

## 1 SENATE BILL NO. 354

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6

7 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE REGULATION AND TAXATION OF CIGARETTES,  
8 TOBACCO PRODUCTS, AND PRODUCTS THAT CONTAIN NICOTINE AND PROVIDING FOR THE  
9 EXPENDITURE OF REVENUE FROM THE TAX; PROVIDING A FUNDING MECHANISM TO SAVE HEALTH  
10 CARE SERVICES; REVISING THE DEFINITION OF "TOBACCO PRODUCTS"; INCREASING THE RATE OF  
11 TAX FOR THE PURCHASE OF CIGARETTES; INCREASING THE RATE OF TAX FOR NONCIGARETTE  
12 TOBACCO PRODUCTS; PROVIDING FOR TAXATION OF CERTAIN NICOTINE PRODUCTS; DECREASING  
13 WHOLESALE INSIGNIA DISCOUNTS; REVISING THE DISBURSEMENT OF THE TAX REVENUE FOR  
14 INCREASED HEALTH AND MEDICAID SERVICES; PROVIDING FOR WAGE INCREASES TO DIRECT CARE  
15 WORKERS THAT PROVIDE MEDICAID SERVICES; PROVIDING A TRANSITION PROVISION FOR  
16 REPORTING BY CIGARETTE WHOLESALERS; PROVIDING RULEMAKING AUTHORITY; AMENDING  
17 SECTIONS 16-10-306, 16-11-102, 16-11-111, 16-11-114, 16-11-119, AND 53-6-1201, MCA; AND PROVIDING  
18 EFFECTIVE DATES, AN APPLICABILITY DATE, AND A TERMINATION DATE."  
19

20 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
21

22 **Section 1.** Section 16-10-306, MCA, is amended to read:

23 **"16-10-306. Cigarette and tobacco product labels -- federal requirements -- penalty.** (1) A person  
24 may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product  
25 that violates any federal:

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

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

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

- 1 (a) the package is marked as manufactured for use outside of the United States;  
 2 (b) any label or language has been altered from the manufacturer's original packaging and labeling to  
 3 conceal the fact that the package was manufactured for use outside of the United States; or  
 4 (c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use  
 5 outside of the United States.

6 (3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the  
 7 United States is contraband and may be seized without a warrant by the department, any agent of the  
 8 department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed  
 9 by the department.

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

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

13 (5) For the purposes of this section:

14 (a) "cigarette" has the meaning ~~defined~~ provided in 16-11-102; and

15 (b) "tobacco product" ~~means all products containing tobacco for human consumption or use except~~  
 16 cigarettes has the meaning provided in 16-11-102.

17

18 **Section 2.** Section 16-11-102, MCA, is amended to read:

19 **"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the context  
 20 requires otherwise:

21 (a) "Contraband" means:

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

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

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

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

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

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

30 (c) "Person" means an individual, firm, partnership, corporation, association, company, committee, other

1 group or persons, or other business entity, however formed.

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

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

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

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

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

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

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

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

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

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

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

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

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

25 (j) "Manufacturer's original container" means the original master shipping case or original shipping case  
26 used by the tobacco product manufacturer to ship multipack units, such as boxes, cartons, and sleeves, to  
27 warehouse distribution points.

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

30 (l) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

1 (m) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling  
 2 tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco  
 3 product vending machines.

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

7 (o) "Sale" or "sell" means any transfer of tobacco products for consideration, exchange, barter, gift, offer  
 8 for sale, or distribution in any manner or by any means.

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

12 (q) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana  
 13 cigarette tax insignia affixed and sells or offers to sell tobacco products to a licensed retailer or tobacco product  
 14 vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers  
 15 as subjobbers.

