GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Fiscal Note 2027 Biennium

Bill#/Title: **HB0525.02 (001): Generally revise laws relating to nicotine and vapor products**

Primary Sponsor: Amy Regier Status: As Amended in House Committee

☐ Included in the Executive Budget ☒ Needs to be included in HB 2 ☐ Significant Local Gov Impact

☐ Significant Long-Term Impacts ☐ Technical Concerns ☒ Dedicated Revenue Form Attached

FISCAL SUMMARY

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Expenditures				
General Fund (01)	$924,784	$257,469	$265,705	$274,071
State Special Revenue (02)	$753,500	$2,166,500	$2,263,500	$2,365,500
Revenues				
General Fund (01)	$1,236,000	$3,940,000	$4,146,000	$4,362,000
State Special Revenue (02)	$753,500	$2,166,500	$2,263,500	$2,365,500
Net Impact General Fund Balance	$311,216	$3,682,531	$3,880,295	$4,087,929

Description of fiscal impact

HB 525 creates a vapor product directory administered by the Attorney General (AG). Manufacturers would be required to annually "Certify" that their vapor products (containing nicotine) comply with federal marketing authorization requirements. Penalties are provided for selling vapor products that are not included on the directory, which will also be administered by the AG. The Department of Revenue (DOR) will inform the AG of potential violations alongside four unannounced compliance checks that may be conducted in a year. The Department of Revenue will need to license vapor product wholesalers and sub-jobbers and update programs to facilitate their licensing, as well as update website and communication on licensing changes. Agencies will incur FTE and operating costs, including litigation expenses in FY 2026. Amendments to HB 525 redefines "tobacco products" to include vapor products that contain nicotine; tobacco products are currently taxed at 50% of wholesale price. The amendments increase costs to the Department of Revenue and create revenue for the general fund and for nicotine use prevention at the Department of Public Health and Human Services.

FISCAL ANALYSIS

Assumptions

Department of Justice (DOJ)

1. HB 525 would require 4.00 FTE for the Department of Justice Office of Consumer Protection (OCP) due to additional litigation work tasked to attorneys, paralegals, and investigators.
2. OCP assumes 2.00 FTE investigators will be needed. OCP assumes $168,526 will be needed for personal services and benefits for the two new positions.
3. Operating expenses of $30,222 would be needed in FY 2026 and would cover travel, new office and computer set up costs, phone costs, and technology fixed costs. Starting in FY 2027, $25,118 would be needed in operating expenses.

4. OCP assumes 1.00 FTE attorney will be needed. OCP assumes $113,013 would be needed for personal services and benefits.
5. OCP assumes 1.00 FTE paralegal will be needed. OCP assumes $79,367 would be needed for personal services and benefits.
6. OCP assumes an estimated $350,000 in litigation expenses would also need to be appropriated. The litigation expenses would be needed only in FY 2026.
7. Operating expenses in the amount of $25,992 would be needed in FY 2026 and would cover travel, new office and computer set up costs, phone costs, and technology fixed costs. Starting in FY 2027, $17,288 would be needed in operating expenses.
8. NEW SECTION. Section 14(2) directs the attorney general to transfer $300,000 to the general fund at the end of the first fiscal year after the effective date of the of HB 525. The effective date of of HB 525 is July 1, 2025, therefore this fiscal note includes a FY 2026 transfer of $300,000 from fees and penalties collected by the DOJ.
9. NEW SECTION. Section 8 includes penalties for retailers, wholesalers, or importers who vapor products containing nicotine that are not included in the director. Within a 12-month period:
   a. the first violation is $250 for each product in violation.
   b. the second violation is $500.
   c. the third violation is $750.
   d. the fourth and subsequent violation is $1,000.
10. Fees and penalties collected are to be deposited in to the state special revenue account established in NEW SECTION. Section 13 of HB 525.
11. Based on tobacco compliance check outcomes data from the United States Food and Drug Administration (FDA), in FY 2024, there were 14 Electronic Nicotine Delivery System (ENDS) and E-Liquid violations in Montana (https://timp-ccid.fda.gov/). These violations were related to sales to a person under 21 years of age. With the addition of the HB 525 vapor product directory, this analysis assumes retailer, wholesaler, and importer violations will increase to 50 per year. Each failed compliance check will include 25 products per entity. Annual penalty fee revenue into the state special revenue account is $312,500 (50 failed compliance checks x 25 products x $250 per product).

