

## HOUSE BILL NO. 687

INTRODUCED BY S. MENDENHALL

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE TOBACCO LAWS; REQUIRING ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE TO COMPLY WITH ALL TOBACCO PRODUCT LAWS; APPOINTING THE SECRETARY OF STATE AS AGENT FOR SERVICE OF PROCESS FOR ANY PERSON WHO REGULARLY AND SYSTEMATICALLY SOLICITS BUSINESS IN THIS STATE; PROVIDING DEFINITIONS; CLARIFYING THAT THE DEPARTMENT OF REVENUE MAY CONTRACT WITH THE DEPARTMENT OF JUSTICE FOR ENFORCEMENT OF CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; REVISING LAWS FOR CIGARETTE LICENSING TO INCLUDE LICENSING FOR SELLERS OF ALL TOBACCO PRODUCTS; REQUIRING COMMON CARRIERS TO REPORT SHIPMENTS OF TOBACCO PRODUCTS TO THE DEPARTMENT OF REVENUE; ALLOWING DEPARTMENT OF JUSTICE AGENTS TO ENFORCE BOTH TOBACCO TAX LAWS AND LAWS RELATED TO THE MASTER SETTLEMENT AGREEMENT; REQUIRING SUBJOBBER, TOBACCO PRODUCT VENDORS, AND RETAILERS TO MAINTAIN RECORDS RELATED TO TOBACCO PRODUCTS; ALLOWING THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF JUSTICE TO EXAMINE RECORDS RELATED TO TOBACCO PRODUCTS; PROVIDING FOR INDIVIDUAL LIABILITY FOR OFFICERS AND DIRECTORS OF ENTITIES THAT SELL TOBACCO PRODUCTS IN VIOLATION OF TOBACCO LAWS; REQUIRING TOBACCO PRODUCT SELLERS TO REPORT SALES TO MONTANA TAX AUTHORITIES; REQUIRING LABELING OF TOBACCO PRODUCTS SHIPPED INTO MONTANA; REVISING THE PENALTY FOR USING, CONSUMING, OR SELLING A PACK OF CIGARETTES THAT DOES NOT BEAR THE REQUIRED TAX INSIGNIA; ALLOWING SEIZURE OF CONTRABAND TOBACCO PRODUCTS BY DEPARTMENT OF JUSTICE AGENTS; REVISING THE FORFEITURE AND DESTRUCTION PROCEDURES FOR CONTRABAND; AUTHORIZING THE DEPARTMENT OF REVENUE TO ADOPT RULES THAT RELATE TO CIGARETTE AND OTHER TOBACCO PRODUCT TAXES; GENERALLY REVISING THE PENALTIES FOR VIOLATIONS OF THE TOBACCO PRODUCT TAX LAWS; REQUIRING RETAILERS WHO PURCHASE TOBACCO PRODUCTS ON WHICH THE MONTANA TAXES HAVE NOT BEEN PAID TO PAY THE TAXES; PROVIDING FOR A RIGHT TO HEARING ON ACTIONS TAKEN TO ENFORCE THE TOBACCO PRODUCTS TAX LAWS; PROVIDING FOR JURISDICTION FOR TAX VIOLATIONS; AMENDING SECTIONS 16-10-306, 16-11-102, 16-11-103, 16-11-104, 16-11-111, 16-11-114, 16-11-118, 16-11-119, 16-11-120, 16-11-122, 16-11-131, 16-11-132, 16-11-133, 16-11-141, 16-11-142, 16-11-143, 16-11-144, 16-11-145, 16-11-146, 16-11-147, 16-11-148, 16-11-149,

16-11-150, 16-11-155, 16-11-158, 16-11-507, AND 53-6-1201, MCA; REPEALING SECTIONS 16-11-157, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-205, AND 16-11-206, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Regular and systematic solicitation of business -- compliance with chapter.** Every person who engages in the regular or systematic solicitation of consumers in this state to purchase tobacco products in any manner shall comply with all the requirements of this chapter and any rules adopted pursuant to this chapter.

