

HOUSE BILL NO. 910

INTRODUCED BY M. CAFERRO

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TAXATION OF VAPOR PRODUCTS;
REVISING THE DEFINITION OF "TOBACCO PRODUCTS"; PROVIDING FOR COLLECTION AND
ADMINISTRATION OF THE VAPOR PRODUCTS TAX; PROVIDING PENALTIES; PROVIDING FOR
DISTRIBUTION OF REVENUE TO THE MEDICAID RESERVE ACCOUNT; PROVIDING AN
APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; PROVIDING A DEFINITION DEFINITIONS;
AMENDING SECTION SECTIONS 16-11-102, AND 16-11-111 SECTION 53-6-151, MCA; AND PROVIDING
EFFECTIVE DATES AND AN APPLICABILITY DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 5], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Licensed subjobber" means a subjobber licensed under the provisions of [sections 1 through 5]. The person must be treated as a wholesaler.

(2) "Licensed wholesaler" means a wholesaler licensed under the provisions of [sections 1 through 5].

(3) (a) "Manufacturer" means a person who fabricates vapor products from raw materials for the purpose of resale.

(b) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling vapor products to the ultimate consumer.

(4) "Sale" or "sell" means any transfer of vapor products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

(5) "Sole distributor" means a person who either causes a unique brand of vapor products to be manufactured according to distinctive specifications and acts as the exclusive distributor of the vapor products or is the exclusive distributor of a brand of vapor products within the continental United States.

(6) "Vapor product" has the same meaning as provided in 16-11-302.

(7) "Wholesale price" means the established price for which a manufacturer sells a vapor product to a wholesaler or any other person before any discount or reduction.

(8) "Wholesaler" means a person who:

(a) purchases vapor products from a manufacturer for the purpose of selling vapor products to subjobbers, wholesalers, or retailers; or

(b) purchases vapor products from a sole distributor, another wholesaler, or any other person for the purpose of selling vapor products to subjobbers, wholesalers, or retailers.

NEW SECTION. Section 2. Powers of department -- rulemaking. (1) The department may prescribe rules not inconsistent with the provisions of [sections 1 through 5] for the detailed and efficient administration of [sections 1 through 5]. All rules and orders promulgated must be published promptly and a copy distributed to each wholesale licensee. The department is authorized to adopt rules for the effective collection and refund of the tax imposed by [sections 1 through 5].

(2) The department may conduct inquiries and hearings, and any member of the department or any agent may administer oaths and take testimony under oath relative to the matter of inquiry. The director may subpoena witnesses and require the production of books, papers, and documents. The director, after the hearing, shall make findings and issue an order in writing. The findings and order must be filed in the office of the department and must be open for public inspection.

(3) The department may appoint additional assistants as required to carry out the provisions of [sections 1 through 5].

(4) The department is authorized to employ clerical and field assistants necessary to properly administer the provisions of [sections 1 through 5].

NEW SECTION. Section 3. Tax imposed -- collection and enforcement. (1) (a) A tax on the purchase of vapor products for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state.

(b) The tax on vapor products that contain nicotine is 20% of the wholesale price.

(c) Vapor products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

(2) The tax imposed by subsection (1) must be precollected and paid by a wholesaler to the department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by [sections 1 through 5] must be assessed penalty and interest as provided in 15-1-216.

(3) A retailer who purchases vapor products for resale on which the vapor products tax has not been collected and paid to the department shall comply with all of the provisions of [sections 1 through 5] and the rules adopted to implement [sections 1 through 5] as if the retailer were a wholesaler.

(4) A retailer shall assume that the vapor products tax has not been collected and paid to the department in the absence of a statement on the retailer's invoice or sales slip for the vapor products indicating that the vapor tax is included in the total billing cost.

(5) A person who fails to collect and remit the tax provided for in [sections 1 through 5] is subject to assessment of the tax, penalties, and enforcement in the same manner as a seller of tobacco products in 16-11-143.

NEW SECTION. Section 4. Incorporation by reference of tobacco product provisions -- license requirement -- liability -- penalty. (1) Every wholesaler, subjobber, retailer, or vapor product vendor shall obtain a license from the department and pay a license fee before engaging in the business in the same manner as provided in 16-11-120 and 16-11-122. The license must be displayed in the same manner as provided in 16-11-123. The license fee must be deposited in the same manner as provided in 16-11-124. [Sections 1 through 5] do not prevent a person from being licensed as both a wholesaler and a retailer.

(2) An individual listed in 16-11-126 is individually liable, jointly and severally, for failing to comply with the provisions of [sections 1 through 5] in the same manner as an individual regarding sales of tobacco products in 16-11-126.

(3) A person who accepts purchase orders for vapor product sales shall comply with the provisions of 16-11-128.

(4) The requirements, penalties, and punishments of 16-11-132 apply to a seller of vapor products in the same manner as sales of tobacco products in 16-11-126.

(5) The right to a hearing before the department under 16-11-149 and the right to appeal a decision of the department under 16-11-150 apply to a person aggrieved by the department based on enforcement of the provisions of [sections 1 through 5].

NEW SECTION. Section 5. Distribution of revenue. Vapor product taxes collected under the provisions of [sections 1 through 5] must, in accordance with the provisions of 17-2-124, be deposited in the medicaid reserve account provided for in 53-6-151.