Department of Revenue

12. HB 525 as amended is effective July 1, 2025
13. Under current law, there is no tax on vapor nicotine products.
14. HB 525 as amended adds vapor nicotine products to the definition of tobacco products. To estimate how much revenue the tax would bring to the State of Montana, Utah was used as a model. Utah's tax on vapor and alternative nicotine products has been in effective in 2020. They levy a 56% tax on the wholesale price of e-cigarette and alternative nicotine products. To model this for Montana, a per capita methodology was implemented. Data provided by the Utah State Tax Commission on e-cigarette and alternative nicotine products is shown in Table 1.1:

Table 1.1

FY	E-Cig and Alt. Nicotine Product Tax Revenue
2022	$13,776,324
2023	$14,689,335
2024	$15,249,350

15. As of 2024, Utah's population is estimated at 3.45 million – or about three times Montana's estimated population of 1.14 million. Assuming this tax revenue came from adult users of vape, data from the U.S. Census Bureau shows that Utah's adult (over 18) population is 71% of the total population and 78.4% for Montana. According to the National Center for Health Statistics, the percentage of adults that use e-

cigarettes or electronic vaping products is 4.7%. This percentage was applied to the adult populations of Utah and Montana, which is also assumed constant over the estimating period of 2022, 2023, and 2024. Table 1.2 below shows the value of the referenced percentages on the respective states' populations.

Table 1.2

Utah population	Adult population	4.7% that use vape
3,454,230	2,452,503	115,268
Montana population	**Adult population**	**4.7% that use vape**
1,142,750	895,916	42,108

16. Since population is assumed constant, the values in Table 1.1. are then used to find the tax paid per capita in Utah over the three years provided by dividing their e-cigarette and alternative nicotine tax revenue. This is done by adjusting Utah's per capita tax revenue (from a 56% tax), shown in Table 1.3, to the proposed 50% in HB 525's amendment. To apply this, Utah's per capita tax revenue is adjusted to 100% of value (from a 56% tax). These adjusted values are shown in Table 1.4.

Table 1.3

FY	Utah Tax Revenue Per Capita
2022	$119.52
2023	$127.44
2024	$132.29

Table 1.4

FY	Utah Tax Revenue Per Capita Non-Tax Spending
2022	$213.42
2023	$227.56
2024	$236.24

17. To obtain estimates for Montana's vape tax revenue at a 50% tax rate, Montana's vaping population is multiplied by the 100% tax revenue per capita values in Table 1.4 and then taking 50%. These tax revenue estimates are provided in Table 1.5.

Table 1.5

FY	Estimated MT Vape Tax Revenue
2022	$4,493,000
2023	$4,791,000
2024	$4,974,000

18. Vapor nicotine product consumption is expected to keep growing into the next decade. To obtain estimates for fiscal years 2026 to 2029, Montana's projected vape tax revenue growth rate was calculated from Table

1.5. Between 2022 and 2023, vape tax revenue grew by 6.6% and by 3.8% from 2023 to 2024, which averaged at 5.22%. This growth will be assumed constant for the forecast period of fiscal year 2026 to 2029. The values are shown below in Table 1.6. Since the collections for this vapor nicotine tax would not begin until March 1, 2026 (or a quarter of fiscal year 2026) then only 25% if potential revenue would be accounted.

Table 1.6

FY	Projected MT Vapor Tax Revenue
2026	$1,378,000
2027	$5,794,000
2028	$6,097,000
2029	$6,415,000

19. HB 525 as amended would distribute this vapor nicotine revenue as 68% to the general fund and 32% to the Department of Health and Human Services for nicotine use prevention. These distributions are shown in Table 1.7.

