

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; PROHIBITING THE SALE OF DISPOSABLE VAPOR PRODUCTS; 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) "Disposable vapor product" has the same meaning as "vapor product" as defined in this section except that a disposable vapor product is a prefilled, self-contained product designed for one-time use.

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

(2)(3) "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)(4) "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)(5) "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

1 August 8, 2016, that was submitted to the United States food and drug administration on or before September
2 9, 2020, and accepted for filing.

3 ~~(5)(6)~~ "Units sold" means the number of individual vapor products containing nicotine sold in the state
4 by the applicable vapor product manufacturer, whether directly or through a wholesaler, retailer, or similar
5 intermediary or intermediaries, during a given year or quarter.

6 ~~(6)(7)~~ (a) "Vapor product" has the same meaning as provided in 16-11-102, except that for the
7 purposes of [sections 1 through 15], the vapor product must contain nicotine.

8 (b) The term does not include a product regulated as a drug or device by the FDA under Chapter V
9 of the Federal Food, Drug, and Cosmetic Act.

10 ~~(7)(8)~~ "Vapor product manufacturer" means a person or entity that manufactures or fabricates vapor
11 products for the purpose of sale or resale.

12 ~~(8)(9)~~ "Wholesaler" means a person or entity that:

13 (a) purchases vapor products from a vapor product manufacturer for the purpose of selling vapor
14 products to retailers; or

15 (b) purchases vapor products from another wholesaler or any other person or entity for the
16 purpose of selling vapor products to wholesalers or retailers.

17
18 **NEW SECTION. Section 2. Vapor product directory.** (1) By October 1, 2025, and annually
19 afterward, a vapor product manufacturer whose vapor products containing nicotine are sold for retail sale in this
20 state or to a consumer in this state, whether directly or through a retailer, wholesaler, importer, or similar
21 intermediary or intermediaries, shall execute and deliver, on a form prescribed by the attorney general, a
22 certification to the attorney general, under penalty of perjury, that as of the date of the certification the vapor
23 product manufacturer is compliant with this chapter and that, for each vapor product containing nicotine sold for
24 retail sale in this state or to a consumer in this state:

25 (a) the vapor product manufacturer has received a marketing granted order for the vapor product
26 containing nicotine from the FDA pursuant to 21 U.S.C. 387j;

27 (b) the vapor product manufacturer submitted a timely filed premarket tobacco product application
28 for the vapor product containing nicotine to the FDA pursuant to 21 U.S.C. 387j, and the application either

remains under review by the FDA or has received a denial order that has been and remains stayed by the FDA or court order, rescinded by the FDA, or vacated by a court; ~~or~~

(c) the vapor product manufacturer can demonstrate that the FDA has issued a rule, guidance, or other formal statement that temporarily exempts the vapor product containing nicotine from federal premarket tobacco application requirements; or

(d) the vapor product is not a disposable vapor product as defined in [section 1]. Disposable vapor products may not be offered to the public for sale in this state.

(2) The certification form must:

(a) separately list each brand name, product name, category, including but not limited to ~~disposable vapor product~~, power unit, device, e-liquid cartridge, and e-liquid pod, and flavor for each vapor product containing nicotine that is sold in this state;

(b) identify the number of units sold in the state during the preceding calendar year for each brand family and product name;

(c) indicate by an asterisk a brand family or product name of a vapor product containing nicotine sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the certification;

(d) identify by name and address a vapor product manufacturer of vapor products containing nicotine; ~~and~~

(e) certify that the vapor product manufacturer has appointed an agent for service of process and has provided notice as required by [section 9]; and

(f) certify that the vapor product is not a disposable vapor product.

