A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ALTERNATIVE NICOTINE PRODUCTS AND VAPOR PRODUCTS; LIMITING LOCAL GOVERNING UNITS AND THE DEPARTMENT OF PUBLIC HEALTH AND HUMAN SERVICES FROM ESTABLISHING REQUIREMENTS ON ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS; AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS ACT TO CLARIFY THAT ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS ARE SEPARATE AND DISTINCT FROM TOBACCO PRODUCTS; AMENDING SECTIONS 16-11-301 AND 16-11-302, MCA; REPEALING SECTION 16-11-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

WHEREAS, 26 U.S.C. 5702, defining tobacco products, does not include alternative nicotine products or vapor products in the definition of tobacco products; and

WHEREAS, this bill seeks to clarify Montana law that alternative nicotine products or vapor products are separate and distinct from tobacco products.

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

NEW SECTION. Section 1. Alternative nicotine products and vapor products -- rulemaking and local ordinance prohibition. (1) In accordance with Article XI, section 6, of the Montana constitution, a local governing unit may not establish or continue in effect any regulation, ordinance, requirement, or restrictions with respect to the definition, classification, manufacturing and product standards, the manufacture, ingredients and constituents, labeling, product warning requirements, marketing, distribution, sale, possession, exposure to, access to, advertising and promotion of, or use of alternative nicotine products or vapor products that is different from, or in addition to, any requirement under the provisions of 50-40-103(8) or this section.

(2) Notwithstanding 50-1-202 or 50-2-116, the department of public health and human services and local health boards are prohibited from establishing or continuing in effect any regulation or rule with respect to
the definition, classification, manufacturing and product standards, the manufacture, ingredients and
constituents, labeling, product warning requirements, marketing, distribution, sale, possession, exposure to,
access to, advertising and promotion of, the characterizing flavor, or use of alternative nicotine products or
vapor products which is different from, or in addition to, any requirement under the provisions of 50-40-103(8)
or this section.

Section 2. Section 16-11-301, MCA, is amended to read:

"16-11-301. Short title. This part may be cited as the "Youth Access to Tobacco Products, Alternative
Nicotine Products, and Vapor Products Control Act"."

Section 3. Section 16-11-302, MCA, is amended to read:

"16-11-302. Definitions. For the purposes of 16-11-301 through 16-11-309 this part, the following
definitions apply:

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

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

(2) "Characterizing flavor" means a taste or aroma, other than the taste or aroma of tobacco, imparted
either prior to or during consumption of a tobacco product, vapor product, or alternative nicotine product, or any
byproduct produced thereof. This includes but is not limited to tastes or aromas relating to food or drink of any
sort, menthol, mint, wintergreen, fruit, chocolate, vanilla, honey, candy, cocoa, dessert, alcoholic beverages,
herbs, or spices.

(2)(3) "Distribute" means:

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

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

(c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or
(3)(4) "Health warning" means a tobacco product label required by federal law and intended to alert users of the product to the health risks associated with tobacco use. The term includes warning labels required under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health Education Act of 1986.

(4)(5) "License" means a retail tobacco product, alternative nicotine product, and vapor product sales license.

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

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

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

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

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

**NEW SECTION. Section 4. Repealer.** The following section of the Montana Code Annotated is repealed:

16-11-311. Local regulations.

**NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
integral part of Title 16, chapter 11, part 3, and the provisions of Title 16, chapter 11, part 3, apply to [section 1].

NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

NEW SECTION. Section 7. Retroactive applicability. [This act] applies retroactively, within the meaning of 1-2-109, to any regulation, rule, or ordinance adopted by a local governing body, a local board of health, or the department of public health and human services before, on, or after [the effective date of this act] that is in violation of [section 1].

- END -