NEW SECTION. **Section 2. Secretary of state as process agent for unlicensed person doing business in state.** Every person who engages in the regular or systematic solicitation of consumers in this state to purchase tobacco products in any manner, without a license as required by this chapter, shall, by so doing, be considered to appoint the secretary of state as its agent upon whom all lawful process may be served. The secretary of state may be served with process issued within this state in any action or proceeding against the unlicensed person arising out of any contract or transaction. The regular and systematic solicitation of consumers in this state is considered to signify the person's assent to personal jurisdiction in the courts of this state and agreement that service of process on the secretary of state will have the same legal effect and validity as personal service of process upon the person in this state.

NEW SECTION. **Section 3. Service of process.** (1) Service of process pursuant to [section 2] must be made by delivering to and leaving with the secretary of state's office two copies of the summons and complaint and any fees required by law. The secretary of state shall, in a timely manner, mail by registered or certified mail one of the copies to the defendant at its last-known business address. The secretary of state shall keep the other copy as a record of the process served upon the secretary of state. The service of process is sufficient if a notice of service and a copy of the process are sent within 10 days after service by certified mail by the plaintiff's attorney to the defendant at its last-known principal place of business and if the defendant's receipt or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance with this section are filed with the clerk of the court in which the action is pending on or

before the date the defendant is required to appear or within a further time that the court may allow.

(2) Service of process in any action, suit, or proceeding, in addition to being made in the manner provided in subsection (1), must be considered valid if:

(a) served upon any person within this state on behalf of the person soliciting business who is:

- (i) soliciting orders for sale of tobacco products;
- (ii) making any contract for sale of tobacco products or delivering any tobacco products; or
- (iii) collecting or receiving any money for tobacco products;

(b) a copy of the process is sent within 10 days after service, by certified mail, by the plaintiff's attorney to the defendant at the last-known principal place of business of the defendant; and

(c) the defendant's receipt or the receipt issued by the post office with which the letter is certified, showing the name of the sender of the letter and the name and address of the person to whom the letter is addressed, and the affidavit of the plaintiff's attorney showing compliance with this subsection (2) are filed with the clerk of the court in which the action is pending on or before the date the defendant is required to appear or within a further time that the court may allow.

(3) A plaintiff or complainant is not entitled to a judgment by default under this section until 30 days after the date of the filing of the affidavit of compliance.

(4) This section does not limit or abridge the right to serve any process, notice, or demand upon any tobacco product seller in any other manner now or later permitted by law.

**NEW SECTION. Section 4. Joint and several liability.** (1) An individual is individually liable, jointly and severally, with and to the same extent as the business, upon a determination that the individual possessed the responsibility on behalf of the business to comply or direct compliance with state law regarding sales of tobacco products if the individual is:

(a) a controlling person who directly or indirectly controls a business liable for a violation of this chapter; or

(b) a partner, officer, director, or person occupying a similar status or performing similar functions.

(2) For the purpose of determining liability for violations of this chapter, a member-managed limited liability company must be treated as a partnership with liability extending to each member who was a member at the time the violation occurred.

(3) For the purpose of determining personal liability for the failure to comply with requirements of this chapter by a manager-managed limited liability company, the managers of the limited liability company are jointly

and severally liable along with the limited liability company for all penalties owed.

(4) For determining personal liability for the failure to comply with requirements of this chapter, the partners of the limited liability partnership are jointly and severally liable, along with the limited liability partnership, for any penalties and interest due.

**NEW SECTION. Section 5. Tobacco product sales reporting requirements.** (1) Prior to delivering, mailing, or shipping tobacco products into Montana, a person who accepts purchase orders for tobacco product sales shall file a statement with the department. The statement must set forth:

(a) the name, trade name, and address of the principal place of business of the seller, any other place of business of the seller, and the seller's domicile state; and

(b) all owners or controlling persons and every partner, officer, director, or person occupying a similar status or performing similar functions and their home addresses.

(2) By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products into this state or contracted with another party for delivery service in connection with a sale of tobacco products into this state made during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department. The memorandum or sales invoice must provide, for each delivery sale made during the previous calendar month:

(a) the name and address of the consumer to whom the sale was made;

(b) the brand or brands of the tobacco products that were sold; and

(c) the quantity of tobacco products that were sold.

(3) A person that satisfies the requirements of 15 U.S.C. 376 is considered to meet the requirements of this section.

(4) The department may seek an injunction to restrain the actual or threatened violation of this section and to compel the seller to comply with this section.

