

HOUSE BILL NO. 121

INTRODUCED BY B. BEARD

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4 A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A DIRECT SHIPMENT LICENSE FOR TOBACCO
5 PRODUCTS; REQUIRING A DIRECT SHIPMENT LICENSE FOR A PERSON WHO SHIPS TOBACCO
6 PRODUCTS TO A PERSON OTHER THAN A LICENSED WHOLESALER OR RETAILER; ESTABLISHING A
7 LICENSE FEE; PROVIDING FOR DISPOSITION OF THE LICENSE FEE; REQUIRING A PERSON WITH A
8 DIRECT SHIPMENT LICENSE TO COLLECT TOBACCO TAXES; PROVIDING PENALTIES; EXPANDING
9 RULEMAKING AUTHORITY; AMENDING SECTIONS 16-11-124, 16-11-129, AND 53-6-1201, MCA;
10 REPEALING SECTION 16-11-128, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

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14 NEW SECTION. **Section 1. Direct shipment license for tobacco products -- definition.** (1) Prior to
15 delivering, mailing, or shipping tobacco products into Montana to a person other than a licensed wholesaler or
16 retailer, a person who accepts purchase orders for tobacco product sales shall obtain a direct shipment license
17 as provided in this section.

18 (2) The annual direct shipment license fee is \$400. The license fee must be deposited in the state special
19 revenue account for health and medicaid initiatives provided for in 53-6-1201.

20 (3) The license application must be accompanied by a written statement acknowledging that the person
21 will contract only with common carriers that agree that any delivery of tobacco products will be made only to a
22 person in Montana who is at least 18 years of age and who signs a form acknowledging receipt of the tobacco
23 product.

24 (4) Direct shipments of tobacco products are subject to the provisions of [sections 2 and 3].
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26 NEW SECTION. **Section 2. Requirements for direct shipment of tobacco products -- labeling --**
27 **taxes -- recordkeeping.** (1) The shipment of tobacco products directly to a person other than a licensed
28 wholesaler or retailer from a person that does not possess a current direct shipment license is prohibited, and
29 penalties may be assessed as provided in [section 3].

30 (2) A shipment of tobacco products under this section must be conspicuously labeled with the words

1 "Contains Tobacco: Signature of Person Age 18 or Older Required for Delivery".

2 (3) A person with a direct shipment license shall maintain records of any sales or shipments to an
3 individual in Montana.

4 (4) By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or
5 shipped tobacco products into this state or contracted with another party for delivery service in connection with
6 a sale of tobacco products in this state made during the previous calendar month shall file a memorandum of sale
7 or a copy of the sales invoice with the department and pay the tax required under 16-11-111. The memorandum
8 or sales invoice must provide, for each delivery sale made during the previous calendar month:

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

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

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

12 (5) Failure to pay taxes or file the information required in subsection (4) subjects the person holding the
13 direct shipment license to the penalties and interest provided for in 15-1-216. The department may seek an
14 injunction to restrain the actual or threatened violation of this section and to compel the seller to comply with this
15 section.

16 (6) A person with a direct shipment license shall allow the department to perform an audit of the record
17 of shipments. The shipment records must be retained for 3 years.

18 (7) A person that satisfies the requirements of 15 U.S.C. 376 meets the requirements of this section.

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21 **NEW SECTION. Section 3. Direct shipment license enforcement -- penalty -- rulemaking.** (1)

22 Subject to a right to a hearing and the appeal process provided by the Montana Administrative Procedure Act in
23 Title 2, chapter 4, the department may enforce the requirements of [sections 1 through 3] by suspending or
24 revoking the direct shipment license or imposing a civil penalty not to exceed \$1,500.

25 (2) A person that has a direct shipment license is considered to have consented to the jurisdiction of the
26 department or any other state agency and the Montana courts concerning enforcement of [sections 1 through
27 3] and related rules or regulations.

28 (3) The department may adopt rules to implement this part.

29

30 **Section 4.** Section 16-11-124, MCA, is amended to read:

1 **"16-11-124. Disposition of license fees.** (1) ~~At~~ Except as provided in [section 1], all license fees
2 collected under the provisions of this part must be deposited with the state treasurer in the general fund.

3 (2) Each biennium, there must be appropriated to the department and the department of justice an
4 amount justified and reasonable to operate the cigarette enforcement responsibilities of each department."
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6 **Section 5.** Section 16-11-129, MCA, is amended to read:

7 **"16-11-129. Enforcement.** The attorney general, a designee of the attorney general, or any person who
8 holds a permit under 26 U.S.C. 5713 may bring an action in the appropriate Montana district court to prevent or
9 restrain violations of ~~16-11-128~~ [sections 1 through 3] by any person or by a principal of the person."
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11 **Section 6.** Section 53-6-1201, MCA, is amended to read:

12 **"53-6-1201. Special revenue fund -- health and medicaid initiatives.** (1) There is a health and
13 medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be
14 administered by the department of public health and human services.

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

16 (a) money from cigarette taxes deposited under 16-11-119(2)(c);

17 (b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119(4)(b); ~~and~~

18 (c) tobacco product direct ship license fees as provided in [section 1]; and

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

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

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

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

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

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

30 (e) grants to schools for suicide prevention activities, for the biennium beginning July 1, 2017; and

1 (f) tobacco use prevention or cessation programs administered by the department. The funding provided
 2 by this subsection (3)(f) must be equal to the license fees deposited pursuant to [section 1].

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

9 (b) ~~Until~~ Except as provided in subsection (3)(f), until the programs or credits described in subsections
 10 (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections
 11 (3)(a) and (3)(c).

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

15 (6) The department of public health and human services may adopt rules to implement this section."
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17 **NEW SECTION. Section 7. Repealer.** The following section of the Montana Code Annotated is
 18 repealed:

19 16-11-128. Tobacco product sales reporting requirements.
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21 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 3] are intended to be codified
 22 as an integral part of Title 16, chapter 11, part 1, and the provisions of Title 16, chapter 11, part 1, apply to
 23 [sections 1 and 2].
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25 **NEW SECTION. Section 9. Effective date.** [This act] is effective July 1, 2019.
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