16 (r) (i) ~~"Tobacco product" means: cigarettes and all other products containing tobacco that are~~  
 17 (A) a product containing, made, or derived from tobacco or that contains nicotine that is intended for  
 18 human consumption or use is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved,  
 19 inhaled, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing  
 20 tobacco, snuff and snus; and

21 (B) any substance, regardless of whether or not it contains nicotine, consumed during the use of a device  
 22 that can be used to deliver nicotine or another substance in any form, including aerosolized or vaporized, to the  
 23 person inhaling from the device, including but not limited to an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

24 (ii) The term does not include:

25 (A) drugs, devices, or combination products, as defined in the Federal Food, Drug, and Cosmetic Act,  
 26 authorized by the United States food and drug administration for sale as a tobacco cessation product or for other  
 27 therapeutic purposes when the product is marketed and sold solely for such an approved purpose; or

28 (B) filters, rolling papers, pipes, or a device described in subsection (2)(r)(i)(B).

29 (s) (i) "Tobacco product vendor" means a person doing business in the state who purchases tobacco  
 30 products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines that the

1 person operates for a profit in premises or locations other than the person's own.

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

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

5 (u) "Wholesaler" means a person who:

6 (i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to  
7 subjobbers, tobacco product vendors, wholesalers, or retailers; or

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

10

11 **Section 3.** Section 16-11-111, MCA, is amended to read:

12 **"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal**

13 **member.** (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in  
14 the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of  
15 Montana. The tax is ~~\$1.70~~ \$3.20 on each package containing 20 cigarettes. Whenever packages contain other  
16 than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

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

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

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

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

26 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system of  
27 preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval  
28 prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota,  
29 as established in a cooperative agreement between the department and an Indian tribe or as set out in this  
30 chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and

1 delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a  
 2 federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been  
 3 filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must  
 4 be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota  
 5 allocations are not transferable between quota periods or between reservations.

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

11 (7) There must be collected and paid to the state of Montana a tax of ~~50%~~ 74% of the wholesale price,  
 12 to the wholesaler, of all tobacco products other than cigarettes and moist snuff. The tax on moist snuff is ~~85 cents~~  
 13 the greater of 74% of the wholesale price or the tax on each pack of 20 cigarettes under subsection (1)(a) per  
 14 1.2 ounces of moist snuff. For a package of moist snuff less than 1.2 ounces an ounce based upon the net weight  
 15 of the package listed by the manufacturer, the tax must be calculated as if the package is 1.2 ounces. For  
 16 ~~packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the~~  
 17 ~~package.~~ Tobacco products shipped from Montana and destined for retail sale and consumption outside the state  
 18 are not subject to this tax.

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

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

25 (10) A retailer must assume that the tobacco products tax has not been collected and paid to the  
 26 department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states  
 27 that the applicable Montana tobacco products tax is included in the total billing cost."  
 28

29 **Section 4.** Section 16-11-114, MCA, is amended to read:

30 "**16-11-114. Insignia discount.** (1) Each licensed wholesaler is entitled to purchase an insignia at full

1 face value less the following percentage of the face value upon payment for the insignia as defrayment of the  
2 costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

3 (a) ~~0.90%~~ 0.478% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar  
4 month;

5 (b) ~~0.60%~~ 0.318% for the next 2,580 cartons or portion of 2,580 cartons purchased in any calendar  
6 month; and

7 (c) ~~0.45%~~ 0.239% for purchases in excess of 5,160 cartons in any calendar month.

8 (2) The taxes for tobacco products, other than cigarettes, that are paid by the wholesaler must be paid  
9 to the department in full less a 1.5% defrayment for the wholesaler's collection and administrative expenses and  
10 must, in accordance with the provisions of 17-2-124, be deposited by the department in the state general fund  
11 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  
12 the tobacco products purchased become unsalable."  
13

14 **Section 5.** Section 16-11-119, MCA, is amended to read:

15 **"16-11-119. Disposition of taxes.** (1) Cigarette taxes collected under the provisions of 16-11-111(1)  
16 must, in accordance with the provisions of 17-2-124, be deposited as follows:

17 (a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the  
18 department of public health and human services for the operation and maintenance of state veterans' nursing  
19 homes;

20 ~~(b) for fiscal years beginning July 1, 2011, and ending June 30, 2015, 1.2% in the state special revenue~~  
21 ~~fund to the credit of the account established in section 2, Chapter 461, Laws of 2009, for the construction of the~~  
22 ~~state veterans' home in southwestern Montana;~~

23 ~~(c)~~(b) 2.6% in the long-range building program account provided for in 17-7-205;

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

26 ~~(e)~~(d) the remainder to the state general fund.

