

HOUSE BILL NO. 525

INTRODUCED BY A. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO NICOTINE AND VAPOR PRODUCTS; PROHIBITING DISTRIBUTING, SELLING, OR THE ATTEMPT TO SELL VAPOR PRODUCTS CONTAINING NICOTINE UNLESS INCLUDED IN A DIRECTORY MAINTAINED AND ENFORCED BY THE ATTORNEY GENERAL; REQUIRING MANUFACTURERS OF VAPOR PRODUCTS CONTAINING NICOTINE TO CERTIFY THAT THEIR VAPOR PRODUCTS ARE IN COMPLIANCE WITH FEDERAL MARKETING AUTHORIZATION REQUIREMENTS; ~~APPLYING THE TAX ON TOBACCO PRODUCTS TO VAPOR PRODUCTS THAT CONTAIN NICOTINE;~~ PROVIDING A STATUTORY APPROPRIATION; PROVIDING DEFINITIONS; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-11-102, 16-11-118, ~~16-11-119~~, 16-11-120, 16-11-128, 16-11-132, 16-11-141, 16-11-159, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in this chapter, the following definitions apply:

(1) "FDA" means the United States food and drug administration.

(2) "Importer" means a person or entity in a state or territory of the United States to whom vapor products that are manufactured outside the United States are shipped, delivered, or consigned for resale.

(3) "Retailer" means a person, other than a wholesaler, who is licensed by the department of revenue and who is engaged in the business of selling vapor products to the ultimate consumer.

(4) "Timely filed premarket tobacco product application" means an application pursuant to 21 U.S.C. 387j for a vapor product containing nicotine derived from tobacco marketed in the United States as of August 8, 2016, that was submitted to the United States food and drug administration on or before September 9, 2020, and accepted for filing.

(5) "Units sold" means the number of individual vapor products containing nicotine sold in the state

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(2) The department of revenue is authorized to disclose to the attorney general any information received by it and requested by the attorney general for the purposes of determining compliance with and enforcing the provisions of this chapter. The department of revenue and the attorney general shall share the information received under this chapter with each other and may share the information with other federal, state, or local agencies only for the purposes of enforcement of this chapter or the corresponding laws of other states.

(3) In addition to the information required to be submitted pursuant to subsections (1) and (2), the attorney general may require a wholesaler or vapor product manufacturer to submit any additional information, including but not limited to samples of the packaging or labeling of each brand family of vapor products containing nicotine, to enable the attorney general to determine whether a vapor product manufacturer or wholesaler is in compliance with this chapter. All information submitted by a wholesaler or vapor product manufacturer under this section must be full, complete, and accurate.

(4) The attorney general may seek an injunction to restrain a threatened or actual violation of this section by a wholesaler and to compel the wholesaler to comply with this section.

NEW SECTION. Section 15. Annual reports. Starting January 31, 2026, and annually afterward, the attorney general shall provide a report to the revenue interim committee in accordance with 5-11-210 regarding the status of the directory, including a discussion of the date of initial publication, dates of updated versions, and issues the attorney general has encountered related to making updates to the directory, revenue and expenditures related to the administration of this section, and any enforcement activities undertaken by the attorney general. The report must be accompanied by the most recent version of the directory.

Section 16. 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 that is 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,

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- 1 held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or 5;
- 2 (iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;
- 3 (iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; ~~or~~
- 4 (v) any cigarettes or tobacco products that violate 16-10-306; or
- 5 (vi) any vapor products containing nicotine that are not included in the directory established under
- 6 [sections 2 through 6].
- 7 (b) "Department" means the department of revenue provided for in 2-15-1301.
- 8 (c) "Person" means an individual, firm, partnership, corporation, association, company, committee,
- 9 other group of persons, or other business entity, however formed.
- 10 (2) As used in this part, the following definitions apply, unless the context requires otherwise:
- 11 (a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under
- 12 ordinary conditions of use, and consists of or contains:
- 13 (i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;
- 14 (ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the
- 15 type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by
- 16 consumers as a cigarette; or
- 17 (iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its
- 18 appearance or the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be
- 19 offered to or purchased by consumers as a cigarette described in subsection (2)(a)(i).
- 20 (b) "Controlling person" means a person who owns an equity interest of 10% or more of a business
- 21 or the equivalent.
- 22 (c) "Directory" means the tobacco product directory as provided in 16-11-504.
- 23 (d) "Full face value of insignia" means the total amount of the tax levied under this part.
- 24 (e) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under
- 25 the provisions of this part.
- 26 (f) "Licensed retailer" means any person, other than a wholesaler, subjobber, ~~or tobacco product~~
- 27 vendor, or vapor product vendor, who is licensed under the provisions of this part.
- 28 (g) "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person

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1 must be treated as a wholesaler.

