

## 1 HOUSE BILL NO. 312

2 INTRODUCED BY M. DUNWELL

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING THE YOUTH ACCESS TO TOBACCO  
5 PRODUCTS CONTROL ACT; PROHIBITING THE SALE OF FLAVORED PRODUCTS AND PROVIDING  
6 EXCEPTIONS; PROHIBITING THE SALE OF TOBACCO PRODUCTS, ALTERNATIVE NICOTINE PRODUCTS,  
7 AND VAPOR PRODUCTS THROUGH SELF-SERVICE DISPLAYS; RESTRICTING VENDING MACHINE SALES  
8 TO CIGARETTES ONLY; PROVIDING A PENALTY; EXTENDING RULEMAKING AUTHORITY; AND  
9 AMENDING SECTIONS 16-11-302, 16-11-303, 16-11-306, 16-11-308, AND 16-11-309, MCA."

10  
11 WHEREAS, state law prohibits the sale or distribution of tobacco products, alternative nicotine products,  
12 and vapor products to minors; and

13 WHEREAS, the Centers for Disease Control and Prevention released findings showing that use of  
14 e-cigarettes by high school students has increased by an astounding 78% within just the last year; and

15 WHEREAS, e-cigarettes are now the most commonly used tobacco product among Montana's youth,  
16 with 46% of Montana high school students having used an electronic smoking device in their lifetime; and

17 WHEREAS, the Food and Drug Administration has stated that "all tobacco products, including flavored  
18 tobacco products, are as addictive and carry the same health risks as regular tobacco products"; and

19 WHEREAS, youth reported product flavoring as a top reason for using tobacco within the past 30 days;  
20 and

21 WHEREAS, tobacco companies use predatory marketing tactics to target youth, particularly susceptible  
22 customers, by placing a large number of tobacco products at retail stores popular with youth, often within reach  
23 and near gum and candy; and

24 WHEREAS, more than half of teenagers visit a convenience store at least once a week, and cigarette  
25 marketing is more prevalent in stores where youth shop frequently; and

26 WHEREAS, 67% of Montanans agree with a law that would prohibit the sale of flavored tobacco products  
27 in all stores where youth under the age of 18 are allowed; and

28 WHEREAS, the United States Surgeon General reports that no youth should ever use e-cigarettes and  
29 has called on local authorities to use strategies to discourage vaping by youth; and

30 WHEREAS, in December 2018, the United States Surgeon General declared e-cigarette use among

1 youth an epidemic in the United States; and

2 WHEREAS, it is the intent of the Legislature to protect public health and welfare by reducing youth access  
3 to tobacco products, alternative nicotine products, and vapor products.

4

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

6

7 **Section 1.** Section 16-11-302, MCA, is amended to read:

8 **"16-11-302. Definitions.** For the purposes of 16-11-301 through 16-11-308, the following definitions  
9 apply:

10 (1) (a) "Alternative nicotine product" means any manufactured noncombustible product containing  
11 nicotine derived from tobacco that is intended for human consumption, whether chewed, absorbed, dissolved,  
12 or ingested by any other means.

13 (b) The term does not include a tobacco product, a vapor product, or a product regulated as a drug or  
14 device by the United States food and drug administration under Chapter V of the Federal Food, Drug, and  
15 Cosmetic Act.

16 (2) "Distribute" means:

17 (a) to give, deliver, sample, or sell;

18 (b) to offer to give, deliver, sample, or sell; or

19 (c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or  
20 sell.

21 (3) (a) "Flavored product" means any tobacco product, alternative nicotine product, or vapor product that  
22 contains a taste or smell other than the taste or smell of tobacco that is distinguishable by an ordinary consumer  
23 prior to or during the consumption of a tobacco product, alternative nicotine product, or vapor product. The taste  
24 or smell may include but is not limited to menthol, mint, wintergreen, fruit, chocolate, cocoa, vanilla, honey, or the  
25 taste or smell of any candy, dessert, alcoholic beverage, herb, or spice.

