BUSINESS & LABOR
EXHIBIT NO. 10
DATE 2-10-15
BILL NO. SB66

Amendments to Senate Bill No. 66
1st Reading Copy

Requested by Senator Elsie Arntzen

For the Senate Business, Labor, and Economic Affairs Committee

Prepared by Jameson Walker
February 9, 2015 (3:58pm)

1. Title, page 1, line 6.
Following: "CONTROL ACT;"
Strike: "DEFINING "ELECTRONIC SMOKING DEVICE";"

2. Title, page 1, line 7.
Following: "AMENDING"
Strike: "SECTION"
Insert: "SECTIONS 16-11-122,"

3. Title, page 1, line 7.
Following: "16-11-302,"
Insert: "16-11-303, 16-11-304, 16-11-305, 16-11-306, 16-11-308, 16-11-309, 16-11-310, AND 45-5-637,"

4. Title, page 1, line 7.
Strike: "AN IMMEDIATE"
Insert: "A DELAYED"

5. Page 1, line 10.
Following: line 9
Insert: "**Section 1.** Section 16-11-122, MCA, is amended to read:

"**16-11-122. License fees -- renewal.** (1) Each application for a wholesaler's license or a tobacco product vendor's license must be accompanied by a fee of $50.

(2) Each application for a subjobber's license must be accompanied by a fee of $50.

(3) Each application for a retailer's license must be accompanied by a fee of $5.

(4) Each application for one license to sell either alternative nicotine products or vapor products must be accompanied by a fee of $5.

~~(4)~~(5) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be discounted for payment processing charges paid by the department to a third party.

~~(5)~~(6) These licenses must be renewed annually on or before the anniversary date established by rule by the board of review established in 30-16-302 and upon payment of the annual fee are effective for 1 year, without proration, and are not transferable."

{*Internal References to 16-11-122:*

30-16-301 [x] 30-16-301 [x] 50-50-207 [x]}"
Renumber: subsequent sections

6. Page 1, line 14.
Following: line 13
Insert: "(1) "Alternative nicotine product" means a noncombustible product containing nicotine that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term does not include a tobacco product, a vapor product, or a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug, and Cosmetic Act."
Renumber: subsequent subsections

7. Page 1, line 19.
Strike: subsection (2) in its entirety

8. Page 2, line 4.
Strike: "or nicotine that can be ingested into the body by chewing, absorbing, dissolving, or any other means"

9. Page 2, line 5.
Following: "cigars,"
Strike: "an electronic smoking device,"

10. Page 2, line 5.
Following: "smokeless tobacco."
Strike: remainder of line 5 through "Act." line 7
Insert: "The term does not include an alternative nicotine product, a vapor product, or a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug, and Cosmetic Act."

11. Page 2, line 8.
Insert: "(7) "Vapor product" means a noncombustible product that may contain nicotine and that uses a heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless of shape or size, to produce vapor from a solution or other substance. The term includes an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device. The term does not include a product regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug,

and Cosmetic Act."

Insert: "Section 3. Section 16-11-303, MCA, is amended to read:

"16-11-303. License for retail sale of tobacco products -- alternative nicotine products -- vapor products. (1) A person may not sell tobacco products, alternative nicotine products, or vapor products at retail, whether over the counter, by vending machine, or otherwise, without a license obtained from the department of revenue.

(2) A license for the retail sale of tobacco products, alternative nicotine products, or vapor products may be obtained from the department of revenue.

(3) The fee collected by the department must be deposited in the general fund."

{*Internal References to 16-11-303:*
16-11-144 [x] *16-11-302 *[a]* *16-11-308 [a]* *16-11-308 [a]*
16-11-308 [a] *16-11-308 [a]* *16-11-309 [a]* *16-11-309 [a]*
*16-11-311 *[x]* *16-11-311 *[x]* *16-11-312 *[x]* }"

Insert: "Section 4. Section 16-11-304, MCA, is amended to read:

"16-11-304. Signs. A retail seller of tobacco products, alternative nicotine products, or vapor products shall conspicuously display, at each place on the premises at which tobacco products, alternative nicotine products, or vapor products are displayed and sold, a sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products, alternative nicotine products, and vapor products to persons under 18 years of age.""