**NEW SECTION. Section 6. Forfeiture of contraband and property used in transporting contraband.** (1) Upon the seizure of any contraband and within 10 working days after seizure of any equipment or property, the officer making the seizure shall:

(a) deliver an inventory of the property or contraband seized to the person from whom the seizure was made or to any other person having a right or interest in the seized property or contraband, if known; and

(b) file a copy of the inventory with the department if the tobacco product is contraband under part 1 of

this chapter or with the department of justice if the tobacco product is contraband under parts 4 or 5 of this chapter.

(2) If a person other than the person from whom the property or contraband was seized, as described in subsection (1), does not notify the department that issued the notice of a written claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (1), the seized property or contraband is considered forfeited.

(3) If a person notifies the appropriate department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (1), the person is entitled to a hearing on the claim or right. The hearing must be held before the issuing department's director or the director's designee, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property or contraband is more than \$500, a person seeking the return of the property or contraband may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property or contraband was seized.

(4) All property and contraband forfeited must be disposed of as provided in 16-11-158.

**Section 7.** Section 16-10-306, MCA, is amended to read:

**"16-10-306. Cigarette and tobacco product labels -- federal requirements -- penalty.** (1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

(a) tax, trademark, or copyright law; or

(b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

(a) the package is marked as manufactured for use outside of the United States;

(b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or

(c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the department, any agent of the

department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action under the civil enforcement provisions of Title 16, chapter 10, part 4.

(b) A violation of this section is criminally punishable by a fine in an amount not to exceed \$10,000.

(5) For the purposes of this section, ~~the term "cigarette"~~ has the meaning defined in 16-11-102 and "tobacco product" has the meaning defined in 16-11-201 means all products containing tobacco for human consumption or use except cigarettes."

**Section 8.** Section 16-11-102, MCA, is amended to read:

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

~~(a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco:~~

(a) "Contraband" means:

(i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of this part;

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

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

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

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

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

(c) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group or persons, or other business entity, however formed.

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

~~(a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that the person operates for a profit in premises or locations other than the person's own. That person must be treated as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a retailer.~~

(a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

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

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

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

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

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

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

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

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

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

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

~~(h) "Public warehouses" means agents or representatives of manufacturers who receive cigarettes in carload lots for distribution in original cases to wholesalers and retailers.~~

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

~~(i)~~(k) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

~~(j)~~(l) "Retailer" means a person, other than a wholesaler, who operates a store, stand, booth, concession, or other outlet for the purpose of selling cigarettes at retail is engaged in the business of selling tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product vending machines.

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

~~(k)~~(n) "Sale" or "sell" means any transfer of ~~cigarettes~~ tobacco products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

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

~~(m)~~(p) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell ~~the cigarettes~~ tobacco products to a licensed retailer or ~~cigarette~~ tobacco product vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers. ~~A licensed subjobber shall use the license in the interest of the general public. If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client whose business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that retail business, the license is considered to have been used or to be intended to be used in violation of this part.~~

(q) "Tobacco product" means cigarettes and all other products containing tobacco that are intended for human consumption or use.

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

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

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

~~(n)~~(t) "Wholesaler" means a person who ~~services retail outlets by maintaining an established place of business for the purchase of cigarettes and who:~~

(i) purchases ~~cigarettes~~ tobacco products from a manufacturer for the purpose of selling ~~cigarettes~~ tobacco products to subjobbers, tobacco product vendors, and retailers; or

(ii) purchases ~~cigarettes~~ tobacco products from a sole distributor, another wholesaler, or any other person for the purpose of selling ~~cigarettes~~ tobacco products to subjobbers, tobacco product vendors, and retailers."



**Section 9.** Section 16-11-103, MCA, is amended to read:

**"16-11-103. Powers of department.** (1) The department ~~shall have the power and authority to~~ may prescribe ~~all~~ rules not inconsistent with the provisions of this ~~part chapter~~ for the detailed and efficient administration of this ~~part chapter~~. All rules and orders promulgated must be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by ~~part 2 of~~ this chapter.

(2) The department of revenue and the department of justice and ~~its~~ their duly authorized agents ~~are empowered to~~ may conduct inquiries and hearings, and any member of the department of revenue, department of justice, or any agent ~~is authorized to~~ may administer oaths and take testimony under oath relative to the matter of inquiry. The director, the attorney general, or an authorized agent may subpoena witnesses and require the production of books, papers, and documents pertinent to the inquiry. The director, the attorney general, or ~~the director's~~ an agent, after the hearing, shall make findings and issue an order in writing, ~~which~~ The findings and order must be filed in the office of the department of revenue or the department of justice and must be open for public inspection.

(3) The department is authorized to contract with the department of justice for the investigations required under this ~~part chapter~~. The department may appoint additional assistants and establish an additional division of ~~cigarette tobacco product~~ enforcement as required to carry out the provisions of this ~~part chapter~~.

(4) The department and the department of justice are authorized to employ clerical and field assistants necessary to properly administer the provisions of this ~~part chapter~~.

(5) The department of justice may appoint one or more investigators or prosecuting officers who, under its direction, shall perform the duties it may require.

(6) When requested by the department of revenue, the department of justice shall:

(a) investigate all matters relating to the purchase, sale, importation, exportation, possession, and delivery of tobacco products; and

(b) serve as a liaison to local law enforcement authorities in matters relating to tobacco law enforcement."

**Section 10.** Section 16-11-104, MCA, is amended to read:

**"16-11-104. Carriers to report cigarette shipments -- penalties.** (1) Every common carrier hauling, transporting, or shipping into or out of the state of Montana from or to any other state any ~~cigarettes~~ tobacco products shall, ~~if requested by the department~~, report in writing such the shipments or deliveries to the department on forms furnished by the department, The reports must include ~~giving~~ the date, the person to whom the ~~same~~

~~was tobacco products were~~ consigned and delivered, the quantity as shown by the bill of lading, and ~~such~~ other information ~~as that~~ the department may require. A carrier shall retain for ~~30~~ 36 months all pertinent and relevant records necessary for the preparation of this report and any other information that the department may require.

(2) A common carrier who violates the provisions of subsection (1) is subject to civil penalties as determined by the department. For a first offense, a natural person shall be fined an amount not to exceed \$50,000, and any other entity shall be fined an amount not to exceed \$100,000. For a second or subsequent offense, a natural person shall be fined an amount not to exceed \$100,000, and any other entity shall be fined an amount not to exceed \$200,000."

**Section 11.** Section 16-11-111, MCA, is amended to read:

**"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

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

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

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

(5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been

filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

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

(7) There must be collected and paid to the state of Montana a tax of 50% of the wholesale price, to the wholesaler, of all tobacco products other than cigarettes and moist snuff. The tax on moist snuff is 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

(8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in 15-1-216.

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

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

**Section 12.** Section 16-11-114, MCA, is amended to read:

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

~~(1)~~(a) 0.90% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar month;

~~(2)~~(b) 0.60% for the next 2,580 cartons or portion of 2,580 cartons purchased in any calendar month;

and

~~(3)~~(c) 0.45% for purchases in excess of 5,160 cartons in any calendar month.

(2) The taxes for tobacco products, other than cigarettes, that are paid by the wholesaler must be paid to the department in full less a 2.5% defrayment for the wholesaler's collection and administrative expenses and must, in accordance with the provisions of 15-1-501, be deposited by the department in the state general fund except as provided in 16-11-119. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

**Section 13.** Section 16-11-118, MCA, is amended to read:

**"16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, and retailers.** (1) All wholesalers and subjobbers shall keep for 5 3 years all:

- (a) invoices of ~~cigarettes~~ tobacco products purchased, and imported, or sold;
- (b) all receipts issued and insignia purchased; and
- (c) an accurate record of all sales of ~~cigarettes~~ tobacco products, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination.

(2) All retailers and tobacco product vendors shall keep for 3 years all invoices of tobacco products purchased and received, showing the date of each purchase, the brand purchased, the quantity of each brand purchased, and an accurate record of the total sales of tobacco products.

(3) A wholesaler, retailer, subjobber, or tobacco product vendor shall permit the department and the department of justice and their assistants, authorized agents, or representatives to examine all ~~cigarettes~~ tobacco products, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine compliance with this chapter.

(4) A person that violates the provisions of subsections (1) through (3) is subject to civil penalties as determined by the department of not less than \$1,000 or more than \$10,000."

**Section 14.** Section 16-11-119, MCA, is amended to read:

**"16-11-119. Disposition of taxes.** (1) Cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 15-1-501, be deposited as follows:

- (a) 8.3% or \$2 million, whichever is greater, 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;
- (b) 2.6% in the long-range building program account provided for in 17-7-205;

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

(d) the remainder to the state general fund.