27 (2) If money in the state special revenue fund for the operation and maintenance of state veterans'  
28 nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred as follows:

29 (a) an amount not to exceed \$3 million to the state general fund; and

30 (b) the remainder to the health and medicaid initiatives account provided for in 53-6-1201.

1 (3) The taxes collected under the provisions of 16-11-111(7) on tobacco products, other than cigarettes,  
2 must in accordance with the provisions of 17-2-124 be deposited as follows:

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

4 (b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in  
5 53-6-1201."

6

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

8 **"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and  
9 medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be  
10 administered by the department of ~~public health and human services~~.

11 (2) There must be deposited in the account:

12 (a) money from cigarette taxes deposited under 16-11-119~~(1)(d)~~;

13 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119~~(3)(b)~~; and

14 (c) money transferred from the state special revenue fund for the operation and maintenance of state  
15 veterans' nursing homes under 16-11-119; and

16 ~~(e)~~(d) any interest and income earned on the account.

17 (3) ~~This~~ Subject to subsection (4), this account may be used only to provide funding for:

18 (a) the state funds necessary to take full advantage of available federal matching funds in order to  
19 administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided  
20 for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

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

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

26 (d) an offset to loss of revenue to the general fund as a result of new tax credits;

27 (e) funding new programs to assist eligible small employers with the costs of providing health insurance  
28 benefits to eligible employees;

29 (f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and  
30 premium assistance payments as provided in Title 33, chapter 22, part 20; and



1 (g) providing a state match for the medicaid program for premium incentive payments or premium  
2 assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216;

3 (h) providing an increase in wages for direct care workers that provide medicaid services as provided  
4 in subsection (4); and

5 (i) tobacco use prevention or cessation programs administered by the department. The funding provided  
6 by this subsection (3)(i) must be equal to at least \$200,000 each fiscal year and cannot be used to supplant other  
7 state or federal funding in any fiscal year for tobacco use prevention or cessation services.

8 (4) (a) The amount of taxes attributable to the increased tax rates under the provisions of [this act] must  
9 be used to provide an increase in wages for direct care workers and additional employer expenses. Any  
10 increased tax revenue that is not claimed by providers under this subsection (4) may be distributed as provided  
11 in subsection (5). The increased revenue is intended to increase medicaid services and not to supplant the  
12 general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

13 (b) Any provider that receives payments distributed under subsection (4)(a) shall pay direct care workers  
14 on average no less than the following:

15 (i) \$10.80 by October 1, 2017;

16 (ii) \$11.80 by January 1, 2018;

17 (iii) \$12.80 by July 1, 2018; and

18 (iv) \$13.80 by October 1, 2018.

19 (c) Subject to the minimum distributions in subsection (4)(b), medicaid provider rates for services  
20 provided by direct care workers must be increased in a manner that reflects an average direct care worker wage  
21 increase of \$1 per hour as indicated in subsection (4)(b)(i), with additional increases of \$1.00 per hour as  
22 indicated in subsections (4)(b)(ii), (4)(b)(iii), and (4)(b)(iv). In addition to direct care worker wage increases, a  
23 provider is entitled to an amount not to exceed 15% of the direct care worker wage increases for employer  
24 expenses.

25 (d) A provider that receives funds under subsection (4)(a) shall maintain appropriate records  
26 documenting wages of direct care workers. This documentation must be maintained and made available to the  
27 department to the same extent as other required records and documentation under applicable medicaid record  
28 requirements.

