

SENATE BILL NO. 66

INTRODUCED BY D. SANDS

BY REQUEST OF THE DEPARTMENT OF JUSTICE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; ~~DEFINING "ELECTRONIC SMOKING DEVICE";~~ REVISING THE DEFINITION OF "TOBACCO PRODUCT"; AMENDING ~~SECTION~~ SECTIONS 16-11-122, 16-11-302, 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, MCA; AND PROVIDING ~~AN IMMEDIATE A~~ DELAYED EFFECTIVE DATE."

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

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 a 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."

Section 2. Section 16-11-302, MCA, is amended to read:

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

(1) "ALTERNATIVE NICOTINE PRODUCT" MEANS ANY MANUFACTURED NONCOMBUSTIBLE PRODUCT CONTAINING NICOTINE DERIVED FROM TOBACCO THAT IS INTENDED FOR HUMAN CONSUMPTION, WHETHER CHEWED, ABSORBED,

1 DISSOLVED, OR INGESTED BY ANY OTHER MEANS. THE TERM DOES NOT INCLUDE A TOBACCO PRODUCT, A VAPOR
 2 PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION
 3 UNDER CHAPTER V OF THE FEDERAL FOOD, DRUG, AND COSMETIC ACT.

4 ~~(1)~~(2) "Distribute" means:

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

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

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

9 ~~(2) "Electronic smoking device" means any product containing or delivering nicotine or any other~~
 10 ~~substance intended for human consumption that can be used by a person to inhale vapor or aerosol from the~~
 11 ~~product. The term includes any such device, whether manufactured, distributed, marketed, or sold as an~~
 12 ~~e-cigarette, e-cigar, e-pipe, e-hookah, or vape pen or under any other product name or descriptor, and includes~~
 13 ~~any component part of the product whether or not sold separately. The term does not include drugs, devices, or~~
 14 ~~combination products approved for sale by the United States food and drug administration, as those terms are~~
 15 ~~defined in the Federal Food, Drug, and Cosmetic Act.~~

16 ~~(2)~~(3) "Health warning" means a tobacco product label required by federal law and intended to alert
 17 users of the product to the health risks associated with tobacco use. The term includes warning labels required
 18 under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health
 19 Education Act of 1986.

20 ~~(3)~~(4) "License" means a retail tobacco product sales license.

21 ~~(4)~~(5) "Person" means a natural person, company, corporation, firm, partnership, organization, or other
 22 legal entity.

23 ~~(5)~~(6) "Tobacco product" means a substance intended for human consumption that contains tobacco
 24 ~~or nicotine that can be ingested into the body by chewing, absorbing, dissolving, or any other means.~~ The term
 25 includes cigarettes, cigars, ~~an electronic smoking device~~, snuff, smoking tobacco, and smokeless tobacco. ~~The~~
 26 ~~term does not include drugs, devices, or combination products approved for sale by the United States food and~~
 27 ~~drug administration, as those terms are defined in the Federal Food, Drug, and Cosmetic Act. THE TERM DOES NOT~~
 28 ~~INCLUDE AN ALTERNATIVE NICOTINE PRODUCT, A VAPOR PRODUCT, OR A PRODUCT REGULATED AS A DRUG OR DEVICE BY~~
 29 ~~THE UNITED STATES FOOD AND DRUG ADMINISTRATION UNDER CHAPTER V OF THE FEDERAL FOOD, DRUG, AND~~
 30 ~~COSMETIC ACT.~~

1 (7) "VAPOR PRODUCT" MEANS A NONCOMBUSTIBLE PRODUCT THAT MAY CONTAIN NICOTINE AND THAT USES A
 2 HEATING ELEMENT, POWER SOURCE, ELECTRONIC CIRCUIT, OR OTHER ELECTRONIC, CHEMICAL, OR MECHANICAL MEANS,
 3 REGARDLESS OF SHAPE OR SIZE, TO PRODUCE VAPOR FROM A SOLUTION OR OTHER SUBSTANCE. THE TERM INCLUDES
 4 AN ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC CIGARILLO, ELECTRONIC PIPE, OR SIMILAR PRODUCT OR
 5 DEVICE AND A VAPOR CARTRIDGE OR OTHER CONTAINER THAT MAY CONTAIN NICOTINE IN A SOLUTION OR OTHER FORM
 6 THAT IS INTENDED TO BE USED WITH OR IN AN ELECTRONIC CIGARETTE, ELECTRONIC CIGAR, ELECTRONIC CIGARILLO,
 7 ELECTRONIC PIPE, OR SIMILAR PRODUCT OR DEVICE. THE TERM DOES NOT INCLUDE A PRODUCT REGULATED AS A DRUG
 8 OR DEVICE BY THE UNITED STATES FOOD AND DRUG ADMINISTRATION UNDER CHAPTER V OF THE FEDERAL FOOD, DRUG,
 9 AND COSMETIC ACT."

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 11 **SECTION 3. SECTION 16-11-303, MCA, IS AMENDED TO READ:**
 12 **"16-11-303. License for retail sale of tobacco products -- alternative nicotine products -- vapor**
 13 **products.** (1) A person may not sell tobacco products, alternative nicotine products, or vapor products at retail,
 14 whether over the counter, by vending machine, or otherwise, without a license obtained from the department of
 15 revenue.
 16 (2) A license for the retail sale of tobacco products, alternative nicotine products, or vapor products may
 17 be obtained from the department of revenue.
 18 (3) The fee collected by the department must be deposited in the general fund."