(3) An annual certification form must be accompanied by:

(a) a copy of:

(i) the marketing granted order issued by the FDA pursuant to 21 U.S.C. 387j;

(ii) the acceptance letter issued by the FDA pursuant to 21 U.S.C. 387j for a timely filed premarket tobacco product application;

(iii) a document issued by the FDA or by a court confirming that the premarket tobacco product application has received a denial order that has been and remains stayed by the FDA or court order, rescinded

by the FDA, or vacated by a court; or

(iv) a document issued by the FDA demonstrating that the vapor product containing nicotine is temporarily exempt from the premarket tobacco product application requirements; and

(b) a nonrefundable payment of \$2,500 for each vapor product containing nicotine the first time a vapor product manufacturer submits a certification form for that product, and \$1,000 for each vapor product containing nicotine each time a vapor product manufacturer submits an annual certification form for that product afterward.

(4) A vapor product manufacturer must notify the attorney general at least 30 days prior to making changes to the name, brand style, or packaging of a vapor product that was previously included in a certification under subsections (1) and (2) but is not required to submit an additional marketing granted order or premarket tobacco product application for this type of product change.

NEW SECTION. Section 3. Confidentiality. The information submitted by the vapor product manufacturer pursuant to [sections 2(3)(a) and 6(2)] constitutes a trade secret as defined in 30-14-402, is confidential information as defined in 2-6-1002, and is protected from disclosure.

NEW SECTION. Section 4. Notice of changes. A vapor product manufacturer required to submit a certification form pursuant to [section 2] shall notify the attorney general within 30 days of any material change to the certification form, including the issuance or denial of a marketing authorization or other order by the FDA pursuant to 21 U.S.C. 387j, or any other order or action by the FDA or any court that affects the ability of the vapor product containing nicotine to be introduced or delivered into interstate commerce for commercial distribution in the United States.

NEW SECTION. Section 5. Directory -- publication -- updates. (1) Starting January 1, 2026, the attorney general shall maintain and make publicly available on the attorney general's official website a directory that lists all vapor product manufacturers and all vapor products containing nicotine, such as brand names, product names, categories, including but not limited to ~~a disposable vapor product~~, e-liquid, e-liquid cartridge, e-liquid pod, and power unit, and flavors, for which certification forms have been submitted and approved by the

1 attorney general.

2 (2) The attorney general shall update the directory as necessary in order to correct mistakes and
3 to add or remove a vapor product manufacturer or vapor product containing nicotine to keep the directory in
4 conformity with the requirements of this chapter. The attorney general shall establish a process to provide
5 licensed retailers, wholesalers, importers, and other relevant parties notice of the initial publication of the
6 directory and changes made to the directory in the prior month.

7 (3) A vapor product manufacturer or the vapor product manufacturer's vapor products containing
8 nicotine may not be included or retained in the directory if the attorney general determines that any of the
9 following apply:

10 (a) the vapor product manufacturer failed to provide a complete and accurate certification as
11 required by [section 2];

12 (b) the vapor product manufacturer submitted a certification that does not comply with the
13 requirements of [sections 2(2) and (3)(a)];

14 (c) the vapor product manufacturer failed to include with its certification the payment required by
15 [section 2(3)(b)];

16 (d) the vapor product manufacturer sold vapor products containing nicotine in this state required to
17 be certified under this chapter during a period when either the vapor product manufacturer or the vapor product
18 containing nicotine had not been certified and listed on the directory;

19 (e) the information provided by the vapor product manufacturer in its certification is determined by
20 the attorney general to contain false information or contains material misrepresentations or omissions;

21 (f) the vapor product manufacturer failed to submit a change notice to the attorney general as
22 required by [section 4]; or

23 (g) the vapor product manufacturer failed to submit any reports required under 16-11-128.

24

25 **NEW SECTION. Section 6. Directory -- notice and inventory.** The attorney general shall provide
26 vapor product manufacturers notice and an opportunity to cure deficiencies before removing vapor product
27 manufacturers or vapor products containing nicotine from the directory.

28 (1) The attorney general may not remove the vapor product manufacturer or the vapor product

1 manufacturer's vapor products containing nicotine from the directory until at least 30 days after the vapor
2 product manufacturer has been given notice of an intended action. Notice is sufficient and immediately received
3 by a vapor product manufacturer if the notice is sent either electronically or by facsimile to an electronic mail
4 address or facsimile number provided by the vapor product manufacturer in its most recent certification filed
5 under [sections 2(2) and (3)].

