

HOUSE BILL NO. 628

INTRODUCED BY M. DUNWELL

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REGULATING THE RETAIL SALE OF FLAVORED TOBACCO,
5 ALTERNATIVE NICOTINE, OR VAPOR PRODUCTS, KNOWN COLLECTIVELY AS FLAVORED PRODUCTS,
6 UNDER THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; REQUIRING A LICENSE AND
7 INSPECTIONS FOR SALES OF FLAVORED PRODUCTS; RESTRICTING SALES TO THOSE 18 YEARS OF
8 AGE OR OLDER; ADDING PENALTIES FOR VIOLATIONS OF FLAVORED PRODUCT RESTRICTIONS;
9 AMENDING SECTIONS 16-11-302, 16-11-303, 16-11-306, 16-11-308, AND 16-11-309, MCA; AND PROVIDING
10 AN EFFECTIVE DATE."

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

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

15 **"16-11-302. Definitions.** For the purposes of 16-11-301 through 16-11-308, the following definitions
16 apply:

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

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

23 (2) "Distribute" means:

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

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

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

28 (3) (a) "Flavored product" means any tobacco product, alternative nicotine product, or vapor product that
29 contains a taste or smell other than the taste or smell of tobacco that is distinguishable by an ordinary consumer
30 prior to or during the consumption of a tobacco product, alternative nicotine product, or vapor product. The taste

1 or smell may include but is not limited to menthol, mint, wintergreen, fruit, chocolate, cocoa, vanilla, honey, or the
2 taste or smell of any candy, dessert, alcoholic beverage, herb, or spice.

3 (b) A public statement or claim made or disseminated by the manufacturer of a tobacco product,
4 alternative nicotine product, or vapor product or by a person authorized by the manufacturer to make public
5 statements or claims that the tobacco product, alternative nicotine product, or vapor product produces a taste or
6 smell other than tobacco constitutes presumptive evidence that the tobacco product, alternative nicotine product,
7 or vapor product is a flavored product.

8 ~~(3)~~(4) "Health warning" means a tobacco product label required by federal law and intended to alert
9 users of the product to the health risks associated with tobacco use. The term includes warning labels required
10 under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health
11 Education Act of 1986.

12 ~~(4)~~(5) "License" means a retail tobacco product sales license.

13 ~~(5)~~(6) "Person" means a natural person, company, corporation, firm, partnership, organization, or other
14 legal entity.

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

18 (a) the assistance of the person selling the tobacco product, alternative nicotine product, vapor product,
19 or flavored product; and

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

21 ~~(6)~~(8) (a) "Tobacco product" means a substance intended for human consumption that contains tobacco.
22 The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

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

26 ~~(7)~~(9) (a) "Vapor product" means a noncombustible product that may contain nicotine and that uses a
27 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means, regardless
28 of shape or size, to produce vapor from a solution or other substance. The term includes an electronic cigarette,
29 electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor cartridge or other
30 container that may contain nicotine in a solution or other form that is intended to be used with or in an electronic

1 cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

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

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

6 **"16-11-303. License for retail sale of tobacco products -- alternative nicotine products -- vapor**
7 **products -- flavored products.** (1) A person may not sell tobacco products, alternative nicotine products, ~~or~~
8 vapor products, or flavored products at retail, whether over the counter, by vending machine, or otherwise, without
9 a license obtained from the department of revenue.

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

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

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

15 **"16-11-306. Sales Restrictions on sales of tobacco, alternative nicotine products, or vapor**
16 **products, or flavored products through vending machines restricted.** (1) Tobacco products, alternative
17 nicotine products, and vapor products may be sold through a vending machine only in places where alcoholic
18 beverages are sold and consumed on the premises and where the vending machine is under the direct
19 line-of-sight supervision of the owner or an employee of the establishment. The tobacco products, alternative
20 nicotine products, or vapor products must be in a vending machine that contains only tobacco products,
21 alternative nicotine products, or vapor products.

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

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

29 (4) (a) Except as provided in subsection (4)(b), flavored products may not be sold or offered for sale by
30 means of a self-service display or a vending machine, and a purchaser may not take possession of a flavored

1 product until after payment has been received and processed.

2 (b) A licensee may sell flavored products at retail with limited self-service access if the licensee:

3 (i) prohibits individuals under 18 years of age from entering the retail premises; or

4 (ii) provides a separate access area, which may include a humidor, that is monitored by the retail staff
5 and is restricted to individuals 18 years of age or older. "

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

8 **"16-11-308. Civil penalties -- license suspension -- tobacco education fee.** (1) Failure to obtain a
9 license, as required by 16-11-303, failure to post signs, as provided in 16-11-304, failure to restrict the sale of
10 flavored products in violation of 16-11-306, or the manufacture or sale of cigarettes or rolling tobacco in violation
11 of the minimum package size requirements of 16-11-111 or 16-11-307 is punishable by a civil penalty of \$100.
12 The department may collect the penalty in the manner provided for the collection of other debts.

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

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

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

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

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

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

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

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

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

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

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

28 (8) Upon the sixth and subsequent violation of this section, the department of public health and human
29 services shall notify the department of revenue in writing to initiate suspension of the licenses required by
30 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of the

1 licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-11-144
2 and this section. The department of revenue shall review the record of violations and may initiate license
3 suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the
4 department of revenue declines to initiate suspension proceedings, the violation may not be charged against the
5 licensee for the purposes of this section.

6 (9) Fees assessed pursuant to this section must be deposited in the state general fund."
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8 **Section 5.** Section 16-11-309, MCA, is amended to read:

9 **"16-11-309. Inspection and notification of violation required.** (1) The department of public health and
10 human services shall conduct inspections of persons selling or distributing tobacco products, alternative nicotine
11 products, ~~or vapor products, or flavored products~~ to determine compliance with 16-11-303, 16-11-304,
12 16-11-305(1), 16-11-306, and 16-11-307. Inspections may be conducted directly by the department of public
13 health and human services or may be provided for by contract let by the department of public health and human
14 services. Persons found to be in violation of the requirements of this part or the rules of the department of public
15 health and human services a fourth and subsequent time must be notified in writing by the department of public
16 health and human services of the facts of the violation and the penalties provided by this part.

17 (2) The department of public health and human services shall provide documentation of alleged
18 violations of 16-11-303; and 16-11-305; ~~and~~ through 16-11-307 to the department of revenue."
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20 NEW SECTION. **Section 6. Notification to tribal governments.** The secretary of state shall send a
21 copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
22 Chippewa tribe.

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24 NEW SECTION. **Section 7. Effective date.** [This act] is effective July 1, 2019.

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