) There must be deposited in the account:

- 1 (a) money from cigarette taxes deposited under 16-11-119(1)(d);
2 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(c); and
3 (c) any interest and income earned on the account.

4 (3) This account may be used only to provide funding for tobacco disease prevention designed to prevent
5 children from using tobacco and to help adults stop using tobacco. The account may not be used to replace
6 existing funding allocated to state tobacco prevention efforts but only to increase the total amount of expenditures
7 to prevent and reduce tobacco use and its harms to the state.

8 (4) The department of public health and human services shall adopt rules to implement the programs
9 that consider the standards contained in best practices for comprehensive tobacco control programs, August
10 1999 or its successor, published by the U.S. department of health and human services, centers for disease
11 control and prevention.

12

13 **NEW SECTION. Section 10. Obesity prevention account.** (1) There is an obesity prevention account
14 in the state special revenue fund established by 17-2-102. This account is to be administered by the department
15 of public health and human services.

16 (2) There must be deposited in the account:

- 17 (a) money from cigarette taxes deposited under 16-11-119(1)(e);
18 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(3)(d);
19 (c) any interest and income earned on the account.

20 (3) This account may be used only to provide funding for the operation and maintenance of statewide
21 programs for obesity prevention.

22 (4) The department of public health and human services shall adopt rules to implement the programs
23 that consider the guidelines established by the U.S. department of health and human services, centers for
24 disease control and prevention.

25

26 **NEW SECTION. Section 11. Targeted rural underserved track program account.** (1) There is a
27 targeted rural underserved track program (TRUST) account in the state special revenue fund established by
28 17-2-102. This account is to be administered by the board of regents.

29 (2) There must be deposited in the account:

- 30 (a) money from cigarette taxes deposited under 16-11-119(1)(f); and

1 (b) any interest and income earned on the account.

2 (3) This account may be used only to provide funding for the targeted rural underserved track (TRUST)
3 program to provide scholarships and program assistance in training medical students for rural and underserved
4 practice through the Washington, Wyoming, Alaska, Montana, and Idaho (WWAMI) program.

5 (4) Unspent funds in this account may not be transferred to the state general fund and must remain in
6 the account to cover program costs that will not be fully realized until the fifth year after the program is
7 implemented and to cover increases in program costs resulting from inflation.

8

9 **NEW SECTION. Section 12. Maternal child health block grant program account.** (1) There is a
10 maternal child health block grant program account in the state special revenue fund established by 17-2-102.
11 This account is to be administered by the department of public health and human services.

12 (2) There must be deposited in the account:

13 (a) money from cigarette taxes deposited under 16-11-119(1)(g); and

14 (b) any interest and income earned on the account.

15 (3) This account may be used only to provide funding for the maternal child health block grant program
16 to add capacity to community-based efforts to decrease use of and exposure to tobacco in pregnancy and
17 childhood, increase immunization rates, improve nutrition, and reduce overweight and obesity in pregnancy and
18 early childhood.

19 (4) Unspent funds in this account may not be transferred to the state general fund and must remain in
20 the account to cover increases in program costs resulting from inflation.

21

22 **NEW SECTION. Section 13. Senior and long-term care account.** (1) There is a senior and long-term
23 care account in the state special revenue fund established by 17-2-102. This account is to be administered by
24 the department of public health and human services.

25 (2) There must be deposited in the account:

26 (a) money from cigarette taxes deposited under 16-11-119(1)(h); and

27 (b) any interest and income earned on the account.

28 (3) This account may be used only to provide funding for senior and long-term care.

29 (4) Unspent funds in this account may not be transferred to the state general fund and must remain in
30 the account to cover increases in program costs resulting from inflation.