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

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

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

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

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

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

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

14 (n) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling
15 tobacco products or vapor products to the ultimate consumer. The term includes a person who operates fewer
16 than 10 tobacco product or vapor product vending machines.

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

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

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

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

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- (s) "Tobacco product" means:
- ~~(i)~~ cigarettes and all other products containing tobacco that are intended for human consumption or use; ~~OR~~
- ~~(ii) VAPOR PRODUCTS THAT CONTAIN NICOTINE.~~
- (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.
- (v) "Vapor product manufacturer" means a person or entity that manufactures or fabricates vapor products for the purpose of sale or resale.
- (w) "Vapor product vendor" means a person doing business in the state who purchases vapor products through a wholesaler or retailer for 10 or more vapor product vending machines that the person operates for a profit in premises or locations other than the person's own premises or location.
- ~~(u)(x)~~ "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or a vapor product manufacturer sells a vapor product to a wholesaler or any other person before any discount or reduction.
- ~~(v)(y)~~ "Wholesaler" means a person who:
- (i) purchases tobacco products from a manufacturer or vapor products from a vapor product manufacturer for the purpose of selling tobacco products or vapor products to subjobbers, tobacco product vendors, vapor product vendors, wholesalers, or retailers; or

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

Section 17. Section 16-11-118, MCA, is amended to read:

"16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, vapor product vendors, and retailers. (1) All wholesalers and subjobbers shall keep for 3 years all:

- (a) invoices of tobacco products and vapor products that are purchased, imported, or sold;
- (b) all receipts issued and insignia purchased; and
- (c) an accurate record of all sales of tobacco products and vapor products, showing the name and address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination.

(2) All retailers, ~~and tobacco product vendors~~, and vapor product vendors shall keep for 3 years all invoices of tobacco products and vapor products purchased and received, showing the date of each purchase, the brand purchased, the quantity of each brand purchased, and an accurate record of the total sales of tobacco products.

(3) A wholesaler, retailer, subjobber, ~~or tobacco product vendor~~, or vapor product vendor shall permit the department and the department of justice and their assistants, authorized agents, or representatives to examine all tobacco products, invoices, receipts, books, paper, memoranda, and records as may be necessary to determine compliance with this chapter.

(4) A person that violates the provisions of subsections (1) through (3) is subject to civil penalties as determined by the department of not less than \$1,000 or more than \$10,000."

SECTION 18. SECTION 16-11-119, MCA, IS AMENDED TO READ:

"16-11-119. Disposition of taxes — statutory appropriation. (1) ~~A sum equal to the amount necessary to purchase cigarette tax stamps must be deposited to or allocated from the state special revenue fund to the credit of the department from cigarette taxes collected under the provisions of 16-11-111, as provided in subsection (5) (6) of this section.~~

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(2) ~~After the deposit or allocation in subsection (1), cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited as follows:~~

(a) ~~8.3% or \$5 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;~~

(b) ~~2.6% in the major repair long-range building program account provided for in 17-7-221;~~

(c) ~~44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201;~~

(d) ~~\$150,000 in the veterans and surviving spouses state special revenue account provided for in 40-2-108; and~~

(e) ~~the remainder to the state general fund.~~

(3) ~~If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.~~

(4) ~~(a) The Except as provided in subsection (5), the taxes collected on tobacco products other than cigarettes must in accordance with the provisions of 17-2-124 be deposited as follows:~~

(a) ~~one half in the state general fund; and~~

(b) ~~one half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201.~~

~~(5) The taxes collected on vapor products that contain nicotine must be deposited as follows:~~

~~(a) 68% in the general fund; and~~

~~(b) 32% to the department of health and human services for nicotine use prevention.~~

~~(5)(6) Each fiscal year, a sum equal to the amount of money necessary to purchase cigarette tax stamps is statutorily appropriated, as provided in 17-7-502, from the state special revenue fund allocation in subsection (1) to the department for tax administration responsibilities."~~

Section 18. Section 16-11-120, MCA, is amended to read:

"16-11-120. Tobacco product -- vapor product -- licenses. Every wholesaler, subjobber, retailer, or