

1 HOUSE BILL NO. 869
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 5 BERGSTROM, K. REGIER, S. HINEBAUCH, R. LYNCH, D. BARTEL, J. ELLSWORTH, G. KMETZ, J.
 6 FITZPATRICK, J. ETCHART, D. HARVEY, J. KASSMIER, B. PHALEN, L. HELLEGAARD, T. SMITH, N.
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 9 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING TOBACCO LAWS; REVISING TOBACCO
 10 EDUCATION FEES; REVISING TOBACCO SETTLEMENT ACCOUNT ALLOCATION; REVISING THE
 11 TOBACCO PREVENTION ADVISORY BOARD; AMENDING SECTIONS 16-11-308, 17-6-606, AND 17-6-610,
 12 MCA; AND PROVIDING AN APPLICABILITY DATE."

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

15
 16 **Section 1.** Section 16-11-308, MCA, is amended to read:

17 **"16-11-308. Civil penalties -- license suspension -- tobacco education fee.** (1) Failure to obtain a
 18 license, as required by 16-11-303, failure to post signs, as provided in 16-11-304, or the manufacture or sale of
 19 cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307
 20 is punishable by a civil penalty of \$100. The department may collect the penalty in the manner provided for the
 21 collection of other debts.

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

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

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

27 (c) A fifth offense is punishable by assessment against the owner of the establishment of a
 28 tobacco education fee of \$500. The employee or other person who sold the tobacco product, alternative

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1 nicotine product, or vapor product, the establishment manager, and the establishment owner, if the owner is a
2 sole proprietor or partner, shall read and view the tobacco education material.

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

5 (e) A seventh and subsequent offense under 16-11-305(1) or 16-11-307(1) or a fourth and
6 subsequent offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and
7 16-11-303 for 1 year.

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

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

12 (5) Tobacco education fees must be assessed and collected by the department of public health
13 and human services. The department shall assess fees of \$25 for a 4-hour course, \$45 for an 8-hour course,
14 \$65 for a 12-hour course, and \$85 for a 16-hour course. Notice of an assessment pursuant to subsection (2)
15 and this subsection must be made by the department of public health and human services within 30 days of the
16 alleged violation by certified letter addressed to the establishment owner or manager. The notice of assessment
17 against the owner of the establishment must provide an opportunity for a hearing. The hearing may be
18 conducted using electronic equipment and must comply with the provisions of the Montana Administrative
19 Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the owner or
20 manager shall notify the department of public health and human services that the owner or manager objects to
21 the assessment and request a hearing pursuant to this subsection.

22 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-
23 11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of \$25 against the
24 employee who sold the tobacco product, alternative nicotine product, or vapor product if the employee is not the
25 owner of the establishment. The tobacco education fee must be assessed and collected by the department of
26 public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this
27 subsection must be made by the department of public health and human services by certified letter addressed
28 to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be

1 conducted using electronic equipment and must comply with the provisions of the Montana Administrative
2 Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall
3 notify the department of public health and human services that the employee objects to the assessment and
4 requests a hearing pursuant to this subsection.

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

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

20 (9) Fees assessed pursuant to this section must be deposited in the state general fund."
21

22 **Section 2.** Section 17-6-606, MCA, is amended to read:

23 **"17-6-606. Tobacco settlement accounts -- purpose -- uses.** (1) The purpose of this section is to
24 dedicate a portion of the tobacco settlement proceeds to fund statewide programs for tobacco disease
25 prevention designed to:

- 26 (a) discourage children from starting use of tobacco;
- 27 (b) assist adults in quitting use of tobacco; and
- 28 (c) provide funds for the children's health insurance program.

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1 (2) An amount equal to ~~32%~~ 17% 16% of the total yearly tobacco settlement proceeds received
2 after June 30, 2003, must be deposited in a state special revenue account. Subject to subsection ~~(5)(6)~~, the
3 funds referred to in this subsection may be used only for funding statewide programs for tobacco disease
4 prevention designed to prevent children from starting tobacco use and to help adults who want to quit tobacco
5 use. The department of public health and human services shall manage the tobacco disease prevention
6 programs and shall adopt rules to implement the programs. In adopting rules, the department shall consider the
7 standards contained in Best Practices for Comprehensive Tobacco Control Programs--August 1999 or its
8 successor document, published by the U.S. department of health and human services, centers for disease
9 control and prevention.

10 (3) An amount equal to ~~47%~~ 32% of the total yearly tobacco settlement proceeds received after
11 June 30, 2003, must be deposited in a state special revenue account. Subject to subsection ~~(5)(6)~~, the funds
12 referred to in this subsection may be used only for matching funds to secure the maximum amount of federal
13 funds for the Children's Health Insurance Program Act provided for in Title 53, chapter 4, part 10.

14 (4) (a) An amount equal to 1% or \$300,000, whichever is greater, of the yearly tobacco settlement
15 proceeds received after [the effective date of this act] must be transferred to the tobacco enforcement unit
16 within the department of justice's office of consumer protection for the unit's general operations, including those
17 provided in Title 16, chapter 11, parts 1 through 5.

18 (b) The funds provided for in subsection (4)(a) do not apply to the limit of the 3-year operating fund
19 of the office of consumer protection.

20 ~~(4)(5)~~ Funds deposited in a state special revenue account, as provided in subsection (2) or (3), that
21 are not appropriated within 2 years after the date of deposit must be transferred to the trust fund.

22 ~~(5)(6)~~ The legislature shall appropriate money from the state special revenue accounts provided for in
23 this section for programs for tobacco disease prevention, for the programs referred to in the subsection
24 establishing the account, and for funding the tobacco prevention advisory board.

25 ~~(6)(7)~~ Programs funded under this section that are private in nature may be funded through
26 contracted services."

27

28 **Section 3.** Section 17-6-610, MCA, is amended to read:

