

1 HOUSE BILL NO. 148

2 INTRODUCED BY F. SMITH

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT IMPOSING A TAX ON THE SALE FOR CONSUMPTION OF
5 CIGARETTE PAPERS; PROVIDING FOR THE ADMINISTRATION OF THE TAX ON CIGARETTE PAPERS;
6 ESTABLISHING PENALTIES FOR VIOLATIONS OF PROVISIONS RELATING TO THE TAX ON CIGARETTE
7 PAPERS; REQUIRING THE LICENSURE OF WHOLESALERS, SUBJOBBER, RETAILERS, AND VENDORS
8 OF CIGARETTE PAPERS; ESTABLISHING A CIGARETTE PAPER TAX DISCOUNT TO WHOLESALERS TO
9 DEFRAID THE COSTS OF COLLECTING AND HELPING TO ADMINISTER THE TAX ON CIGARETTE
10 PAPERS; REVISING THE DEFINITION OF "TOBACCO PRODUCT" TO INCLUDE CIGARETTE PAPERS AND
11 TO PROHIBIT THE SALE OR DISTRIBUTION OF CIGARETTE PAPERS TO PERSONS UNDER 18 YEARS
12 OF AGE; AMENDING SECTIONS 16-11-302 AND 30-16-301, MCA; AND PROVIDING AN IMMEDIATE
13 EFFECTIVE DATE AND AN APPLICABILITY DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 **NEW SECTION. Section 1. Definitions.** As used in [sections 1 through 34], unless the context requires
18 otherwise, the following definitions apply:

19 (1) "Cigarette paper" means any paper that is customarily used in the manufacture of cigarettes,
20 regardless of size or shape and whether or not the paper is flavored, colored, patterned, or adulterated, but does
21 not include paper that is an integral part of a cigarette, as defined in 16-11-102, on which the tax on cigarettes
22 has been paid. The department shall presume that paper that is customarily used in the manufacture of
23 cigarettes is cigarette paper for the purposes of [sections 1 through 34].

24 (2) "Cigarette paper vendor" means a person doing business in the state who purchases cigarette
25 papers through a wholesaler, subjobber, or retailer for 10 or more cigarette paper vending machines that the
26 person operates for a profit in premises or locations other than the person's own. That person must be treated
27 as a wholesaler. A person who operates fewer than 10 cigarette paper vending machines must be treated as
28 a retailer.

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

30 (4) "Full face value of the insignia" means the total amount of the tax levied under [sections 1 through

1 34].

2 (5) "Indian reservation" means lands declared to be a reservation for an Indian tribe or tribes:

3 (a) by a treaty between the tribe and a territorial government, a state government, or the United States;

4 (b) through an act of the United States congress; or

5 (c) through an executive order of the United States.

6 (6) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette paper vendor,
7 who is licensed under the provisions of [sections 1 through 34].

8 (7) "Licensed subjobber" means a subjobber licensed under the provisions of [sections 1 through 34].

9 The person must be treated as a wholesaler.

10 (8) "Licensed wholesaler" means a wholesaler licensed under the provisions of [sections 1 through 34].

11 (9) "Manufacturer" means any person who fabricates cigarette papers from raw materials for the
12 purpose of resale.

13 (10) "Person" means an individual, firm, partnership, corporation, association, company, or other
14 business entity, however formed.

15 (11) "Quota" means 150% of the national average individual consumption of cigarette papers multiplied
16 by the enrolled tribal member population of an Indian reservation on which the cigarette papers sales are made
17 or any other formula or amount agreed to in a state-tribal cooperative agreement.

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

19 (13) "Retailer" means any person other than a wholesaler who is engaged in the business of selling
20 cigarette papers to the ultimate consumer.

21 (14) "Sale" or "sell" means any transfer of cigarette papers for a consideration, exchange, barter, gift,
22 offer for sale, or distribution, in any manner or by any means.

23 (15) "Subjobber" means a person who purchases from a licensed wholesaler cigarette papers with the
24 Montana cigarette paper tax insignia affixed and sells or offers to sell the cigarette papers to a licensed retailer
25 or vendor. An isolated sale or exchange of cigarette papers between licensed retailers does not constitute those
26 retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public. If during
27 any month more than 35% of the volume of cigarette paper sales by a subjobber is with any retail client whose
28 business is controlled directly or indirectly through consanguinity or affinity with the owner or employer for that
29 retail business, the license is considered to have been used or to be intended to be used in violation of [sections
30 1 through 34].