6 (2) The vapor product manufacturer has 30 days from the date the attorney general provides
7 notice under subsection (1) to cure all identified deficiencies. Failure to cure the deficiencies to the attorney
8 general's satisfaction may result in the attorney general removing the vapor product manufacturer or the
9 manufacturer's vapor products containing nicotine from the directory.

10 (3) Retailers have 30 days following the removal of a vapor product manufacturer or the vapor
11 product manufacturer's vapor products containing nicotine from the directory to sell the vapor products
12 containing nicotine that were in the retailer's inventory as of the date of removal.

13 (4) After 30 days following removal from the directory, the vapor products containing nicotine of a
14 vapor product manufacturer identified in the notice of removal and intended for sale in this state are subject to
15 seizure and forfeiture from retailers, wholesalers, and importers and destruction or disposal, and may not be
16 purchased or sold for retail sale in this state. The cost of the seizure, forfeiture, and destruction or disposal
17 must be borne by the retailer, wholesaler, or importer from whom the vapor products containing nicotine are
18 confiscated.

19
20 **NEW SECTION. Section 7. Restrictions on sale of vapor products containing nicotine. (1)**

21 Except as provided in subsections (2) and (3) of this section, beginning October 1, 2025, or on the date that the
22 attorney general first makes the directory available for public inspection on the attorney general's official
23 website, whichever is later, vapor products containing nicotine not included in the directory may not be sold for
24 retail sale in this state, either directly or through a retailer, wholesaler, importer, or similar intermediary or
25 intermediaries.

26 (2) A retailer has 60 days from the date that the attorney general first makes the directory available
27 for inspection on the attorney general's public website to sell vapor products containing nicotine that were in the
28 retailer's inventory and not included in the directory or remove those vapor products containing nicotine from

1 inventory.

2 (3) A retailer, wholesaler, or importer has 60 days from the date that the attorney general first
3 makes the directory available for inspection on the attorney general's public website to remove those vapor
4 products containing nicotine intended for retail sale in the state from the retailer, wholesaler, or importer's
5 inventory.

6 (4) After 60 days following publication of the directory, the attorney general may begin enforcing
7 this chapter, and vapor products containing nicotine not listed in the directory and intended for sale in this state
8 are subject to seizure, forfeiture, and destruction or disposal and may not be purchased or sold for retail sale in
9 this state except as provided in subsections (2) and (3) of this section. The cost of the seizure, forfeiture, and
10 destruction or disposal must be borne by the retailer, wholesaler, or importer from whom the vapor products
11 containing nicotine are confiscated.

12

13 **NEW SECTION. Section 8. Penalties.** The following penalties apply to violations of this chapter:

14 (1) A retailer, wholesaler, or importer who sells or offers for sale a vapor product containing
15 nicotine for retail sale in this state or to a consumer in this state that is not included in the directory shall be
16 subject to a civil penalty of \$250 for each individual vapor product containing nicotine offered for sale in
17 violation of this chapter.

18 (a) For a second violation of this type within a 12-month period, the civil penalty is \$500 for each
19 individual vapor product containing nicotine offered for sale in violation of this chapter and a licensee's license
20 must be suspended for 1 month.

21 (b) For a third violation of this type within a 12-month period, the civil penalty is \$750 for each
22 individual vapor product containing nicotine offered for sale in violation of this chapter and a licensee's license
23 must be suspended for 3 months.

24 (c) For a fourth or subsequent violation of this type within a 12-month period, the civil penalty is
25 \$1,000 for each individual vapor product containing nicotine offered for sale in violation of this chapter and a
26 licensee's license must be suspended for 1 year.

27 (2) A vapor product manufacturer whose vapor products containing nicotine are not listed in the
28 directory and who causes the vapor products containing nicotine that are not listed to be sold for retail sale in

1 this state or to a consumer in this state, whether directly or through a retailer, wholesaler, importer, or similar
2 intermediary or intermediaries, is subject to a civil penalty of \$10,000 for each individual vapor product
3 containing nicotine offered for sale in violation of this chapter. In addition, any vapor product manufacturer that
4 falsely represents any information required by a certification form is guilty of a misdemeanor for each false
5 representation.

