

Amendment - 2nd Reading-yellow - Requested by: Ron Marshall - (H) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Jameson Walker,

HB0149.003.001

1 HOUSE BILL NO. 149
2 INTRODUCED BY R. MARSHALL, E. STAFMAN, N. NICOL, J. WINDY BOY, E. BUTTREY, J. ETCHART, K.
3 LOVE, E. BYRNE, C. SCHOMER, J. FULLER, B. MITCHELL, K. ZOLNIKOV, A. REGIER, C. HINKLE, Z.
4 WIRTH, D. ZOLNIKOV
5

6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO ALTERNATIVE
7 NICOTINE AND VAPOR PRODUCTS; ESTABLISHING THAT ALTERNATIVE NICOTINE AND VAPOR
8 PRODUCTS ARE SEPARATE FROM TOBACCO REGULATIONS; PROVIDING DEFINITIONS; PROVIDING
9 FOR LICENSURE AND FEES; PROVIDING RESTRICTIONS ON SALES TO PERSONS UNDER 18 AND ON
10 CERTAIN OTHER SALES; PROVIDING THAT ALL RETAIL SALES OF ALTERNATIVE NICOTINE OR ANY
11 VAPOR PRODUCTS MUST BE AT LOCATIONS THAT RESTRICT AGE FOR ENTRY; PROVIDING FOR
12 CIVIL PENALTIES; AMENDING SECTIONS 7-1-111, 16-11-122, 16-11-302, 16-11-303, 16-11-304, 16-11-305,
13 16-11-306, 16-11-308, 16-11-309, 16-11-310, 16-11-311, 30-16-301, 45-5-623, 45-5-637, AND 50-50-207,
14 MCA; AND REPEALING SECTION 16-11-313, MCA."
15

16 WHEREAS, the Supreme Court of the United States is considering Wages and White Lion Investments
17 LLC, dba Triton Distribution v. U.S. Food and Drug Administration, No. 23-1038, a case that will address the
18 FDA's administrative restrictions on the alternative nicotine and vapor product industry. In this case, the U.S.
19 5th Circuit Court of Appeals already condemned the FDA's rules, finding the imposed requisites "unfair" and
20 that the FDA "unexpectedly demanded" requirements of the alternative nicotine and vapor industry that were
21 not in the enacting legislation; and

22 WHEREAS, in Loper Bright Enterprises v. Raimondo, 144 S. Ct. 2244 (2024), the Supreme Court
23 overturned its 1984 decision in Chevron USA Inc. v. Natural Resource Defense Council, 468 US 1227 (1984),
24 holding that it was fundamentally misguided to give judicial deference to agency interpretation of statutes; and

25 WHEREAS, if the Supreme Court follows Loper, then FDA rules and restrictions arbitrarily created by
26 the agency and foisted on the alternative nicotine and vapor product industry will likely be overturned, leaving a
27 regulatory vacuum that gives rise to this act.

Amendment - 2nd Reading-yellow - Requested by: Ron Marshall - (H) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Jameson Walker,

HB0149.003.001

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

NEW SECTION. Section 1. Definitions. For the purposes of [sections 1 through 8], the following definitions apply:

(1) "Age-restricted sales venue" means a location or business that is open to the public and prohibits entry of people under 18 years of age. The term may include but is not limited to a:

(a) bar, tavern, cocktail lounge, brewery, winery, distillery, nightclub, or any other location where alcohol is served to the public for consumption on the licensed premises under Title 16;

(b) liquor store;

(c) casino;

(d) dispensary licensed under Title 16, chapter 12;

(e) adult entertainment venue; and

(f) location where vapor products are sold to the public.

~~(1)~~(2) (a) "Alternative nicotine product" means any manufactured noncombustible product containing nicotine derived from tobacco that is intended for human consumption, whether chewed, absorbed, dissolved, or ingested by any other means. The term includes synthetic nicotine and synthetic nicotine products.

(b) The term does not include a tobacco product, A CIGARETTE AS DEFINED IN 16-11-102 OR 16-11-402, a vapor product, or 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.

~~(2)~~(3) (a) "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.

(b) The term does not include a product regulated as a CIGARETTE AS DEFINED IN 16-11-102 OR 16-

Amendment - 2nd Reading-yellow - Requested by: Ron Marshall - (H) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Jameson Walker,

HB0149.003.001

1 11-402 ORA drug or device by the United States food and drug administration under Chapter V of the Federal
2 Food, Drug, and Cosmetic Act.

3

4 **NEW SECTION. Section 2. License -- fee -- renewal.** (1) A person may not sell alternative nicotine
5 products or vapor products at retail, whether over the counter, by vending machine, or otherwise, without a
6 license obtained from the department of revenue.

7 (2) A license for the retail sale of alternative nicotine products or vapor products may be obtained
8 from the department of revenue.

9 (3) An application for a license to sell either alternative nicotine products or vapor products must
10 be accompanied by a fee of \$20. The fee may be paid by credit card and may be discounted for payment
11 processing charges paid by the department to a third party. The fee collected by the department must be
12 deposited in the general fund.

13 (4) The license must be renewed annually. Upon payment of the annual fee, the license is
14 effective for 1 year, without proration, and is not transferable.

15

16 **NEW SECTION. Section 3. Prohibition on sales to persons under 18 years of age -- signs --**
17 **age-restricted sales venue.** (1) (A) A person may not sell or distribute an alternative nicotine product or vapor
18 product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

19 (B) ~~The retail sales of alternative nicotine products or ANY vapor products must be made at~~ age-
20 restricted sales venues as defined in [section 1] and all other locations that prohibit individuals who are under
21 18 years of age from entering the premises.

22 (2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of
23 a driver's license or other generally accepted identification that includes a picture of the individual.

24 (3) If the seller scans a person's government or tribal-issued identification, the seller shall handle
25 data and metadata from the scan in accordance with 16-3-313.

26 (4) A retail seller of alternative nicotine products or vapor products shall conspicuously display, at
27 each place on the premises at which alternative nicotine products or vapor products are displayed and sold, a

Amendment - 2nd Reading-yellow - Requested by: Ron Marshall - (H) Committee of the Whole

- 2025

69th Legislature 2025

Drafter: Jameson Walker,

HB0149.003.001

sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the sale of alternative nicotine products and vapor products to persons under 18 years of age."

NEW SECTION. Section 4. Sales of alternative nicotine products or vapor products through vending machines restricted. (1) Alternative nicotine products and vapor products may be sold through a vending machine only in places where alcoholic beverages are sold and consumed on the premises and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the establishment. The alternative nicotine products or vapor products must be in a vending machine that contains only alternative nicotine products or vapor products.

(2) Alternative nicotine products or vapor products may not be sold through a vending machine that is located in a restaurant unless the restaurant has a bar, the restaurant area shares seating with the bar area, and the vending machine meets the requirements of subsection (1).

(3) The sale of alternative nicotine products or vapor products from a vending machine under the direct line-of-sight supervision of an owner or employee is considered a sale of alternative nicotine products or vapor products by the owner or employee for the purposes of [section 3].

NEW SECTION. Section 5. Civil penalties -- license suspension. (1) Failure to obtain a license as required by [section 2] or failure to post signs as provided in [section 3] is punishable by a civil penalty of \$100. The department may collect the penalty in the manner provided for the collection of other debts.

(2) A person who violates [section 3(1)] or [section 4] at any one location within a 3-year period shall be punished as follows:

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

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

(c) A fifth offense is punishable by assessment of a \$500 fine against the owner of the establishment.

(d) A sixth offense is punishable by suspension of the license for 3 months.