{*Internal References to 16-11-304:*
*16-11-302 *[a]* *16-11-308 [a]* *16-11-309 [a]* *16-11-311 *[x]*
*16-11-311 *[x]* *16-11-312 *[x]* }"

Insert: "Section 5. Section 16-11-305, MCA, is amended to read:

"16-11-305. Sale or distribution of tobacco products, alternative nicotine products, or vapor products to persons under 18 years of age prohibited. (1) A person may not sell or distribute a tobacco product, alternative nicotine product, or vapor product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

(2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of a driver's license or other generally accepted identification that includes a picture of the individual."

{*Internal References to 16-11-305:*
*16-11-302 *[a]* *16-11-306 [a]* *16-11-308 [a]* *16-11-308 [a]*
16-11-308 [a] *16-11-308 [a]* *16-11-309 [a]* *16-11-309 [a]*
*16-11-311 *[x]* *16-11-311 [x]* *16-11-312 *[x]* }"

Insert: "Section 6. Section 16-11-306, MCA, is amended to read:

"16-11-306. Sales of tobacco, alternative nicotine products, or vapor products through vending machines restricted.

(1) Tobacco products, alternative nicotine products, and vapor products may be sold through a vending machine only in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The tobacco products, alternative nicotine products, or vapor products must be in a vending machine that contains only tobacco products, alternative nicotine products, or vapor products.

(2) Tobacco products, alternative nicotine products, or vapor products may not be sold through a vending machine that is located in a restaurant unless the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the requirements of subsection (1).

(3) The sale of tobacco products, alternative nicotine products, or vapor products from a vending machine under the direct line-of-sight supervision of an owner or employee is considered a sale of tobacco products, alternative nicotine products, or vapor products by the owner or employee for the purposes of 16-11-305."

{ *Internal References to 16-11-306:*
*16-11-302 *[a]* *16-11-309 [a]* *16-11-311 *[x]* *16-11-311 *[x]*
*16-11-312 *[x]* }"

Insert: "Section 7. Section 16-11-308, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

{*Internal References to 16-11-308:*
16-11-302 [a] *16-11-307 [x]* *16-11-311 [x]* *16-11-311 [x]*
16-11-312 [x]}"

Insert: "Section 8. Section 16-11-309, MCA, is amended to read:

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

(2) The department of public health and human services shall provide documentation of alleged violations of 16-11-303, 16-11-305, and 16-11-307 to the department of revenue."

{*Internal References to 16-11-309: None.*}"

Insert: "Section 9. Section 16-11-310, MCA, is amended to read:

"16-11-310. Minors not liable for possession or attempt to purchase. An individual under 18 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession of or the attempt to purchase a tobacco product, alternative nicotine product, or vapor product for the purposes of enforcing this part."

{*Internal References to 16-11-310: None.*}"

Insert: "Section 10. Section 45-5-637, MCA, is amended to read:

"45-5-637. ~~Tobacco possession~~ Possession or consumption of tobacco products, alternative nicotine products, or vapor products by persons under 18 years of age prohibited -- unlawful attempt to purchase -- penalties. (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product, alternative nicotine product, or vapor product, as defined in 16-11-302, commits the offense of possession or consumption of a tobacco product, alternative nicotine product, or vapor product.

(2) A person convicted of possession or consumption of a tobacco product, alternative nicotine product, or vapor product:

(a) shall be fined $50 for a first offense, no less than $75 or more than $100 for a second offense, and no less than $100 or more than $250 for a third or subsequent offense; or

(b) may be adjudicated on a petition alleging the person to be a youth in need of intervention under the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

(3) A person convicted of possession or consumption of a tobacco product, alternative nicotine product, or vapor product may also be required to perform community service or to attend a tobacco cessation program.

(4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product, alternative nicotine product, or vapor product if the person knowingly attempts to purchase a tobacco product, alternative nicotine product, or vapor product as defined in 16-11-302. A person convicted of attempt to purchase a tobacco product, alternative nicotine product, or vapor product:

(a) for a first offense, shall be fined $50 and may be ordered to perform community service;

(b) for a second or subsequent offense, shall be fined an amount not to exceed $100 and may be ordered to perform community service.

(5) The fines collected under subsections (2) and (4) must be deposited to the credit of the general fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway patrol, the fines must be credited to the county general fund in the county in which the arrest was made."

{*Internal References to 45-5-637: None.*}"

Renumber: subsequent sections

12. Page 2, line 9.
Strike: "on passage and approval"
Insert: "January 1, 2016"

- END -