Table 1.7

FY	General Fund (68%)	DPHHS Nicotine Use Prevention (32%)
2026	$936,000	$441,000
2027	$3,940,000	$1,854,000
2028	$4,146,000	$1,951,000
2029	$4,362,000	$2,053,000

20. If HB 525 as amended becomes law, the department of revenue would collect approximately $1.4 million in tax revenue in 2026, $5.8 million in 2027, $6.1 in 2028, and $6.4 million in 2029. Additionally, the general fund would see new funds as $936,000 in 2026, $3.9 million in 2027, $4.1 million in 2028, and $4.3 million in 2029.
21. Section 13 of the amended HB 525 requires the attorney general to collect fees and penalties. The Department of Revenue assumes the Attorney General's office will provide estimates for this revenue.
22. DOR will incur costs associated with updating forms, programs, reports, websites, and educating taxpayers on the new tax.
23. DOR will hire an audit technician to handle the tax assessed on vapor products as well as an FTE for compliance auditing of retailers. Costs for the 2.0 FTE and associated desk and computer setup is $151,858 in FY 2026, $147,751 in FY 2027, $149,586 in FY 2028, and $151,450 in FY 2029.

Department of Public Health and Human Services (DPHHS)

24. Section 18(5) allocates the taxes on vapor products that contain nicotine:
    a. 68% to the general fund
    b. 32% to DPHHS for nicotine use prevention

Statutory Appropriation

17-1-508, MCA, requires analysis of the statutory appropriation relative to the guidance in 17-1-508(3), MCA, to be published in the fiscal note. In reviewing and establishing statutory appropriations, the legislature shall consider the following guidelines. Answer yes or no to each of the following guidelines regarding the statutory appropriation:

	Yes	No
a. The money is from a continuing, reliable, and estimable source.		X
b. The use of the appropriation or the expenditure occurrence is predictable and reliable.		X
c. The authority exists elsewhere.		X
d. An alternative appropriation method is available, practical, or effective.	X	
e. It appropriates state general fund money for purposes other than paying for emergency services.	X	
f. The money is used for general purposes.	X	
g. The legislature wishes to review expenditure and appropriation levels each biennium.	X	
h. An expenditure cap and sunset date are excluded.	X	

The statutory appropriation in Section 13 terminates July 1, 2033.

Fiscal Analysis Table

Department of Justice

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Fiscal Impact				
FTE	4.00	4.00	4.00	4.00
TOTAL Fiscal Impact	**4.00**	**4.00**	**4.00**	**4.00**
Expenditures				
Personal Services	$360,906	$360,906	$366,319	$371,814
Operating Expenses	$406,214	$42,406	$43,042	$43,687
Transfers	$300,000	$0	$0	$0
TOTAL Expenditures	**$1,067,120**	**$403,312**	**$409,361**	**$415,501**
Funding of Expenditures				
General Fund (01)	$754,620	$90,812	$96,861	$103,001
State Special Revenue (02)	$312,500	$312,500	$312,500	$312,500
TOTAL Funding of Expenditures	**$1,067,120**	**$403,312**	**$409,361**	**$415,501**
Revenues				
General Fund (01)	$300,000	$0	$0	$0
State Special Revenue (02)	$312,500	$312,500	$312,500	$312,500
TOTAL Revenues	**$612,500**	**$312,500**	**$312,500**	**$312,500**
Net Impact to Fund Balance (Revenue minus Funding of Expenditures)				
General Fund (01)	($454,620)	($90,812)	($96,861)	($103,001)
State Special Revenue (02)	$0	$0	$0	$0

Department of Public Health and Human Services

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Fiscal Impact				
Expenditures				
Operating Expenses	$441,000	$1,854,000	$1,951,000	$2,053,000
TOTAL Expenditures	**$441,000**	**$1,854,000**	**$1,951,000**	**$2,053,000**
Funding of Expenditures				
State Special Revenue (02)	$441,000	$1,854,000	$1,951,000	$2,053,000
TOTAL Funding of Expenditures	**$441,000**	**$1,854,000**	**$1,951,000**	**$2,053,000**
Revenues				
State Special Revenue (02)	$441,000	$1,854,000	$1,951,000	$2,053,000
TOTAL Revenues	**$441,000**	**$1,854,000**	**$1,951,000**	**$2,053,000**
Net Impact to Fund Balance (Revenue minus Funding of Expenditures)				
State Special Revenue (02)	$0	$0	$0	$0