(2) If money in the state special revenue fund 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 and moist snuff, must in accordance with the provisions of 15-1-501 be deposited as follows:

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

(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201."

**Section 15.** Section 16-11-120, MCA, is amended to read:

**"16-11-120. Cigarette Tobacco product licenses.** Every wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor. A separate application and a separate license is required for each place of business owned, controlled, or operated by the wholesaler, subjobber, retailer, or ~~cigarette tobacco product~~ vendor within the state of Montana. Application forms must include the type and general description of applicant organizations, names of all known owners, and other pertinent information ~~as that~~ the department may require ~~in regularly promulgated rules~~ by rule. The department shall comply with rules issued by the board of review established in 30-16-302 with respect to the form of electronic verification of information required or acceptable for licensing purposes."

**Section 16.** 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) 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 are effective for 1 year, without proration, and are not transferable."

**Section 17.** Section 16-11-131, MCA, is amended to read:

**"16-11-131. Transporting ~~cigarettes~~ tobacco products without ~~insignia~~ compliance a misdemeanor -- invoices and delivery tickets required -- stop and inspection authorized.** (1) It is unlawful for a person to transport into, receive, carry, or move from place to place within this state, except in the course of interstate commerce, any ~~cigarettes~~ tobacco products that do not ~~bear the insignia (stamps)~~ required by this part comply with the requirements of this chapter.

(2) (a) When transporting unstamped cigarettes and roll-your-own tobacco, a person shall possess invoices or delivery tickets for the cigarettes and roll-your-own tobacco that show the name and address of the consignor or seller, the name of the consignee or purchaser, and the quantity and brands of the cigarettes and roll-your-own tobacco being transported.

(b) The cigarettes and roll-your-own tobacco transported are contraband and are subject to seizure, forfeiture, destruction, and sale as provided in 16-11-141, 16-11-147, 16-11-158, [section 6], 16-11-509, and this section if:

- (i) there are no invoices or delivery tickets;
- (ii) the name or address of the consignee or purchaser is falsified; ~~or~~
- (iii) the consignee or purchaser is not authorized to possess unstamped cigarettes or roll-your-own tobacco; or
- (iv) the cigarettes or roll-your-own tobacco are intended for sale in this state and are not on the directory.

(3) Transportation of cigarettes or roll-your-own tobacco from a point outside the state to a point in another state is not a violation of this section if the person transporting the unstamped cigarettes or cigarettes or roll-your-own tobacco that are not on the directory possesses adequate invoices or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state consignee or purchaser.

(4) If the department, its authorized agent, the department of justice, or a peace officer of the state has knowledge or reasonable grounds to believe that a vehicle is transporting ~~cigarettes~~ tobacco products in violation of this ~~section~~ chapter, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

(5) When a person engaged in the business of selling tobacco products ships or causes to be shipped any tobacco products to any person in this state that are not in the tobacco product manufacturer's original

container or wrapping, the container or wrapping must be plainly and visibly marked with the words "tobacco products".

~~(5)~~(6) A person violating the provisions of this section is guilty of a misdemeanor and is subject to the penalties in 16-11-148."

**Section 18.** Section 16-11-132, MCA, is amended to read:

**"16-11-132. Unlawful to sell ~~cigarettes~~ tobacco products without valid license -- exceptions.** (1) ~~A~~ Unless approved by the department, a person may not sell, offer to sell, or possess with intent to sell any ~~cigarettes~~ tobacco products, at wholesale or retail, unless the person's license is current and valid under the provisions of this part.

(2) A person may not sell, offer to sell, or possess with intent to sell any ~~cigarettes~~ tobacco products, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, tobacco product vendor, or retailer who is not licensed under this part or who is not licensed by the state in which the person sells, offers to sell, or intends to sell ~~cigarettes~~ tobacco products. However, a wholesaler, subjobber, tobacco product vendor, or retailer licensed under the provisions of this chapter may sell cigarettes to any person, wholesaler, subjobber, tobacco product vendor, or retailer not licensed under this chapter if:

(a) the person, wholesaler, subjobber, tobacco product vendor, or retailer is exempt from state ~~cigarette~~ tobacco product taxation provisions;

(b) the person, wholesaler, subjobber, tobacco product vendor, or retailer furnishes documentary evidence of exemption from state ~~cigarette~~ tobacco product taxation provisions; and

(c) the person, wholesaler, subjobber, tobacco product vendor, or retailer signs a receipt of purchase for any ~~cigarettes~~ tobacco products evidencing an exemption from state ~~cigarette~~ tobacco product taxation provisions.