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

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

~~(a) "Contraband" means:~~

~~(i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of this part;~~

~~(ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or 5;~~

~~(iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;~~

~~(iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or~~

~~(v) any cigarettes or tobacco products that violate 16-10-306.~~

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

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

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

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

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

~~(ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by~~

Amendment - 1st Reading-white - Requested by: Mary Caferro - (H) Appropriations

- 2025

69th Legislature 2025

Drafter: Jaret Coles,

HB0910.002.001

~~consumers as a cigarette; or~~

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

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

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

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

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

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

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

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

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

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

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

~~(l) — (i) "Premium cigar" means any roll of tobacco that is hand wrapped in 100% whole tobacco leaf, is not wrapped by a machine, and does not contain a filter, tip, or any characterizing nontobacco flavor.~~

~~(ii) — The term does not include a cigarette.~~

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

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

Amendment - 1st Reading-white - Requested by: Mary Caferro - (H) Appropriations

- 2025

69th Legislature 2025

Drafter: Jaret Coles,

HB0910.002.001

1 ~~product vending machines.~~

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

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

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

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

14 ~~(s) — (i) "Tobacco product" means: cigarettes and all other products containing tobacco that are~~
15 ~~(A) — a product containing, made, or derived from tobacco or that contains nicotine that is intended~~
16 ~~for human consumption or use i s likely to be consumed, whether smoked, heated, chewed, absorbed,~~
17 ~~dissolved, inhaled, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe~~
18 ~~tobacco, chewing tobacco, snuff, and snus; and~~

19 ~~(B) — any substance, regardless of whether or not it contains nicotine, consumed during the use of a~~
20 ~~device that can be used to deliver nicotine or another substance in any form, including aerosolized or~~
21 ~~vaporized, to the person inhaling from the device, including but not limited to an e-cigarette, e-cigar, e-pipe,~~
22 ~~vape pen, or e-hookah.~~

23 ~~(ii) — The term does not include:~~

24 ~~(A) — drugs, devices, or combination products, as defined in the Federal Food, Drug, and Cosmetic~~
25 ~~Act, authorized by the United States food and drug administration for sale as a tobacco cessation product or for~~
26 ~~other therapeutic purposes when the product is marketed and sold solely for such an approved purpose; or~~

27 ~~(B) — filters, rolling papers, pipes, or a device described in subsection (2)(s)(i)(B).~~

28 ~~(s) — "TOBACCO PRODUCT" MEANS:~~

Amendment - 1st Reading-white - Requested by: Mary Caferro - (H) Appropriations

- 2025

69th Legislature 2025

Drafter: Jaret Coles,

HB0910.002.001

(I) CIGARETTES AND ALL OTHER PRODUCTS CONTAINING TOBACCO THAT ARE INTENDED FOR HUMAN

CONSUMPTION OR USE; OR

(JJ) VAPOR PRODUCTS.

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

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

(u) (i) "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.

(ii) 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.

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

(v)(w) "Wholesaler" means a person who:

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

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

Section 2. SECTION 16-11-111, MCA, IS AMENDED TO READ:

"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the

state of Montana. The tax is \$1.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) — The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) — The tax imposed in subsection (1) does not apply to quota cigarettes.

(3) — Subject to the refund or credit provided in subsection (4), the tax must be precollected on all cigarettes entering a Montana Indian reservation.

(4) — Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

(5) — The distribution of tax-free cigarettes to a tribal member must be implemented through a system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on whether the quota, as established in a cooperative agreement between the department and an Indian tribe or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a refund or credit. Once the quota has been filled, the department shall immediately notify all affected wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods or between reservations.

(6) — The total amount of refunds or credits allowed by the department to all wholesalers claiming the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

Amendment - 1st Reading-white - Requested by: Mary Caferro - (H) Appropriations

- 2025

69th Legislature 2025

Drafter: Jaret Coles,

HB0910.002.001

(7) — There must be collected and paid to the state of Montana a tax of 50% of the wholesale price, to the wholesaler, of all tobacco products other than cigarettes, premium cigars, vapor products, and moist snuff. The tax on a premium cigar is the lesser of 50% of the wholesale price or 35 cents a premium cigar. The tax on moist snuff is 85 cents an ounce based upon the net weight of the package listed by the manufacturer. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package. The tax on vapor products that contain nicotine is 20% of the wholesale price. Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

(8) — The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in 15-1-216.

(9) — A retailer who purchases tobacco products for resale on which the tobacco products tax has not been collected and paid to the department shall comply with all the provisions of this part and the rules adopted to implement this part as if it were a wholesaler.

(10) — A retailer must assume that the tobacco products tax has not been collected and paid to the department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states that the applicable Montana tobacco products tax is included in the total billing cost."

Section 6. Section 53-6-151, MCA, is amended to read:

"53-6-151. Medicaid reserve account. There is a medicaid reserve account in the state special revenue fund provided for in 17-2-102. Money in the account must be used by the department for medicaid benefits after June 30, 2014. Any interest or income earned on the account must be deposited in the account. Each calendar quarter through December 31, 2010, the amount recovered under the federal medical assistance percentage hold harmless provision of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 vapor products tax provided for in [sections 1 through 5], must be transferred to the medicaid reserve account."

NEW SECTION. **Section 7. Codification instruction.** [Sections 1 through 5] are intended to be

Amendment - 1st Reading-white - Requested by: Mary Caferro - (H) Appropriations

- 2025

69th Legislature 2025

Drafter: Jaret Coles,

HB0910.002.001

codified as a new part of Title 16, chapter 11, and the provisions of Title 16, chapter 11, apply to [sections 1 through 5].

NEW SECTION. Section 8. Appropriation. There is appropriated \$100 from the general fund to the department of revenue for the biennium beginning July 1, 2025, for the purposes of informing citizens about the provisions of [this act] through electronic means.

NEW SECTION. Section 9. Effective dates. (1) Except as provided in subsection (2), [this act] is effective January 1, 2026.

(2) [Section 8] and this section are effective July 1, 2025.

NEW SECTION. Section 10. Applicability. [This act] applies to vapor products sold after December 31, 2025.

- END -