29 ~~(4)~~(5) (a) On or before July 1, the budget director shall calculate a balance required to sustain each  
30 program in ~~subsection~~ subsections (3)(a) through (3)(g) for each fiscal year of the biennium. If the budget director

1 certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs  
 2 as appropriated. If the budget director determines that the reserve balance of the revenue will not support the  
 3 level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency  
 4 shall adjust the operating budget for the program to reflect the available revenue as determined by the budget  
 5 director.

6 (b) ~~Until~~ Except as provided in subsections (3)(i) and (4), until the programs or credits described in  
 7 subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the  
 8 purposes described in subsections (3)(a) and (3)(c).

9 ~~(5)(6) The phrase~~ As used in this section, the following definitions apply:

10 (a) "Department" means the department of public health and human services provided for in 2-15-2201.

11 (b) (i) "Direct care worker" means a person whose duties focus on the hands-on delivery of medicaid  
 12 services to medicaid patients for the following services:

13 (A) therapeutic group home and community-based psychiatric rehabilitation and support services in the  
 14 division of the department that administers children's mental health and developmental services;

15 (B) intensive community-based rehabilitation and community-based psychiatric rehabilitation and support  
 16 services in the division of the department that administers addictive and mental disorders;

17 (C) residential habilitation, day support and activities, and retirement services through a waiver of federal  
 18 law in the division of the department that administers developmental services; and

19 (D) ancillary services in a nursing facility, personal assistance, community first choice, and elderly and  
 20 physically disabled home and community-based services through a waiver of federal law in the division of the  
 21 department that administers senior and long-term care.

22 (ii) The term does not include program managers, administrative staff, management staff, schedulers,  
 23 nurse supervisors, licensed practical nurses, registered nurses, or case managers.

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

27 ~~(6)(7)~~ The department of public health and human services may adopt rules to implement this section."  
 28

29 **Section 7.** Section 53-6-1201, MCA, is amended to read:

30 **"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and

1    medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be  
2    administered by the department of ~~public health and human services~~.

3           (2) There must be deposited in the account:

4           (a) money from cigarette taxes deposited under 16-11-119~~(1)(d)~~;

5           (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119~~(3)(b)~~; and

6           (c) money transferred from the state special revenue fund for the operation and maintenance of state  
7 veterans' nursing homes under 16-11-119; and

8           ~~(e)~~(d) any interest and income earned on the account.

9           (3) ~~This~~ Subject to subsection (4), this account may be used only to provide funding for:

10          (a) the state funds necessary to take full advantage of available federal matching funds in order to  
11 administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided  
12 for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

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

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

18          (d) an offset to loss of revenue to the general fund as a result of new tax credits;

19          (e) funding new programs to assist eligible small employers with the costs of providing health insurance  
20 benefits to eligible employees;

21          (f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and  
22 premium assistance payments as provided in Title 33, chapter 22, part 20; ~~and~~

23          (g) providing a state match for the medicaid program for premium incentive payments or premium  
24 assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216;

25          (h) providing an increase in wages for direct care workers that provide medicaid services as provided  
26 in subsection (4); and

27          (i) tobacco use prevention or cessation programs administered by the department. The funding provided  
28 by this subsection (3)(i) must be equal to at least \$200,000 each fiscal year and cannot be used to supplant other  
29 state or federal funding in any fiscal year for tobacco use prevention or cessation services.

30          (4) (a) On July 1 of each fiscal year, the department shall provide additional funding for an increase in

1 medicaid provider rates applicable to the services provided by direct care workers. Medicaid provider rates must  
 2 be increased by a rate methodology that provides for an average direct care worker wage increase equal to the  
 3 percentage change to the consumer price index from the previous fiscal year. The consumer price index to be  
 4 used for calculations is the consumer price index for medical care services (CPI-MCS). The increased revenue  
 5 is intended to increase medicaid services and not to supplant the general fund in the trended traditional level of  
 6 appropriation for medicaid services and medicaid provider rates.