26 (b) A public statement or claim made or disseminated by the manufacturer of a tobacco product,  
27 alternative nicotine product, or vapor product or by a person authorized by the manufacturer to make public  
28 statements or claims that the tobacco product, alternative nicotine product, or vapor product produces a taste or  
29 smell other than tobacco constitutes presumptive evidence that the tobacco product, alternative nicotine product,  
30 or vapor product is a flavored product.

1           ~~(3)~~(4) "Health warning" means a tobacco product label required by federal law and intended to alert  
 2 users of the product to the health risks associated with tobacco use. The term includes warning labels required  
 3 under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health  
 4 Education Act of 1986.

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

6           ~~(5)~~(6) "Person" means a natural person, company, corporation, firm, partnership, organization, or other  
 7 legal entity.

8           (7) "Self-service display" means the open display or storage of a tobacco product, alternative nicotine  
 9 product, or vapor product in a manner that is physically accessible in any way to the general public without:

10           (a) the assistance of the person selling the tobacco product, alternative nicotine product, or vapor  
 11 product; and

12           (b) a direct person-to-person transfer between the purchaser and the seller.

13           ~~(6)~~(8) (a) "Tobacco product" means a substance intended for human consumption that contains tobacco.  
 14 The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

15           (b) The term does not include an alternative nicotine product, a vapor product, or a product regulated  
 16 as a drug or device by the United States food and drug administration under Chapter V of the Federal Food, Drug,  
 17 and Cosmetic Act.

18           ~~(7)~~(9) (a) "Vapor product" means a noncombustible product that may contain nicotine and that uses a  
 19 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless  
 20 of shape or size, to produce vapor from a solution or other substance. The term includes an electronic cigarette,  
 21 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other  
 22 container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic  
 23 cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

24           (b) The term does not include a product regulated as a drug or device by the United States food and drug  
 25 administration under Chapter V of the Federal Food, Drug, and Cosmetic Act."

26

27           **Section 2.** Section 16-11-303, MCA, is amended to read:

28           **"16-11-303. License for retail sale of tobacco products -- alternative nicotine products -- vapor**  
 29 **products -- sale of flavored products prohibited.** (1) A person may not sell tobacco products, alternative  
 30 nicotine products, or vapor products at retail, whether over the counter, by vending machine, or otherwise, without

1 a license obtained from the department of revenue.

2 (2) A license for the retail sale of tobacco products, alternative nicotine products, or vapor products may  
3 be obtained from the department of revenue.

4 (3) The fee collected by the department must be deposited in the general fund.

5 (4) A licensee may not sell flavored products at retail unless the licensee:

6 (a) prohibits individuals under 18 years of age from entering the retail premises; and

7 (b) derives at least 90% of the licensee's revenues from the sale of tobacco products, alternative nicotine  
8 products, and vapor products. At the request of the department, the licensee shall provide financial records  
9 documenting annual sales."

10

11 **Section 3.** Section 16-11-306, MCA, is amended to read:

12 **"16-11-306. Sales of tobacco, alternative nicotine products, or vapor products through**  
13 **self-service displays prohibited -- vending machines restricted.** (1) Except as provided in subsections (2)  
14 and (3), tobacco products, alternative nicotine products, and vapor products may not be sold or offered for sale  
15 by means of a self-service display, and a purchaser may not take possession of a tobacco product, alternative  
16 nicotine product, or vapor product until after payment has been received and processed.

17 ~~(1)(2) Tobacco products, alternative nicotine products, and vapor products~~ Only cigarettes may be sold  
18 through a vending machine ~~only~~ in places where alcoholic beverages are sold and consumed on the premises  
19 and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the  
20 establishment. The ~~tobacco products, alternative nicotine products, or vapor products~~ cigarettes must be in a  
21 vending machine that contains only ~~tobacco products, alternative nicotine products, or vapor products~~ cigarettes.

22 ~~(2)(3) Tobacco products, alternative nicotine products, or vapor products~~ Cigarettes may not be sold  
23 through a vending machine that is located in a restaurant unless the restaurant has a bar, the restaurant area  
24 shares seating with the bar area, and the vending machine meets the requirements of subsection ~~(1)~~ (2).