6 (3) In an action to enforce this chapter, the state is entitled to recover costs, including the costs of
7 investigation, expert witness fees, and reasonable attorney fees.

8 (4) A second or subsequent violation of this chapter constitutes an unfair or deceptive trade
9 practice and is a violation of 30-14-103.

10
11 **NEW SECTION. Section 9. Agent for service of process.** (1) A nonresident or foreign vapor
12 product manufacturer that has not registered to do business in the state as a foreign corporation or business
13 entity shall, as a condition precedent to having its vapor products containing nicotine on the directory, appoint,
14 and continually engage without interruption the services of an agent in this state to act as an agent for the
15 service of process on whom all process and any action or proceeding against it concerning or arising out of the
16 enforcement of this chapter may be served in any manner authorized by law. The service constitutes legal and
17 valid service of process on the vapor product manufacturer. The vapor product manufacturer shall provide the
18 name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of
19 the attorney general.

20 (2) The vapor product manufacturer shall provide notice to the attorney general at least 30 days
21 prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney
22 general of the appointment of a new agent no less than 5 days prior to the termination of an existing agent
23 appointment. If an agent terminates an agency appointment, the vapor product manufacturer shall notify the
24 attorney general of the termination within 5 days and include proof to the satisfaction of the attorney general of
25 the appointment of a new agent.

26
27 **NEW SECTION. Section 10. Bond requirement for nonresident or foreign vapor product**
28 **manufacturers.** (1) A nonresident or foreign vapor product manufacturer that has not registered to do business

1 in the state as a foreign corporation or business entity shall, as a condition to having its name or its vapor
2 products containing nicotine listed and retained in the directory, submit to the attorney general a surety bond or
3 other cash security payable to the state of Montana in the amount of \$25,000 the first time the nonresident or
4 foreign vapor product manufacturer files a certification pursuant to [section 2]. The bond must be posted by a
5 corporate surety located within the United States.

6 (2) The bond must be conditioned on the performance by the nonresident or foreign vapor product
7 manufacturer of all requirements and obligations imposed by this chapter. A surety on a nonresident or foreign
8 vapor product manufacturer's bond must be liable up to the amount of the bond, and the state may execute on
9 the surety bond for the payment of fines and penalties imposed on the nonresident or foreign vapor product
10 manufacturer under this section and for the costs of seizure and destruction of vapor products containing
11 nicotine sold in violation of this section. If the state executes on the surety bond, it may require the nonresident
12 or foreign vapor product manufacturer to provide an additional bond as a condition precedent for retaining the
13 nonresident or foreign vapor product manufacturer or its vapor products containing nicotine in the directory. The
14 state may also require an initial and subsequent bond in excess of \$25,000 if the nonresident or foreign vapor
15 product manufacturer's volume of sales, conduct, or other circumstances merit a larger bond.

16 (3) A surety on a bond furnished by a nonresident or foreign vapor product manufacturer as
17 provided in this section must be released and discharged from liability to the state accruing on the bond after
18 expiration of 60 days from the date on which the surety must have lodged with the attorney general a written
19 request to be released and discharged. This subsection does not relieve, release, or discharge the surety from
20 liability already accrued or that may accrue before the expiration of the 60-day period. The attorney general
21 shall, on receiving this request, notify the nonresident or foreign vapor product manufacturer who furnished the
22 bond. Unless the nonresident or foreign vapor product manufacturer, on or before the expiration of the 60-day
23 period, files with the attorney general a new bond with the surety approved by and acceptable to the attorney
24 general, the attorney general shall remove the nonresident or foreign vapor product manufacturer and the
25 nonresident or foreign vapor product manufacturer's vapor products containing nicotine from the directory.