Department of Revenue

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Fiscal Impact				
FTE	1.00	1.00	1.00	1.00
TOTAL Fiscal Impact	**1.00**	**1.00**	**1.00**	**1.00**
Expenditures				
Personal Services	$145,942	$147,751	$149,586	$151,450
Operating Expenses	$18,306	$18,906	$19,258	$19,620
Equipment	$5,916	$0	$0	$0
TOTAL Expenditures	**$170,164**	**$166,657**	**$168,844**	**$171,070**
Funding of Expenditures				
General Fund (01)	$170,164	$166,657	$168,844	$171,070
TOTAL Funding of Expenditures	**$170,164**	**$166,657**	**$168,844**	**$171,070**
Revenues				
General Fund (01)	$936,000	$3,940,000	$4,146,000	$4,362,000
TOTAL Revenues	**$936,000**	**$3,940,000**	**$4,146,000**	**$4,362,000**
Net Impact to Fund Balance (Revenue minus Funding of Expenditures)				
General Fund (01)	$765,836	$3,773,343	$3,977,156	$4,190,930

STATEWIDE SUMMARY

	FY 2026 Difference	FY 2027 Difference	FY 2028 Difference	FY 2029 Difference
Fiscal Impact				
FTE	5.00	5.00	5.00	5.00
TOTAL Fiscal Impact	**5.00**	**5.00**	**5.00**	**5.00**
Expenditures				
Personal Services	$506,848	$508,657	$515,905	$523,264
Operating Expenses	$865,520	$1,915,312	$2,013,300	$2,116,307
Equipment	$5,916	$0	$0	$0
Transfers	$300,000	$0	$0	$0
TOTAL Expenditures	**$1,678,284**	**$2,423,969**	**$2,529,205**	**$2,639,571**
Funding of Expenditures				
General Fund (01)	$924,784	$257,469	$265,705	$274,071
State Special Revenue (02)	$753,500	$2,166,500	$2,263,500	$2,365,500
TOTAL Funding of Expenditures	**$1,678,284**	**$2,423,969**	**$2,529,205**	**$2,639,571**
Revenues				
General Fund (01)	$1,236,000	$3,940,000	$4,146,000	$4,362,000
State Special Revenue (02)	$753,500	$2,166,500	$2,263,500	$2,365,500
TOTAL Revenues	**$1,989,500**	**$6,106,500**	**$6,409,500**	**$6,727,500**
Net Impact to Fund Balance (Revenue minus Funding of Expenditures)				
General Fund (01)	$311,216	$3,682,531	$3,880,295	$4,087,929
State Special Revenue (02)	$0	$0	$0	$0

OIP
Sponsor's Initials

3/5/24
Date

RO
Budget Director's Initials

3/4/2025
Date

GOVERNOR'S OFFICE OF BUDGET AND PROGRAM PLANNING

Dedication of Revenue 2027 Biennium

17-1-507, MCA.

1. **Are there persons or entities that benefit from this dedicated revenue that do not pay?**

No   Fees go to the Department of Justice to establish and administer the vapor product directory.

2. **What special information or other advantages exist as a result of using a state special revenue fund that could not be obtained if the revenue were allocated to the general fund?**

No   Fees go to the Department of Justice to establish and administer the vapor product directory.

3. **Is the source of revenue relevant to current use of the funds and adequate to fund the program activity that is intended?**

No   Unable to determine fee revenue at this point.

4. **Does the need for this state special revenue provision still exist?**

No

5. **Does the dedicated revenue affect the legislature's ability to scrutinize budgets, control expenditures, or establish priorities for state spending?**

No The legislature will be able to review the budget, and expenditures associated with the vapor product directory.

6. Does the dedicated revenue fulfill a continuing, legislatively recognized need?

No Yes, it funds the vapor product directory.

7. How does the dedicated revenue provision result in accounting/auditing efficiencies or inefficiencies in your agency? Also, if the program/activity were general funded, could you adequately account for the program/activity?

No Unclear if there are efficiencies or inefficiencies associated with the dedicated revenue.