25 ~~(3)(4) The sale of tobacco products, alternative nicotine products, or vapor products~~ cigarettes from a  
26 vending machine under the direct line-of-sight supervision of an owner or employee is considered a sale of  
27 tobacco products, ~~alternative nicotine products, or vapor products~~ by the owner or employee for the purposes  
28 of 16-11-305."

29

30 **Section 4.** Section 16-11-308, MCA, is amended to read:

1           **"16-11-308. Civil penalties -- license suspension -- tobacco education fee.** (1) Failure to obtain a  
2 license or the sale of flavored products in violation of, as required by 16-11-303, failure to post signs; as provided  
3 in 16-11-304, failure to comply with 16-11-306, or the manufacture or sale of cigarettes or rolling tobacco in  
4 violation of the minimum package size requirements of 16-11-111 or 16-11-307 is punishable by a civil penalty  
5 of \$100. The department may collect the penalty in the manner provided for the collection of other debts.

6           (2) A person who violates 16-11-305(1) or 16-11-307(1) at any one location within a 3-year period shall  
7 be punished as follows:

8           (a) A first through third offense is punishable by a verbal notification of violation.

9           (b) A fourth offense is punishable by a written notice of violation to be sent by the department of public  
10 health and human services to the owner of the establishment.

11           (c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco  
12 education fee of \$500. The employee or other person who sold the tobacco product, alternative nicotine product,  
13 or vapor product, the establishment manager, and the establishment owner, if the owner is a sole proprietor or  
14 partner, shall read and view the tobacco education material.

15           (d) A sixth offense under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2) is  
16 punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

17           (e) A seventh and subsequent offense under 16-11-305(1) or 16-11-307(1) or a fourth and subsequent  
18 offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and 16-11-303  
19 for 1 year.

20           (3) After 2 years from the first violation, if a person has not received notice of any further violations, a  
21 second violation is considered a first violation for the purposes of subsection (2).

22           (4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless tobacco  
23 education fees or civil penalties are paid in full.

24           (5) Tobacco education fees must be assessed and collected by the department of public health and  
25 human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by the  
26 department of public health and human services within 30 days of the alleged violation by certified letter  
27 addressed to the establishment owner or manager. The notice of assessment against the owner of the  
28 establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic  
29 equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days  
30 from the date on which the notice of assessment was mailed, the owner or manager shall notify the department

1 of public health and human services that the owner or manager objects to the assessment and request a hearing  
2 pursuant to this subsection.

3 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of  
4 16-11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of \$25 against the  
5 employee who sold the tobacco product, alternative nicotine product, or vapor product if the employee is not the  
6 owner of the establishment. The tobacco education fee must be assessed and collected by the department of  
7 public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this  
8 subsection must be made by the department of public health and human services by certified letter addressed  
9 to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be  
10 conducted using electronic equipment and must comply with the provisions of the Montana Administrative  
11 Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall  
12 notify the department of public health and human services that the employee objects to the assessment and  
13 requests a hearing pursuant to this subsection.

14 (7) The tobacco education material referred to in this section must be provided by the department of  
15 public health and human services in the form of written and video self-teaching materials. The education materials  
16 may be used only for the purposes provided in this section. Upon completion of the self-teaching materials, the  
17 establishment owner or manager shall execute a written statement on a form provided by the department of public  
18 health and human services verifying that the employee, owner, or manager, as appropriate, has read and viewed  
19 the self-teaching material and shall return the statement and the self-teaching video to the department of public  
20 health and human services.

21 (8) Upon the sixth and subsequent violation of this section, the department of public health and human  
22 services shall notify the department of revenue in writing to initiate suspension of the licenses required by  
23 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the  
24 licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144  
25 and this section. The department of revenue shall review the record of violations and may initiate license  
26 suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the  
27 department of revenue declines to initiate suspension proceedings, the violation may not be charged against the  
28 licensee for the purposes of this section.

29 (9) Fees assessed pursuant to this section must be deposited in the state general fund."  
30