(3) A person violating the provisions of this section ~~is guilty of a misdemeanor and shall be punished as provided in this part 16-11-148, and all~~ cigarettes tobacco products in the person's possession must be seized, ~~and forfeited, to the state~~ and destroyed pursuant to 16-11-147, 16-11-158, and [section 6]."

**Section 19.** Section 16-11-133, MCA, is amended to read:

**"16-11-133. Sale and use of cigarettes without insignia unlawful.** (1) ~~A~~ Unless approved by the department, a person who sells any package of cigarettes that does not bear the insignia required by this part and a person who uses or consumes a cigarette within this state, taken from a package that does not bear the

required insignia, is guilty of a misdemeanor and is subject to the penalties in 16-11-148.

(2) This section may not be construed to prohibit a natural person from physically transporting into the state of Montana for the person's own personal consumption or use, a maximum of:

(a) 200 cigarettes that bear the tax insignia of another state; or

(b) 10 ounces of tobacco products, other than cigarettes, on which the tobacco taxes of another state have been paid."

**Section 20.** Section 16-11-141, MCA, is amended to read:

**"16-11-141. Powers of arrest -- search and seizure.** (1) The department of justice is a criminal justice agency. Designated agents of the department of justice have peace officer status and may arrest any person violating any provision of this ~~part~~ chapter, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence ~~any unlawful or unlawfully possessed license, stamp, or insignia contraband~~ found in the possession of any person or in any place.

(2) Any investigator or peace officer who finds a tobacco product that the investigator or peace officer has reasonable cause to believe is contraband may seize and remove the contraband and the packages in which the contraband is kept. The contraband and all packages containing the contraband must, in addition to any other penalty prescribed by this chapter, be forfeited to the state of Montana as provided in [section 6] and destroyed as provided in 16-11-158."

**Section 21.** Section 16-11-142, MCA, is amended to read:

**"16-11-142. Duties of county attorneys and peace officers.** In the enforcement of this ~~part~~ chapter, the department of justice may call to its assistance; and it is the duty of any county attorney or any peace officer in this state to assist the department of justice in the enforcement of this ~~part~~ chapter."

**Section 22.** Section 16-11-143, MCA, is amended to read:

**"16-11-143. Penalty and interest for unpaid ~~cigarette~~ tobacco product tax.** (1) If a person fails or refuses to pay the tobacco product tax required by this part when due, the department shall proceed to determine the tax due from the information that the department can obtain and shall assess the tax plus penalty and interest as provided in 15-1-216.

(2) In the case of any violation of this chapter, the department may sue, in the district where the department maintains its principal office, for the amount of the unpaid tobacco product tax, penalty, and costs,



including reasonable expense of the department in effecting collection of the unpaid tax and penalty. When the court finds that the failure to pay the tax has been willful, the court shall, in addition, assess damages in treble the amount of the tax found to be due."

**Section 23.** 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, tobacco product vendor, retailer, ~~cigarette vendor~~, or person licensed under 16-11-303 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)~~ this chapter, 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~~ tobacco products after the person's license has been revoked or suspended is guilty of a misdemeanor and ~~must be punished as provided in this part~~ is subject to the penalties in 16-11-148, and all ~~cigarettes~~ tobacco products in the person's possession must be seized and forfeited to the state."

**Section 24.** Section 16-11-145, MCA, is amended to read:

**"16-11-145. Place where violations committed a considered public nuisance.** Each person having possession or control of or who maintains a building or place where ~~cigarettes~~ tobacco products are sold in violation of this ~~part~~ chapter or who permits the ~~cigarettes~~ tobacco products to be sold in violation of this ~~part~~ chapter in any place or building possessed, controlled, or maintained by that person is guilty of maintaining and keeping a nuisance. The building or place so used, together with the personal property and fixtures used in connection ~~therewith~~ with the building, is considered a nuisance. The person must be enjoined and the building or place, personal property, and fixtures abated as a nuisance at the instance of the state."