26
27 **NEW SECTION. Section 11. Inspections.** (1) (a) A retailer, wholesaler, or importer that sells or
28 resells vapor products containing nicotine in this state is subject to up to four unannounced compliance checks

1 annually for the purposes of enforcing this chapter. The department of revenue, attorney general, and
2 department of public health and human services has authority to inspect all retailers, wholesalers, and
3 importers that sell or resell vapor products containing nicotine in this state.

4 (b) If the department of revenue, attorney general, or department of public health and human
5 services finds a retailer, wholesaler, or importer noncompliant with this chapter, then the department of
6 revenue, attorney general, or department of public health and human services may conduct unannounced
7 follow-up compliance checks within 30 days after a violation of this chapter.

8 (c) The attorney general shall publish the results of all compliance checks at least annually and
9 shall make the results available to the public on request.

10 (2) The attorney general may coordinate with the department of revenue and the department of
11 public health and human services in conducting inspections and may work with the department of revenue and
12 the department of public health and human services to conduct the inspections required under this section with
13 those conducted under section 16-11-309.

14
15 NEW SECTION. Section 12. Rules. The attorney general may promulgate rules necessary to effect
16 the purposes of [sections 1 through 15].

17
18 NEW SECTION. Section 13. Fees and penalties -- appropriations -- use. (1) There is a dedicated
19 state special revenue account within the state special revenue fund established in 17-2-102, to be administered
20 by the attorney general. The account consists of fees and penalties collected by the attorney general pursuant
21 to [sections 1 through 15] and is statutorily appropriated, pursuant to 17-7-502, to the department of justice.
22 Except as provided in subsection (2), money in the account must be used by the attorney general for the
23 purpose of administering the provisions of this chapter and to establish and maintain the directory created in
24 this chapter.

25 (2) At the end of the first fiscal year after [the effective date of this act], the attorney general shall
26 transfer \$300,000 to the general fund.

27
28 NEW SECTION. Section 14. Reporting of information. (1) No later than 20 days after the end of

1 each calendar quarter, and more frequently if directed by the attorney general, each wholesaler shall submit
2 information that the attorney general requires to facilitate compliance with this section by vapor product
3 manufacturers, including but not limited to a list by brand family and product name of the total units sold by the
4 wholesaler during the preceding calendar quarter. The wholesaler shall maintain and make available to the
5 attorney general all invoices and documentation of sales of all vapor products containing nicotine and any other
6 information relied on in reporting to the attorney general for a period of 5 years.

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

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

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

20
21 **NEW SECTION. Section 15. Annual reports.** Starting January 31, 2026, and annually afterward, the
22 attorney general shall provide a report to the revenue interim committee in accordance with 5-11-210 regarding
23 the status of the directory, including a discussion of the date of initial publication, dates of updated versions,
24 and issues the attorney general has encountered related to making updates to the directory, revenue and
25 expenditures related to the administration of this section, and any enforcement activities undertaken by the
26 attorney general. The report must be accompanied by the most recent version of the directory.

27
28 **Section 16.** Section 16-11-102, MCA, is amended to read:

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

3 (a) "Contraband" means:

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

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

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

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

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

11 (vi) any vapor products containing nicotine that are not included in the directory established under
12 [sections 2 through 6].

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

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

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

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

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

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

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

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

28 (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, or vapor 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 or vapor products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product or vapor product vending machines.

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

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

(q) "Sole distributor" means a person who either causes a unique brand of tobacco products to be

1 manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco
2 products or is the exclusive distributor of a brand of tobacco products within the continental United States.

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

7 (s) "Tobacco product" means:

8 (i) _____ cigarettes and all other products containing tobacco that are intended for human consumption
9 or use; OR

10 (ii) _____ VAPOR PRODUCTS THAT CONTAIN NICOTINE.

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

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

15 (u) (i) "Vapor product" means a noncombustible product that may contain nicotine and that uses a
16 heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,
17 regardless of shape or size, to produce vapor from a solution or other substance. The term includes an
18 electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor
19 cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with
20 or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.

21 (ii) The term does not include a product regulated as a drug or device by the United States food
22 and drug administration under Chapter V of the Federal Food, Drug, and Cosmetic Act.

