

1 HOUSE BILL NO. 293
2 INTRODUCED BY R. MARSHALL, S. GUNDERSON, E. BUTTREY
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO ALTERNATIVE
5 NICOTINE AND VAPOR PRODUCTS; ESTABLISHING THAT ALTERNATIVE NICOTINE AND VAPOR
6 PRODUCTS ARE SEPARATE FROM TOBACCO REGULATIONS; PROVIDING DEFINITIONS; PROVIDING
7 FOR LICENSURE AND FEES; PROVIDING RESTRICTIONS ON SALES TO PERSONS UNDER 18 AND ON
8 CERTAIN OTHER SALES; PROVIDING FOR CIVIL PENALTIES; PROVIDING RULEMAKING AUTHORITY;
9 AMENDING SECTIONS 7-1-111, 16-11-122, 16-11-302, 16-11-303, 16-11-304, 16-11-305, 16-11-306, 16-11-
10 308, 16-11-309, 16-11-310, 16-11-311, 30-16-301, 45-5-623, AND 45-5-637, MCA; AND REPEALING
11 SECTION 16-11-313, MCA."

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

14
15 NEW SECTION. **Section 1. Definitions.** For the purposes of [sections 1 through 9], the following
16 definitions 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. THE TERM INCLUDES SYNTHETIC NICOTINE AND SYNTHETIC NICOTINE PRODUCTS.

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

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

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

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

5 (5) Fees assessed pursuant to this section must be deposited in the state general fund.
6

7 **NEW SECTION. Section 6. Inspection and notification of violation required.** (1) The department
8 of public health and human services shall conduct inspections of persons selling or distributing alternative
9 nicotine products or vapor products to determine compliance with [sections 1 through 9]. Inspections may be
10 conducted directly by the department of public health and human services or may be provided for by contract
11 let by the department of public health and human services. Persons found to be in violation of the requirements
12 of [sections 1 through 9] or the rules of the department of public health and human services a fourth and
13 subsequent time must be notified in writing by the department of public health and human services of the facts
14 of the violation and the penalties provided by [sections 1 through 9].

15 (2) The department of public health and human services shall provide documentation of alleged
16 violations of [sections 1 through 9] to the department of revenue.
17

18 **NEW SECTION. Section 7. Minors not liable for possession or attempt to purchase.** An
19 individual under 18 years of age assisting in the enforcement of [sections 1 through 9] is not liable under a civil
20 or criminal law for the possession of or the attempt to purchase an alternative nicotine product or vapor product
21 for the purposes of enforcing [sections 1 through 9].
22

23 **NEW SECTION. Section 8. Rulemaking authority.** The department of revenue may adopt rules to
24 implement [sections 1 through 9].
25

26 **NEW SECTION. Section 9. Local regulations.** A local government may by ordinance adopt
27 ~~reasonable regulations for the sale of alternative nicotine or vapor products. A local government may not adopt~~

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1 ~~or enforce any local ordinance or resolution that prohibits the sale of alternative nicotine products or vapor~~
2 ~~products on the subjects of [sections 1 through 8] that are no more stringent than [sections 1 through 8].~~

3

4 **Section 10.** Section 7-1-111, MCA, is amended to read:

5 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
6 exercising the following:

7 (1) any power that applies to or affects any private or civil relationship, except as an incident to the
8 exercise of an independent self-government power;

9 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject
10 to those provisions, it may exercise any power of a public employer with regard to its employees;

11 (3) any power that applies to or affects the public school system, except that a local unit may
12 impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and
13 shall exercise any power that it is required by law to exercise regarding the public school system;

14 (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of
15 public convenience and necessity pursuant to Title 69, chapter 12;

16 (5) any power that establishes a rate or price otherwise determined by a state agency;

17 (6) any power that applies to or affects any determination of the department of environmental
18 quality with regard to any mining plan, permit, or contract;

19 (7) any power that applies to or affects any determination by the department of environmental
20 quality with regard to a certificate of compliance;

21 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
22 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6
23 months' imprisonment, or both, except as specifically authorized by statute;

24 (9) any power that applies to or affects the right to keep or bear arms;

25 (10) any power that applies to or affects a public employee's pension or retirement rights as
26 established by state law, except that a local government may establish additional pension or retirement
27 systems;

1 by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of
2 the licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-
3 11-144 and this section. The department of revenue shall review the record of violations and may initiate
4 license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the
5 department of revenue declines to initiate suspension proceedings, the violation may not be charged against
6 the licensee for the purposes of this section.

7 (9) Fees assessed pursuant to this section must be deposited in the state general fund."
8

9 **Section 18.** Section 16-11-309, MCA, is amended to read:

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

18 (2) The department of public health and human services shall provide documentation of alleged
19 violations of 16-11-303, 16-11-305, and 16-11-307 to the department of revenue."
20

21 **Section 19.** Section 16-11-310, MCA, is amended to read:

22 **"16-11-310. Minors not liable for possession or attempt to purchase.** An individual under 18
23 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession
24 of or the attempt to purchase a tobacco product, ~~alternative nicotine product, or vapor product~~ for the purposes
25 of enforcing this part."
26

27 **Section 20.** Section 16-11-311, MCA, is amended to read:

1 **"16-11-311. Local regulations.** A local government may by ordinance adopt regulations on the
2 subjects of 16-11-301 through 16-11-308, ~~including alternative nicotine or vapor products as provided in 16-11-~~
3 ~~313, that are no more stringent than 16-11-301 through 16-11-308 and 16-11-313~~ that are no more stringent
4 than 16-11-301 through 16-11-308 and 16-11-313. This section does not apply to regulations affecting
5 alternative nicotine products or vapor products as provided in [sections 1 through 9]."
6

7 **Section 21.** Section 30-16-301, MCA, is amended to read:

8 **"30-16-301. Business registration and licensing plan -- administration.** (1) The provisions of 16-
9 11-120, 16-11-122, 30-12-203, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201
10 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a means of
11 implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-11-120, 16-
12 11-122, [section 2], 30-12-203, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201
13 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses
14 selected by the board of review must allow for:

- 15 (a) an anniversary date for license renewal that is set by the board of review;
16 (b) an electronic means of verifying the information required in the license application; and
17 (c) payment of fees required for licensure by credit card, debit card, or other commercially
18 acceptable means as provided in 15-1-231.

19 (2) The department shall designate an employee in charge of administering the plan whose duties
20 include those of executive secretary of the board of review."
21

22 **Section 22.** Section 45-5-623, MCA, is amended to read:

23 **"45-5-623. Unlawful transactions with children.** (1) Except as provided for in 16-6-305, a person
24 commits the offense of unlawful transactions with children if the person knowingly:

- 25 (a) sells or gives explosives to a child except as authorized under appropriate city ordinances;
26 (b) sells or gives intoxicating substances other than alcoholic beverages to a child;
27 (c) sells or gives an alcoholic beverage to a person under 21 years of age;