**Section 25.** Section 16-11-146, MCA, is amended to read:

**"16-11-146. Penalty for forged license stamp or insignia.** A person found guilty of forgery under 16-11-134 shall be punished by imprisonment in the state prison for not less than 1 year or more than 14 years. In addition, the department may impose the civil penalties in 16-11-148."

**Section 26.** Section 16-11-147, MCA, is amended to read:

**"16-11-147. Seizure and forfeiture of ~~unlawful cigarettes~~ property used in transporting contraband.** (1) A motor vehicle, airplane, conveyance, vehicle, or other means of transportation in which ~~cigarettes are~~ contraband is being unlawfully transported, together with the ~~cigarettes~~ contraband and other equipment or personal property used in connection with and found in that transportation, is subject to seizure by the department of justice, its authorized agent, a sheriff or deputy, or any other peace officer and is subject to forfeiture as provided in ~~subsection (2)~~ [section 6].

~~(2) Upon the seizure of any cigarettes and within 2 days after seizure, the person or officer making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was made, or any other person having a right or interest in the seized property, if known, and file a copy of the inventory with the department.~~

~~———— (3) If a person other than the person from whom the property was seized as described in subsection (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.~~

~~———— (4) If a person notifies the department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing on the claim or right. The hearing must be held before the department director or the director's designee, with the assistance of the department of justice, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property is more than \$500, a person seeking the return of the property may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized."~~

**Section 27.** Section 16-11-148, MCA, is amended to read:

**"16-11-148. ~~Violation a misdemeanor unless otherwise provided -- penalties~~ Penalties and other remedies.** (1) Unless otherwise provided, the purposeful, knowing, or negligent violation of any provision of this part constitutes a misdemeanor. ~~A person violating any provision of this part shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more than 6 months~~ punishable by imprisonment for a term of up to 1 year or by a fine of up to \$1,000, or both. If the person

~~is the holder of a license issued under this part, the license must be revoked by the department for 1 year. Second and subsequent purposeful, knowing, or negligent violations of any provision of this part constitutes a felony punishable by imprisonment for a term exceeding 1 year or a fine not to exceed \$50,000, or both.~~

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

(3) In addition to the criminal penalties provided in subsection (1), the department or the department of justice may assess a person who violates any provision of this part a civil penalty of \$250 for the first full or partial pack of contraband cigarettes and \$10 for each additional full or partial pack of contraband cigarettes. For purposes of this definition of cigarette, 0.09 ounces of roll-your-own tobacco constitutes one individual cigarette. Each tax insignia affixed and each offer to sell, sale, or possession for sale of cigarettes in violation of this part of constitutes a separate violation.

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

**Section 28.** Section 16-11-149, MCA, is amended to read:

**"16-11-149. Hearings before state tax appeal board.** A person aggrieved by any action of the department or its authorized agents ~~under taken to enforce the tax~~ provisions of this part, except for a revocation of a license pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly consider the application, set the application for hearing, and notify the applicant of the time and place fixed for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing or rehearing, the board may make any further or other order in the premises as it may consider proper and lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with the administration of this part upon at least 10 days' notice in writing to the person or persons to be investigated."

**Section 29.** Section 16-11-150, MCA, is amended to read:

**"16-11-150. Appeal to district court.** Any person aggrieved by any action or decision of the ~~state tax appeal board~~ department or the department of justice or a licensing decision of the department made under the provisions of this part may appeal ~~therefrom~~ to the district court in accordance with the Montana Administrative Procedure Act."

**Section 30.** Section 16-11-155, MCA, is amended to read:

**"16-11-155. Definitions.** As used in 16-11-111, ~~and 16-11-155, through 16-11-156, and 16-11-158,~~ the following definitions apply:

(1) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

- (a) by a treaty between the tribe and a territorial government, a state government, or the United States;
- (b) through an act of the United States congress; or
- (c) through an executive order of the United States.

(2) "Quota" means 150% of the national average individual consumption of cigarettes multiplied by the enrolled tribal member population of an Indian reservation on which the cigarette sales are made or any other formula or amount agreed to in a state-tribal cooperative agreement."

**Section 31.** Section 16-11-158, MCA, is amended to read:

**"16-11-158. Sale or retention of forfeited property -- use of sale proceeds -- destruction of contraband.** (1) When property is forfeited under ~~16-11-147~~ [section 6], the department may:

(a) retain the property or any part of the property for official use or, upon application by a law enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive use of enforcing the provisions of ~~16-11-111, 16-11-131, 16-11-147, and 16-11-155 through 16-11-158~~ this chapter or the laws of another state, the District of Columbia, or the United States; or

(b) after advertising, sell the property, other than contraband, at public auction to the highest bidder. ~~The department, before delivering a seized item, shall first require stamps to be affixed.~~

(2) The proceeds of a sale under this section must be applied first to paying the expenses of any investigation leading to the seizure of the ~~items~~ property, including costs incurred by a local, state, tribal, or federal law enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure, maintenance, custody, and court costs. The balance of the proceeds, less an amount that is based on the value of the property seized on an Indian reservation and that is allocated to a tribe pursuant to a state-tribal cooperative agreement, must be deposited in the state general fund.

(3) Contraband forfeited under [section 6] must be destroyed."

**Section 32.** Section 16-11-507, MCA, is amended to read:

**"16-11-507. Reporting of information.** (1) Not later than 20 calendar days after the end of each calendar quarter and more frequently if directed by the attorney general, each wholesaler shall submit information that the attorney general requires to facilitate compliance with this section by nonparticipating manufacturers, including but not limited to a list by brand family of the total number of nonparticipating manufacturer cigarettes or, in the case of nonparticipating manufacturer roll-your-own tobacco, the equivalent amount of tobacco, calculated as provided in 16-11-402(4), on which the wholesaler precollected tax as provided in 16-11-113 ~~or 16-11-203~~ and that the wholesaler sold during the period covered by the report. The wholesaler shall maintain and make available to the attorney general all invoices and documentation of sales of all nonparticipating manufacturer cigarettes and any other information relied upon in reporting to the attorney general for a period of 5 years.

(2) The department is authorized to disclose to the attorney general any information received by it and requested by the attorney general for purposes of determining compliance with and enforcing the provisions of this part. The department and attorney general shall share the information received under this part with each other and may share the information with other federal, state, or local agencies only for the purposes of enforcement of 16-11-403, this part, or the corresponding laws of other states.

(3) The attorney general may require at any time from the nonparticipating manufacturer proof from the financial institution in which the manufacturer has established a qualified escrow fund for the purpose of compliance with 16-11-403 of:

- (a) the amount of money in the fund, exclusive of interest;
- (b) the amount and dates of each deposit to the fund; and
- (c) the amount and dates of each withdrawal from the fund.

(4) In addition to the information required to be submitted pursuant to subsections (1) through (3), the attorney general may require a wholesaler or tobacco product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family, to enable the attorney general to determine whether a tobacco product manufacturer or wholesaler is in compliance with this part. (Certain provisions void on occurrence of contingency--sec. 16, Ch. 397, L. 2003.)"

**Section 33.** Section 53-6-1201, MCA, is amended to read:

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

(2) There must be deposited in the account:

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

(b) money from taxes on tobacco products other than cigarettes deposited under ~~16-11-206(1)(b)~~ 16-11-119(3)(b).

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

(a) the state funds necessary to take full advantage of available federal matching funds in order to maximize enrollment of eligible children under the children's health insurance program, provided for under Title 53, chapter 4, part 10, and to provide outreach to the eligible children. The increased revenue in this account is intended to increase enrollment rates for eligible children in the program and not to be used to support existing levels of enrollment based upon appropriations for the biennium ending June 30, 2005.

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

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

(d) an offset to loss of revenue to the general fund as a result of new tax credits or to fund new programs to assist small businesses with the costs of providing health insurance benefits to employees, if these tax credits or programs are established by the legislature after the effective date of this section.

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

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

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

**NEW SECTION. Section 34. Repealer.** Sections 16-11-157, 16-11-201, 16-11-202, 16-11-203, 16-11-204, 16-11-205, and 16-11-206, MCA, are repealed.

NEW SECTION. **Section 35. Codification instruction.** [Sections 1 through 6] are intended to be codified as an integral part of Title 16, chapter 11, and the provisions of Title 16, chapter 11, apply to [sections 1 through 6].

NEW SECTION. **Section 36. Effective date.** [This act] is effective 90 days after passage and approval.

- END -