7 (b) A provider that receives payments distributed under subsection (4)(a) shall increase the average  
 8 wage for direct care workers by the percentage change to the consumer price index provided for in subsection  
 9 (4)(a).

10 (c) A provider that receives funds under subsection (4)(a) shall maintain appropriate records  
 11 documenting wages of direct care workers. This documentation must be maintained and made available to the  
 12 department to the same extent as other required records and documentation under applicable medicaid record  
 13 requirements.

14 ~~(4)(5)~~ (a) On or before July 1, the budget director shall calculate a balance required to sustain each  
 15 program in ~~subsection~~ subsections (3)(a) through (3)(g) for each fiscal year of the biennium. If the budget director  
 16 certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs  
 17 as appropriated. If the budget director determines that the reserve balance of the revenue will not support the  
 18 level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency  
 19 shall adjust the operating budget for the program to reflect the available revenue as determined by the budget  
 20 director.

21 (b) ~~Until~~ Except as provided in subsections (3)(i) and (4), until the programs or credits described in  
 22 subsections (3)(b) and (3)(d) through (3)(g) are established, the funding must be used exclusively for the  
 23 purposes described in subsections (3)(a) and (3)(c).

24 ~~(5)(6)~~ ~~The phrase~~ As used in this section, the following definitions apply:

25 (a) "Department" means the department of public health and human services provided for in 2-15-2201.

26 (b) (i) "Direct care worker" means a person whose duties focus on the hands-on delivery of medicaid  
 27 services to medicaid patients for the following services:

28 (A) therapeutic group home and community-based psychiatric rehabilitation and support services in the  
 29 division of the department that administers children's mental health and developmental services;

30 (B) intensive community-based rehabilitation and community-based psychiatric rehabilitation and support

1 services in the division of the department that administers addictive and mental disorders;

2 (C) residential habilitation, day support and activities, and retirement services through a waiver of federal  
3 law in the division of the department that administers developmental services; and

4 (D) ancillary services in a nursing facility, personal assistance, community first choice, and elderly and  
5 physically disabled home and community-based services through a waiver of federal law in the division of the  
6 department that administers senior and long-term care.

7 (ii) The term does not include program managers, administrative staff, management staff, schedulers,  
8 nurse supervisors, licensed practical nurses, registered nurses, or case managers.

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

12 (6)(7) The department of public health and human services may adopt rules to implement this section."

13

14 **NEW SECTION. Section 8. Transition.** (1) On or before June 30, 2017, each cigarette wholesaler shall  
15 file a report with the department of revenue in a form prescribed by the department showing the number of  
16 stamped cigarettes and cigarette tax insignia on hand at 11:59 p.m., on April 30, 2017.

17 (2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesaler shall pay the  
18 difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and  
19 cigarette tax insignia subject to [this act] held by the cigarette wholesaler at 11:59 p.m., on April 30, 2017.

20

21 **NEW SECTION. Section 9. Severability.** If a part of [this act] is invalid, all valid parts that are severable  
22 from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part  
23 remains in effect in all valid applications that are severable from the invalid applications.

24

25 **NEW SECTION. Section 10. Effective dates.** (1) Except as provided in subsection (2), [this act] is  
26 effective on passage and approval.

27 (2) [Section 7] is effective January 1, 2019.

28

29 **NEW SECTION. Section 11. Applicability.** (1) Except as provided in subsections (2) and (3), [this act]  
30 applies after April 30, 2017.

1           (2) Section 16-11-111(1) applies to cigarettes sold by a wholesaler after April 30, 2017, that were not  
2 reported and subject to tax under 16-11-111.

3           (3) Section 16-11-111(7) applies to noncigarette tobacco products sold by wholesalers after April 30,  
4 2017.

5

6           NEW SECTION. **Section 12. Termination.** [Section 6] terminates December 31, 2018.

7

- END -