

HOUSE BILL NO. 670
INTRODUCED BY BUZZAS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING TOBACCO LAWS TO DISCOURAGE YOUTH ACCESS; RAISING THE RETAILER'S APPLICATION FEE; RAISING CIVIL PENALTIES AND REVISING THE PENALTY SCHEDULE INCREASING PENALTIES FOR FAILURE TO OBTAIN A RETAIL LICENSE FOR TOBACCO SALES, FOR FAILURE TO POST SIGNS REGARDING SALES OF TOBACCO PRODUCTS TO YOUTH, OR FOR THE MANUFACTURE OR SALE OF TOBACCO PRODUCTS IN VIOLATION OF MINIMUM SIZE REQUIREMENTS; CLARIFYING CERTAIN NOTIFICATION REQUIREMENTS; ELIMINATING A LICENSE REQUIREMENT THAT CONFLICTS WITH ANOTHER SECTION OF LAW REQUIRING A LICENSE; AMENDING SECTIONS ~~16-11-122 AND~~ 16-11-144, 16-11-302, 16-11-308, 16-11-309, 16-11-311, AND 16-11-312, MCA; REPEALING SECTION 16-11-303, MCA; AND PROVIDING AN 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 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 ~~\$50.~~~~

~~(4) 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) 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 and are effective for 1 year, without proration, and are not transferable."~~

SECTION 1. SECTION 16-11-144, MCA, IS AMENDED TO READ:

"16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, cigarette vendor, or person licensed under ~~16-11-303~~ 16-11-120 for failure to comply with any provision of this part, The Montana Cigarette Sales Act (Title 16, chapter 10), the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3), or with any lawful rule of the

department made pursuant to those laws.

(2) A person aggrieved by a revocation or suspension may apply to the department for a hearing, which must be open to the public. If the person is aggrieved by the decision of the department, the person may further appeal to the court.

(3) When a license has been revoked, a license may not be issued to the licensee for a period of 1 year after revocation. When a license has been suspended, the suspension may be for any period not to exceed 1 year.

(4) A person who sells cigarettes after the person's license has been revoked or suspended is guilty of a misdemeanor and must be punished as provided in this part, and all cigarettes in the person's possession must be seized and forfeited to the state."

SECTION 2. SECTION 16-11-302, MCA, IS AMENDED TO READ:

"16-11-302. Definitions. For the purposes of 16-11-301, 16-11-302, and 16-11-304 through 16-11-308, the following definitions apply:

(1) "Distribute" means:

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

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

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

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

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

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

(5) "Tobacco product" means a substance intended for human consumption that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

Section 3. Section 16-11-308, MCA, is amended to read:

"16-11-308. Civil penalties -- consequences for noncompliance -- license suspension -- tobacco

education fee enforcement fine. (1) Failure to obtain a license, as required by ~~46-11-303~~ 16-11-120, 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 ~~\$400~~ \$1,000. 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~~ 1-year period shall be punished as follows:

(a) A first ~~through third~~ offense is punishable by a ~~verbal~~ written 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~~ LICENSEE.

~~—— (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, 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).~~

(b) A second offense is punishable by a civil penalty of \$1,000.

(c) A third or subsequent offense is punishable by suspension of the licenses LICENSE required by 16-11-120 and 16-11-303 for 3 months and a civil penalty of \$5,000.

~~(4)(3) A license may not be reissued REINSTATED for 3 months after suspension under subsection (2)(d) or (2)(e) and may not be reissued REINSTATED 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)(4)~~ 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~~ enforcement fine of \$25 against the employee who sold the tobacco product if the employee is not the ~~owner of the establishment~~ LICENSEE. The tobacco ~~education fee~~ enforcement fine 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:

(5) THE DEPARTMENT OF REVENUE SHALL NOTIFY THE LICENSEE OF AN ALLEGED VIOLATION OF THIS SECTION BY CERTIFIED LETTER ADDRESSED TO THE LICENSEE. THE NOTICE MUST STATE EACH PENALTY OR SANCTION THAT IS APPLICABLE TO THE VIOLATION UNDER THIS SECTION. THE NOTICE MUST STATE THAT THE LICENSEE MAY WITHIN 30 DAYS AFTER RECEIPT OF THE NOTICE REQUEST A HEARING UNDER THE MONTANA ADMINISTRATIVE PROCEDURE ACT. THE HEARING MAY BE HELD BY ELECTRONIC TELECONFERENCE.

~~(8)(5)(6)~~ Upon the ~~sixth~~ third 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 LICENSE 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)(6)(7) Fees~~ Civil penalties and tobacco enforcement fines assessed pursuant to this section must be deposited ~~in the state general fund~~ as follows:

(a) ~~75%~~ 50% to an account in the state special revenue fund to the credit of the department of public health and human services for enforcement of this section; and

(b) ~~25%~~ 50% to the department ~~of revenue~~ for suspension of licenses pursuant to 16-11-144."

SECTION 4. 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 to determine compliance with ~~16-11-303~~ 16-11-120, 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~~ 16-11-120, 16-11-305, and 16-11-307 to the department of revenue."

SECTION 5. SECTION 16-11-311, MCA, IS AMENDED TO READ:

"16-11-311. Local regulations. A local government may by ordinance adopt regulations on the subjects of 16-11-301, 16-11-302, and 16-11-304 through 16-11-308 that are no more stringent than 16-11-301, 16-11-302, and 16-11-304 through 16-11-308."

SECTION 6. SECTION 16-11-312, MCA, IS AMENDED TO READ:

"16-11-312. Rulemaking authority. The department of revenue may adopt rules to implement 16-11-301, 16-11-302, and 16-11-304 through 16-11-308."

NEW SECTION. SECTION 7. REPEALER. SECTION 16-11-303, MCA, IS REPEALED.

NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2003.

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