

## 1 HOUSE BILL NO. 137

2 INTRODUCED BY R. MARSHALL

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO ALTERNATIVE NICOTINE  
5 PRODUCTS AND VAPOR PRODUCTS; LIMITING LOCAL GOVERNING UNITS AND THE DEPARTMENT OF  
6 PUBLIC HEALTH AND HUMAN SERVICES FROM ESTABLISHING REQUIREMENTS ON ALTERNATIVE  
7 NICOTINE PRODUCTS OR VAPOR PRODUCTS; AMENDING THE YOUTH ACCESS TO TOBACCO  
8 PRODUCTS ACT TO CLARIFY THAT ALTERNATIVE NICOTINE PRODUCTS OR VAPOR PRODUCTS ARE  
9 SEPARATE AND DISTINCT FROM TOBACCO PRODUCTS; AMENDING SECTIONS 16-11-301 AND 16-11-  
10 302, MCA; REPEALING SECTION 16-11-311, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE  
11 AND A RETROACTIVE APPLICABILITY DATE."  
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13 WHEREAS, 26 U.S.C. 5702, defining tobacco products, does not include alternative nicotine products  
14 or vapor products in the definition of tobacco products; and

15 WHEREAS, this bill seeks to clarify Montana law that alternative nicotine products or vapor products  
16 are separate and distinct from tobacco products.  
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18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
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20 NEW SECTION. **Section 1. Alternative nicotine products and vapor products -- rulemaking and**  
21 **local ordinance prohibition.** (1) In accordance with Article XI, section 6, of the Montana constitution, a local  
22 governing unit may not establish or continue in effect any regulation, ordinance, requirement, or restrictions with  
23 respect to the definition, classification, manufacturing and product standards, the manufacture, ingredients and  
24 constituents, labeling, product warning requirements, marketing, distribution, sale, possession, exposure to,  
25 access to, advertising and promotion of, or use of alternative nicotine products or vapor products that is  
26 different from, or in addition to, any requirement under the provisions of 50-40-103(8) or this section.

27 (2) Notwithstanding 50-1-202 or 50-2-116, the department of public health and human services and  
28 local health boards are prohibited from establishing or continuing in effect any regulation or rule with respect to

1 the definition, classification, manufacturing and product standards, the manufacture, ingredients and  
 2 constituents, labeling, product warning requirements, marketing, distribution, sale, possession, exposure to,  
 3 access to, advertising and promotion of, the characterizing flavor, or use of alternative nicotine products or  
 4 vapor products which is different from, or in addition to, any requirement under the provisions of 50-40-103(8)  
 5 or this section.

6

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

8 **"16-11-301. Short title.** This part may be cited as the "Youth Access to Tobacco Products, Alternative  
 9 Nicotine Products, and Vapor Products Control Act"."

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

12 **"16-11-302. Definitions.** For the purposes of ~~16-11-301 through 16-11-308~~ this part, the following  
 13 definitions apply:

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

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

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

25 ~~(2)(3)~~ "Distribute" means:

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

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

28 (c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or

1 sell.

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

6 ~~(4)~~(5) "License" means a retail tobacco product, alternative nicotine product, and vapor product sales  
7 license.

8 ~~(5)~~(6) "Person" means a natural person, company, corporation, firm, partnership, organization, or  
9 other legal entity.

10 ~~(6)~~(7) (a) "Tobacco product" means a substance intended for human consumption that contains  
11 tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

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

15 ~~(7)~~(8) (a) "Vapor product" means a noncombustible product that may contain nicotine and that uses a  
16 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,  
17 regardless of shape or size, to produce vapor from a solution or other substance. The term includes an  
18 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor  
19 cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with  
20 or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

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

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

26 16-11-311. Local regulations.

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28 NEW SECTION. Section 5. Codification instruction. [Section 1] is intended to be codified as an

1 integral part of Title 16, chapter 11, part 3, and the provisions of Title 16, chapter 11, part 3, apply to [section 1].

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

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

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