

1 SENATE BILL NO. 122
2 INTRODUCED BY G. HERTZ

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION OF CIGARS; PROVIDING THE CIGAR
5 TAX MAY NOT EXCEED A SPECIFIC AMOUNT FOR EACH CIGAR; DEFINING "CIGAR"; AMENDING
6 SECTIONS 16-11-102 AND 16-11-111, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN
7 APPLICABILITY DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 16-11-102, MCA, is amended to read:

12 **"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the context
13 requires otherwise:

- 14 (a) "Contraband" means:
 - 15 (i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired,
 - 16 transported, imported, or caused to be imported in violation of this part;
 - 17 (ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed,
 - 18 held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or 5;
 - 19 (iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;
 - 20 (iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or
 - 21 (v) any cigarettes or tobacco products that violate 16-10-306.

22 (b) "Department" means the department of revenue provided for in 2-15-1301.

23 (c) "Person" means an individual, firm, partnership, corporation, association, company, committee,
24 other group of persons, or other business entity, however formed.

25 (2) As used in this part, the following definitions apply, unless the context requires otherwise:

26 (a) (i) "Cigar" means any roll of tobacco that is hand wrapped in leaf tobacco or in any substance
27 containing tobacco and is not wrapped by a machine.

28 (ii) The term does not include a cigarette.

Amendment - 1st Reading-white - Requested by: Greg Hertz - (S) Taxation

68th Legislature

Drafter: Jaret Coles, 406-444-4022

SB0122.001.001

1 ~~(a)~~(b) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under
2 ordinary conditions of use, and consists of or contains:

3 (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

4 (ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the
5 type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by
6 consumers as a cigarette; or

7 (iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its
8 appearance or the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be
9 offered to or purchased by consumers as a cigarette described in subsection ~~(2)(a)(i)~~ (2)(b)(i).

10 ~~(b)~~(c) "Controlling person" means a person who owns an equity interest of 10% or more of a business
11 or the equivalent.

12 ~~(c)~~(d)— _____ "Directory" means the tobacco product directory as provided in 16-11-504.

13 ~~(d)~~(e) "Full face value of insignia" means the total amount of the tax levied under this part.

14 ~~(e)~~(f) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under
15 the provisions of this part.

16 ~~(f)~~(g) "Licensed retailer" means any person, other than a wholesaler, subjobber, or tobacco product
17 vendor, who is licensed under the provisions of this part.

18 ~~(g)~~(h) "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person
19 must be treated as a wholesaler.

20 ~~(h)~~(i) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

21 ~~(i)~~(j) "Manufacturer" means any person who fabricates tobacco products from raw materials for the
22 purpose of resale.

23 ~~(j)~~(k) "Manufacturer's original container" means the original master shipping case or original shipping
24 case used by the tobacco product manufacturer to ship multipack units, such as boxes, cartons, and sleeves, to
25 warehouse distribution points.

26 ~~(k)~~(l) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is
27 intended to be placed in the oral cavity.

28 ~~(l)~~(m) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

1 ~~(m)~~(n) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling
2 tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco
3 product vending machines.

4 ~~(n)~~(o) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging,
5 or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making
6 cigarettes.

7 ~~(o)~~(p) "Sale" or "sell" means any transfer of tobacco products for consideration, exchange, barter, gift,
8 offer for sale, or distribution in any manner or by any means.

9 ~~(p)~~(q) "Sole distributor" means a person who either causes a unique brand of tobacco products to be
10 manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco
11 products or is the exclusive distributor of a brand of tobacco products within the continental United States.

12 ~~(q)~~(r) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the
13 Montana cigarette tax insignia affixed and sells or offers to sell tobacco products to a licensed retailer or
14 tobacco product vendor. An isolated sale or exchange of cigarettes between licensed retailers does not
15 constitute those retailers as subjobbers.

16 ~~(r)~~(s) "Tobacco product" means cigarettes and all other products containing tobacco that are
17 intended for human consumption or use.

18 ~~(s)~~(t) (i) "Tobacco product vendor" means a person doing business in the state who purchases
19 tobacco products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines
20 that the person operates for a profit in premises or locations other than the person's own.

21 (ii) A tobacco product vendor must be treated as a wholesaler.

22 ~~(t)~~(u) "Wholesale price" means the established price for which a manufacturer sells a tobacco
23 product to a wholesaler or any other person before any discount or reduction.

24 ~~(u)~~(v) "Wholesaler" means a person who:

25 (i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to
26 subjobbers, tobacco product vendors, wholesalers, or retailers; or

27 (ii) purchases tobacco products from a sole distributor, another wholesaler, or any other person for
28 the purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers."