

HOUSE BILL NO. 654
INTRODUCED BY D. MCALPIN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE PREVENTION OF YOUTH ACCESS TO TOBACCO PRODUCTS ACT; PROHIBITING THE DISTRIBUTION OF FREE OR DISCOUNTED TOBACCO PRODUCTS; PROHIBITING THE SALE OF FLAVORED CIGARETTE, CIGAR, OR TOBACCO PRODUCTS; PROHIBITING DISTRIBUTION OF TOBACCO PRODUCTS BY MEANS OF CONSUMER SELF-SERVICE; AND AMENDING SECTIONS 16-11-301, 16-11-302, 16-11-308, 16-11-309, 16-11-311, AND 16-11-312, MCA."

WHEREAS, the use of tobacco products is harmful to the health of both the user and nonuser of the product, causes cancer, heart disease, and emphysema, as well as many other diseases and health problems, and is responsible for more than 400,000 deaths each year, nationwide; and

WHEREAS, tobacco products are highly addictive and tobacco use begins early, with 90% of smokers beginning at or before the age of 18, and each and every day more than 4,000 young people try cigarettes for the first time and another 1,500 become established, regular smokers; and

WHEREAS, the sale of tobacco products to minors is illegal in all 50 states but minors are still readily able to purchase tobacco products from otherwise legally operating retail outlets; and

WHEREAS, minors are readily able to obtain tobacco products at low prices and at prices that do not include payment of state taxes from internet and mail order sellers and from other sources; and

WHEREAS, youth are attracted to flavored tobacco products, which are increasing the number of youth becoming addicted to tobacco products; and

WHEREAS, reducing youth access to tobacco products will reduce youth tobacco use rates and reduce the number of today's youth who will grow up to become addicted users and who will suffer from tobacco use and may die prematurely from it.

THEREFORE, it is the intent of the Montana Legislature to implement effective measures to stop the sale of tobacco products to youth, make tobacco products less attractive to youth, and otherwise reduce access to tobacco products by youth.

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

NEW SECTION. **Section 1. Short title.** [Sections 1 through 4] may be cited as the "Prevention of Youth

Access to Tobacco Products Act".

NEW SECTION. Section 2. Distribution of free or discounted tobacco products prohibited -- definitions. (1) A person may not sell or distribute a tobacco product for commercial purposes for free or at less-than-basic cost.

(2) A person may not for commercial purposes distribute to members of the general public any coupon redeemable by consumers in this state to obtain a tobacco product for free or at less-than-basic cost.

(3) A person engaged in the sale or distribution of tobacco products may not accept or redeem, offer to accept or redeem, or cause or hire any person to accept or redeem or offer to accept or redeem any coupon for providing members of the general public with any tobacco product for free or at less-than-basic cost.

(4) For the purpose of this section:

(a) "at less-than-basic cost" means free of charge, at a nominal or discounted price, or at any other price less than the seller's or distributor's cost plus the full value of any stamps or taxes placed on the tobacco products by federal, state, or local law not already included in the seller's or distributor's cost;

(b) "coupon" means any card, paper, note, form, statement, ticket, or other item distributed for commercial or promotional purposes to be later surrendered by the bearer in order to receive a tobacco product without charge or at a discount price; and

(c) "seller's or distributor's cost" means the actual price paid by the seller or distributor to obtain the product or, if the product was obtained illegally, the actual price that the seller or distributor would have paid to obtain the product if it had been obtained legally.

NEW SECTION. Section 3. Sale of flavored cigarettes, cigars, or tobacco products prohibited -- definitions. (1) A person may not for commercial purposes sell, distribute, or offer for sale or distribution in this state or sell, distribute, or offer for sale to any person in this state any flavored cigarette or cigar or flavored tobacco product.

(2) For purposes of this section:

(a) "candy flavors" include the flavors of confections made from sugar or a sugar substitute and the brand names of any of those confections and also include chocolate, cocoa, mocha, vanilla, honey, maple, cinnamon, licorice, and mint flavors;

(b) "flavored cigarette or cigar" means any cigarette or cigar or component of a cigarette or cigar, including but not limited to the tobacco, paper, roll, or filter, that contains a natural or artificial constituent or

additive that causes the cigarette or cigar or its smoke to have a characterizing flavor other than tobacco or menthol, including but not limited to candy flavors or fruit flavors; and

(c) "flavored tobacco product" means smokeless or chewing tobacco and loose tobacco that contains a natural or artificial constituent or additive that causes the tobacco to have a characterizing flavor other than tobacco or menthol, including but not limited to candy flavors or fruit flavors.

NEW SECTION. Section 4. Distribution of tobacco products through consumer self-service prohibited. All tobacco products offered for sale at retail outlets must be kept behind the counter or in a location or enclosed cabinet to which consumers do not have access, and tobacco products may not be sold through consumer self-service displays or by any other means by which consumers can obtain possession of the tobacco products without prior assistance from the seller or from employees of the seller who are 19 years of age or older.

Section 5. Section 16-11-301, MCA, is amended to read:

"16-11-301. Short title. ~~This part~~ Sections 16-11-301 through 16-11-312 may be cited as the "Youth Access to Tobacco Products Control Act"."

Section 6. Section 16-11-302, MCA, is amended to read:

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

(1) "Cigarette" has the meaning provided in 16-11-402.

(2) "Commercial purpose" means in the course of business or in order to raise revenue or make a profit, whether legally or illegally.

~~(1)~~(3) "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)~~(4) "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)~~(5) "License" means a retail tobacco product sales license.

~~(4)~~(6) "Person" means a natural person, company, corporation, firm, partnership, organization, or other legal entity.

(7) "Seller" means any person who sells, distributes, or offers for sale or distribution tobacco products for commercial purposes, including sellers located outside of the state that sell or distribute tobacco products to consumers in the state.

(8) "Smokeless tobacco" includes tobacco snuff, chewing tobacco, and any other product containing tobacco that is sold to consumers with the intent or expectation that it will be placed in the oral or nasal cavities or otherwise consumed without being combusted.

~~(5)~~(9) "Tobacco product" means a substance intended for human consumption that contains tobacco. The term includes cigarettes, cigars, ~~snuff~~, smoking tobacco, and smokeless tobacco."

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), or [sections 2 through 4] 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, 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 [sections 2 through 4] 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 [sections 2 through 4] 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)~~, or [sections 2 through 4] is punishable by an assessment of a tobacco education fee of \$25 against the employee who sold the tobacco 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."

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 random, unannounced inspections of persons selling or distributing tobacco products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, ~~and 16-11-307,~~ and [sections 2 through 4]. 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,~~ and [sections 2 through 4] to the department of revenue."

Section 9. 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 through 16-11-308~~ this part that are no more stringent than ~~16-11-301 through 16-11-308~~ this part."

Section 10. 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 through 16-11-308~~ this part."

NEW SECTION. Section 11. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 12. Codification instruction. [Sections 1 through 4] are intended to be codified as an integral part of Title 16, chapter 11, part 3, and the provisions of Title 16, chapter 11, part 3, apply to [sections 1 through 4].

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