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 20 **SECTION 4. SECTION 16-11-304, MCA, IS AMENDED TO READ:**
 21 **"16-11-304. Signs.** A retail seller of tobacco products, alternative nicotine products, or vapor products
 22 shall conspicuously display, at each place on the premises at which tobacco products, alternative nicotine
 23 products, or vapor products are displayed and sold, a sign that is to be provided without charge by the department
 24 of revenue that states: "Montana law prohibits the sale of tobacco products, alternative nicotine products, and
 25 vapor products to persons under 18 years of age."
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27 **SECTION 5. SECTION 16-11-305, MCA, IS AMENDED TO READ:**
 28 **"16-11-305. Sale or distribution of tobacco products, alternative nicotine products, or vapor**
 29 **products to persons under 18 years of age prohibited.** (1) A person may not sell or distribute a tobacco
 30 product, alternative nicotine product, or vapor product to an individual under 18 years of age, whether over the

1 counter, by vending machine, or otherwise.

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

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5 **SECTION 6. SECTION 16-11-306, MCA, IS AMENDED TO READ:**

6 **"16-11-306. Sales of tobacco, alternative nicotine products, or vapor products through vending**
7 **machines restricted.** (1) Tobacco products, alternative nicotine products, and vapor products may be sold
8 through a vending machine only in places where alcoholic beverages are sold and consumed on the premises
9 and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the
10 establishment. The tobacco products, alternative nicotine products, or vapor products must be in a vending
11 machine that contains only tobacco products, alternative nicotine products, or vapor products.

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

15 (3) The sale of tobacco products, alternative nicotine products, or vapor products from a vending
16 machine under the direct line-of-sight supervision of an owner or employee is considered a sale of tobacco
17 products, alternative nicotine products, or vapor products by the owner or employee for the purposes of
18 16-11-305."

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20 **SECTION 7. SECTION 16-11-308, MCA, IS AMENDED TO READ:**

21 **"16-11-308. Civil penalties -- license suspension -- tobacco education fee.** (1) Failure to obtain a
22 license, as required by 16-11-303, failure to post signs, as provided in 16-11-304, or the manufacture or sale of
23 cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307
24 is punishable by a civil penalty of \$100. The department may collect the penalty in the manner provided for the
25 collection of other debts.

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

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

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

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

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

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

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

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

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

23 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of
24 16-11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of \$25 against the
25 employee who sold the tobacco product, alternative nicotine product, or vapor product, if the employee is not the
26 owner of the establishment. The tobacco education fee must be assessed and collected by the department of
27 public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this
28 subsection must be made by the department of public health and human services by certified letter addressed
29 to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be
30 conducted using electronic equipment and must comply with the provisions of the Montana Administrative

1 Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall
 2 notify the department of public health and human services that the employee objects to the assessment and
 3 requests a hearing pursuant to this subsection.

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

11 (8) Upon the sixth and subsequent violation of this section, the department of public health and human
 12 services shall notify the department of revenue in writing to initiate suspension of the licenses required by
 13 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the
 14 licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144
 15 and this section. The department of revenue shall review the record of violations and may initiate license
 16 suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the
 17 department of revenue declines to initiate suspension proceedings, the violation may not be charged against the
 18 licensee for the purposes of this section.

19 (9) Fees assessed pursuant to this section must be deposited in the state general fund."
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21 **SECTION 8. SECTION 16-11-309, MCA, IS AMENDED TO READ:**

22 **"16-11-309. Inspection and notification of violation required.** (1) The department of public health and
 23 human services shall conduct inspections of persons selling or distributing tobacco products, alternative nicotine
 24 products, or vapor products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and
 25 16-11-307. Inspections may be conducted directly by the department of public health and human services or may
 26 be provided for by contract let by the department of public health and human services. Persons found to be in
 27 violation of the requirements of this part or the rules of the department of public health and human services a
 28 fourth and subsequent time must be notified in writing by the department of public health and human services
 29 of the facts of the violation and the penalties provided by this part.

30 (2) The department of public health and human services shall provide documentation of alleged

1 violations of 16-11-303, 16-11-305, and 16-11-307 to the department of revenue."
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SECTION 9. SECTION 16-11-310, MCA, IS AMENDED TO READ:

4 **"16-11-310. Minors not liable for possession or attempt to purchase.** An individual under 18 years
5 of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession of or
6 the attempt to purchase a tobacco product, alternative nicotine product, or vapor product for the purposes of
7 enforcing this part."
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SECTION 10. SECTION 45-5-637, MCA, IS AMENDED TO READ:

10 **"45-5-637. ~~Tobacco possession~~ Possession or consumption of tobacco products, alternative**
11 **nicotine products, or vapor products by persons under 18 years of age prohibited -- unlawful attempt to**
12 **purchase -- penalties.** (1) A person under 18 years of age who knowingly possesses or consumes a tobacco
13 product, alternative nicotine product, or vapor product, as defined in 16-11-302, commits the offense of
14 possession or consumption of a tobacco product, alternative nicotine product, or vapor product.

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

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

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

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

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

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

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

30 (5) The fines collected under subsections (2) and (4) must be deposited to the credit of the general fund

1 of the local government that employs the arresting officer, or if the arresting officer is an officer of the highway
2 patrol, the fines must be credited to the county general fund in the county in which the arrest was made."

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4 NEW SECTION. Section 11. Effective date. [This act] is effective ~~on passage and approval~~ JANUARY
5 1, 2016.

6 - END -