

SENATE BILL NO. 354

INTRODUCED BY M. CAFERRO

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

16
17 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

18
19 **Section 1.** Section 16-10-306, MCA, is amended to read:

20 **"16-10-306. Cigarette and tobacco product labels -- federal requirements -- penalty.** (1) A person
21 may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product
22 that violates any federal:

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

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

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

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

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

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

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

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

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

10 (5) For the purposes of this section;

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

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

14

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

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

18 (a) "Contraband" means:

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

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

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

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

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

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

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

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

30 (a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under

1 ordinary conditions of use, and consists of or contains:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

21 (ii) The term does not include:

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

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

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

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

30 (t) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to

1 a wholesaler or any other person before any discount or reduction.

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

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

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

7

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

9 **"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal**

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

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

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

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

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

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

1 be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota
2 allocations are not transferable between quota periods or between reservations.

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

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

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

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

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

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

27 **"16-11-114. Insignia discount.** (1) Each licensed wholesaler is entitled to purchase an insignia at full
28 face value less the following percentage of the face value upon payment for the insignia as defrayment of the
29 costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

30 (a) ~~0-90%~~ 0.478% for the first 2,580 cartons or portion of 2,580 cartons purchased in any calendar

1 month;

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

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

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

10

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

12 **"16-11-119. Disposition of taxes.** (1) Cigarette taxes collected under the provisions of 16-11-111(1)
13 must, in accordance with the provisions of 17-2-124, be deposited as follows:

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

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

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

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

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

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

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

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

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

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

1 (b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in
2 53-6-1201."

3

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

5 **"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and
6 medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be
7 administered by the department of ~~public health and human services~~.

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

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

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

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

13 ~~(c)(d)~~ any interest and income earned on the account.

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

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

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

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

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

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

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

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

30 (h) providing an increase in wages for direct care workers that provide medicaid services as provided

1 in subsection (4); and

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

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

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

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

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

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

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

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

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

26 ~~(4)(5)~~ (a) On or before July 1, the budget director shall calculate a balance required to sustain each
27 program in ~~subsection~~ subsections (3)(a) through (3)(g) for each fiscal year of the biennium. If the budget director
28 certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs
29 as appropriated. If the budget director determines that the reserve balance of the revenue will not support the
30 level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency

1 shall adjust the operating budget for the program to reflect the available revenue as determined by the budget
2 director.

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

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

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

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

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

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

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

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

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

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

24 ~~(6)(7) The department of public health and human services may adopt rules to implement this section."~~
25

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

27 **"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and
28 medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be
29 administered by the department of ~~public health and human services~~.

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

- 1 (a) money from cigarette taxes deposited under 16-11-119~~(1)~~(d);
- 2 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119~~(3)~~(b); and
- 3 (c) money transferred from the state special revenue fund for the operation and maintenance of state
- 4 veterans' nursing homes under 16-11-119; and
- 5 ~~(e)~~(d) any interest and income earned on the account.
- 6 (3) This Subject to subsection (4), this account may be used only to provide funding for:
- 7 (a) the state funds necessary to take full advantage of available federal matching funds in order to
- 8 administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided
- 9 for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;
- 10 (b) a new need-based prescription drug program established by the legislature for children, seniors,
- 11 chronically ill, and disabled persons that does not supplant similar services provided under any existing program;
- 12 (c) increased medicaid services and medicaid provider rates. The increased revenue is intended to
- 13 increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended
- 14 traditional level of appropriation for medicaid services and medicaid provider rates.
- 15 (d) an offset to loss of revenue to the general fund as a result of new tax credits;
- 16 (e) funding new programs to assist eligible small employers with the costs of providing health insurance
- 17 benefits to eligible employees;
- 18 (f) the cost of administering the tax credit, the purchasing pool, and the premium incentive payments and
- 19 premium assistance payments as provided in Title 33, chapter 22, part 20; and
- 20 (g) providing a state match for the medicaid program for premium incentive payments or premium
- 21 assistance payments to the extent that a waiver is granted by federal law as provided in 53-2-216;
- 22 (h) providing an increase in wages for direct care workers that provide medicaid services as provided
- 23 in subsection (4); and
- 24 (i) tobacco use prevention or cessation programs administered by the department. The funding provided
- 25 by this subsection (3)(i) must be equal to at least \$200,000 each fiscal year and cannot be used to supplant other
- 26 state or federal funding in any fiscal year for tobacco use prevention or cessation services.
- 27 (4) (a) On July 1 of each fiscal year, the department shall provide additional funding for an increase in
- 28 medicaid provider rates applicable to the services provided by direct care workers. Medicaid provider rates must
- 29 be increased by a rate methodology that provides for an average direct care worker wage increase equal to the
- 30 percentage change to the consumer price index from the previous fiscal year. The consumer price index to be

1 used for calculations is the consumer price index for medical care services (CPI-MCS). The increased revenue
 2 is intended to increase medicaid services and not to supplant the general fund in the trended traditional level of
 3 appropriation for medicaid services and medicaid provider rates.

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

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

11 ~~(4)(5)~~ (a) On or before July 1, the budget director shall calculate a balance required to sustain each
 12 program in ~~subsection~~ subsections (3)(a) through (3)(g) for each fiscal year of the biennium. If the budget director
 13 certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs
 14 as appropriated. If the budget director determines that the reserve balance of the revenue will not support the
 15 level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency
 16 shall adjust the operating budget for the program to reflect the available revenue as determined by the budget
 17 director.

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

21 ~~(5)(6) The phrase~~ As used in this section, the following definitions apply:

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

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

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

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

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

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

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

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

9 (6)(7) The department of public health and human services may adopt rules to implement this section."
 10

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

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

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

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

24 (2) [Section 7] is effective January 1, 2019.
 25

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

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

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

1 2017.

2

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

4 - END -