23 (v) "Vapor product manufacturer" means a person or entity that manufactures or fabricates vapor
24 products for the purpose of sale or resale.

25 (w) "Vapor product vendor" means a person doing business in the state who purchases vapor
26 products through a wholesaler or retailer for 10 or more vapor product vending machines that the person
27 operates for a profit in premises or locations other than the person's own premises or location.

28 (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."

1

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

3 **"16-11-119. Disposition of taxes -- statutory appropriation.** (1) A sum equal to the amount
4 necessary to purchase cigarette tax stamps must be deposited to or allocated from the state special revenue
5 fund to the credit of the department from cigarette taxes collected under the provisions of 16-11-111, as
6 provided in subsection ~~(5)~~(6) of this section.

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

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

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

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

15 (d) \$150,000 in the veterans and surviving spouses state special revenue account provided for in
16 10-2-108; and

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

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

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

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

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

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

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

28 (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 19. Section 16-11-120, MCA, is amended to read:

"16-11-120. Tobacco product -- vapor product -- licenses. Every wholesaler, subjobber, retailer, or tobacco product vendor, or vapor product vendor shall obtain a license from the department before engaging in the business of wholesaler, subjobber, retailer, or tobacco product vendor, or vapor product vendor. A separate application and a separate license is required for each place of business owned, controlled, or operated by the wholesaler, subjobber, retailer, or tobacco product vendor, or vapor product vendor within the state of Montana. Application forms must include the type and general description of applicant organizations, names of all known owners, and other pertinent information that the department may require by rule. The department shall comply with rules issued by the board of review established in 30-16-302 with respect to the form of electronic verification of information required or acceptable for licensing purposes."

Section 20. Section 16-11-128, MCA, is amended to read:

"16-11-128. Tobacco product and vapor product sales reporting requirements. (1) Prior to delivering, mailing, or shipping tobacco products or vapor products into Montana to a person other than a licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a statement with the department. The statement must set forth:

(a) the name, trade name, and address of the principal place of business of the seller, any other place of business of the seller, and the seller's domicile state; and

(b) all owners or controlling persons and every partner, officer, director, or person occupying a similar status or performing similar functions and their home addresses.

(2) By the 10th day of each calendar month, each person that has made a sale or delivered, mailed, or shipped tobacco products or vapor products into this state or contracted with another party for delivery service in connection with a sale of tobacco products or vapor products into this state made during the previous calendar month shall file a memorandum of sale or a copy of the sales invoice with the department.

1 The memorandum or sales invoice must provide, for each delivery sale made during the previous calendar
2 month:

3 (a) the name and address of the consumer to whom the sale was made;

4 (b) the brand or brands of the tobacco products or vapor products that were sold; and

5 (c) the quantity of tobacco products or vapor products that were sold.

6 (3) A person that satisfies the requirements of 15 U.S.C. 376 is considered to meet the
7 requirements of this section.

8 (4) The department may seek an injunction to restrain the actual or threatened violation of this
9 section and to compel the seller to comply with this section."
10

11 **Section 21.** Section 16-11-132, MCA, is amended to read:

12 **"16-11-132. Unlawful to sell tobacco products or vapor products without valid license --**
13 **exceptions.** (1) Unless approved by the department, a person may not sell, offer to sell, or possess with intent
14 to sell any tobacco products or vapor products, at wholesale or retail, unless the person's license is current and
15 valid under the provisions of this part.

16 (2) A person may not sell, offer to sell, or possess with intent to sell any tobacco products or vapor
17 products, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, tobacco product vendor, or
18 retailer who is not licensed under this part or who is not licensed by the state in which the person sells, offers to
19 sell, or intends to sell tobacco products or vapor products. However, a wholesaler, subjobber, tobacco product
20 vendor, vapor product vendor, or retailer licensed under the provisions of this chapter may sell cigarettes to any
21 person, wholesaler, subjobber, tobacco product vendor, vapor product vendor, or retailer not licensed under
22 this chapter if:

23 (a) the person, wholesaler, subjobber, tobacco product vendor, vapor product vendor, or retailer is
24 exempt from state tobacco product taxation provisions;

25 (b) the person, wholesaler, subjobber, tobacco product vendor, vapor product vendor, or retailer
26 furnishes documentary evidence of exemption from state tobacco product taxation provisions; and

27 (c) the person, wholesaler, subjobber, tobacco product vendor, or retailer signs a receipt of
28 purchase for any tobacco products evidencing an exemption from state tobacco product taxation provisions.

(3) A tobacco product vendor, vapor product vendor, or retailer may purchase tobacco products and vapor products only from a wholesaler or subjobber who is licensed under this part. A tobacco product vendor, vapor product vendor, or retailer who purchases tobacco products or vapor products directly from a tobacco product manufacturer or a vapor product manufacturer shall obtain a license as a wholesaler under this part.

~~(3)~~(4) A person violating the provisions of this section shall be punished as provided in 16-11-148, and all tobacco products and vapor products in the person's possession must be seized, forfeited, and destroyed pursuant to 16-11-147, 16-11-158, and 16-11-159."

Section 22. Section 16-11-141, MCA, is amended to read:

"16-11-141. Powers of arrest -- search and seizure. (1) The department of justice is a criminal justice agency. Designated agents of the department of justice have peace officer status and may arrest any person violating any provision of this chapter, enter a complaint before any court of competent jurisdiction, and lawfully search and seize and use as evidence contraband found in the possession of any person or in any place.

(2) Any investigator or peace officer who finds a tobacco product or vapor product that the investigator or peace officer has reasonable cause to believe is contraband may seize and remove the contraband and the packages in which the contraband is kept. The contraband and all packages containing the contraband must, in addition to any other penalty prescribed by this chapter, be forfeited to the state of Montana as provided in 16-11-159 and destroyed as provided in 16-11-158."

Section 23. Section 16-11-159, MCA, is amended to read:

"16-11-159. Forfeiture of contraband and property used in transporting contraband. (1) ~~Upon~~ On the seizure of any contraband and within 10 working days after seizure of any equipment or property, the officer making the seizure shall:

(a) deliver an inventory of the property or contraband seized to the person from whom the seizure was made or to any other person having a right or interest in the seized property or contraband, if known; and

(b) file a copy of the inventory with the department if the tobacco product or vapor product is

contraband under part 1 of this chapter or with the department of justice if the tobacco product or vapor product is contraband under parts 4 or 5 of this chapter.

(2) If a person other than the person from whom the property or contraband was seized, as described in subsection (1), does not notify the department that issued the notice of a written claim of ownership or right of possession of the items seized within 15 days of the date of the inventory required in subsection (1), the seized property or contraband is considered forfeited.

(3) If a person notifies the appropriate department in writing of a claim of ownership or right of possession of the items seized within 15 days of the date of inventory required in subsection (1), the person is entitled to a hearing on the claim or right. The hearing must be held before the issuing department's director or the director's designee, in accordance with the Montana Administrative Procedure Act. If the aggregate value of the seized property or contraband is more than \$500, a person seeking the return of the property or contraband may, in lieu of requesting a hearing, bring an action in the district court of the county in which the property or contraband was seized.

(4) All property and contraband forfeited must be disposed of as provided in 16-11-158."

Section 24. Section 17-7-502, MCA, is amended to read:

"17-7-502. Statutory appropriations -- definition -- requisites for validity. (1) A statutory appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the need for a biennial legislative appropriation or budget amendment.

(2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both of the following provisions:

(a) The law containing the statutory authority must be listed in subsection (3).

(b) The law or portion of the law making a statutory appropriation must specifically state that a statutory appropriation is made as provided in this section.

(3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-11-407; 5-13-403; 5-13-404; 7-4-2502; 7-4-2924; 7-32-236; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203; 10-3-310; 10-3-312; 10-3-314; 10-3-316; 10-3-802; 10-3-1304; 10-4-304; 10-4-310; 15-1-121; 15-1-142; 15-1-143; 15-1-218; 15-1-2302; 15-31-165; 15-31-1004; 15-31-1005; 15-35-108; 15-36-332; 15-37-

117; 15-39-110; 15-65-121; 15-70-128; 15-70-131; 15-70-132; 15-70-433; 16-11-119; 16-11-509; [section 13],
17-3-106; 17-3-212; 17-3-222; 17-3-241; 17-6-101; 17-6-214; 17-7-133; 17-7-215; 18-11-112; 19-3-319; 19-3-
320; 19-6-410; 19-9-702; 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-
21-203; 20-3-369; 20-7-1709; 20-8-107; 20-9-250; 20-9-534; 20-9-622; [20-15-328]; 20-26-617; 20-26-1503;
22-1-327; 22-3-116; 22-3-117; [22-3-1004]; 23-4-105; 23-5-306; 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-
10-1004; 37-43-204; 37-50-209; 37-54-113; 39-71-503; 41-5-2011; 42-2-105; 44-4-1101; 44-4-1506; 44-12-
213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-9-113; 53-24-108; 53-24-206; 60-5-530; 60-11-115; 61-3-
321; 61-3-415; 67-1-309; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214; 75-11-313; 75-26-308; 76-13-
150; 76-13-151; 76-13-417; 76-17-103; 77-1-108; 77-2-362; 80-2-222; 80-4-416; 80-11-518; 80-11-1006; 81-1-
112; 81-1-113; 81-2-203; 81-7-106; 81-7-123; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505; [85-25-102]; 87-
1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

(4) There is a statutory appropriation to pay the principal, interest, premiums, and any costs or fees
associated with issuing, paying, securing, redeeming, or defeasing all bonds, notes, or other obligations, as due
in the ordinary course or when earlier called for redemption or defeased, that have been authorized and issued
pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined
by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have
statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the
inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement
system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410
terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental
benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on
occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
terminates June 30, 2025; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates
September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027;
pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to secs.
11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 1, Ch.
408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021,

the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025; pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; pursuant to sec. 1, Ch. 20, L. 2023, sec. 2, Ch. 20, L. 2023, and sec. 3, Ch. 20, L. 2023, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2029; pursuant to sec. 9, Ch. 44, L. 2023, the inclusion of 15-1-142 terminates December 31, 2025; pursuant to sec. 10, Ch. 47, L. 2023, the inclusion of 15-1-2302 terminates June 30, 2025; pursuant to sec. 2, Ch. 374, L. 2023, the inclusion of 10-3-802 terminates June 30, 2031; pursuant to sec. 12, Ch. 558, L. 2023, the inclusion of 20-9-250 terminates December 31, 2029; pursuant to sec. 4, Ch. 621, L. 2023, the inclusion of 22-1-327 terminates July 1, 2029; pursuant to sec. 24, Ch. 722, L. 2023, the inclusion of 17-7-133 terminates June 30, 2027; pursuant to sec. 10, Ch. 758, L. 2023, the inclusion of 44-4-1506 terminates June 30, 2027; and pursuant to sec. 10, Ch. 764, L. 2023, the inclusion of 15-1-143 terminates December 31, 2025.)"

NEW SECTION. Section 25. Appropriation. There is appropriated \$300,000 from the general fund to the attorney general for the biennium beginning July 1, 2025, for establishing and initially administering the directory created by [sections 1 through 15].

NEW SECTION. Section 26. Codification instruction. [Sections 1 through 15] are intended to be codified as a new chapter in Title 16, and the provisions of Title 16 apply to [sections 1 through 15].

NEW SECTION. Section 27. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 28. Effective date. [This act] is effective July 1, 2025.

NEW SECTION. Section 29. Applicability. [This act] applies to vapor products sold on or after

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

- 2025

69th Legislature 2025

Drafter: Jameson Walker,

HB0525.002.003

1 March 1, 2026.

2

3 NEW SECTION. **Section 30. Termination.** [Section 23] terminates July 1, 2033.

4 - END -