1 (16) "Wholesaler" means any person who purchases cigarette papers directly from the manufacturer
2 or from any other person who purchases from the manufacturer and who acquires the products for subsequent
3 sale to retail dealers.

4
5 **NEW SECTION. Section 2. Powers of department.** (1) The department may promulgate rules for the
6 effective administration of [sections 1 through 34].

7 (2) (a) The department and its agents may conduct inquiries and hearings, and any member of the
8 department or any agent is authorized to administer oaths and take testimony under oath relative to the matter
9 of inquiry. The director or an authorized agent may subpoena witnesses and require the production of books,
10 papers, and documents pertinent to the inquiry.

11 (b) The director or the director's agent, after a hearing, shall make findings and issue an order in writing.
12 The findings and order must be filed in the office of the department and be available for public inspection.

13 (3) The department may contract with the department of justice for the investigations required under
14 [sections 1 through 34]. The department may appoint assistants to carry out the provisions of [sections 1 through
15 34].

16 (4) The department and the department of justice are authorized to employ clerical and field assistants
17 to properly administer the provisions of [sections 1 through 34].

18
19 **NEW SECTION. Section 3. Carriers to report shipments of cigarette papers.** Every common carrier
20 hauling, transporting, or shipping any cigarette papers into or out of the state of Montana from or to any other
21 state or country shall, if requested by the department, report in writing to the department on forms furnished by
22 the department. The report must include the date of shipment or delivery, the person to whom the shipment was
23 consigned and delivered, the quantity as shown by the bill of lading, and any other information the department
24 may require. A carrier shall retain for 30 months all pertinent and relevant records necessary for the preparation
25 of the report and any other information the department may require.

26
27 **NEW SECTION. Section 4. Rulemaking authority of department of justice.** The department of
28 justice may adopt rules to implement [sections 2, 12, 17, 22, 23, 28, and 30].

29
30 **NEW SECTION. Section 5. Cigarette paper sales tax -- exemption for sale to tribal member.** (1) (a)

1 A tax on the purchase of cigarette papers for consumption, use, or any purpose other than resale in the regular
2 course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The
3 tax on each package containing 32 or fewer cigarette papers is equal to the tax imposed in 16-11-111 on a
4 package of 20 cigarettes. Whenever a package of cigarette papers contains more than 32 papers, the tax on
5 each cigarette paper in excess of 32 papers in the package is 1 cent or 1/20th of the tax on a package of 32 or
6 fewer papers, whichever is greater.

7 (b) For the purposes of this section, cigarette papers that are sold as part of a package or kit for making
8 cigarettes are subject to the tax imposed by this section.

9 (2) The tax imposed in subsection (1) does not apply to quota cigarette papers.

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

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

17 (5) The distribution of tax-free cigarette papers to a tribal member must be implemented through a
18 system of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for
19 approval prior to the shipment of the untaxed cigarette papers. The department may authorize sales based on
20 whether the quota, as established in a cooperative agreement between the department and an Indian tribe or
21 as set out in [sections 1 through 34], has been met. If authorized as a tax-exempt sale, the wholesaler, upon
22 providing proof of order from and delivery to a retailer within the boundaries of a Montana Indian reservation
23 selling cigarette papers to members of a federally recognized tribe or tribes of that reservation, must be given
24 a refund or credit. Once the quota has been filled, the department shall immediately notify all affected
25 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will not
26 be honored for the remainder of the quota period. Quota allocations are not transferable between quota periods
27 or between reservations.

28 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming the
29 refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax due on
30 the quota allocation. The department shall determine the amount of refunds or credits for each Indian reservation

1 at the beginning of each fiscal year, using the most recent census data available from the bureau of Indian affairs
2 or as provided in a cooperative agreement with the tribe or tribes of the Indian reservation.

3
4 **NEW SECTION. Section 6. Tax on ultimate consumer.** All taxes paid pursuant to [section 5] are
5 conclusively presumed to be direct taxes on the retail consumer precollected for the purpose of convenience
6 and facility only. The full face value of the insignia or tax must be added to the cost of the cigarette papers and
7 recovered from the ultimate consumer or user. When the tax is paid by any other person, the payment is
8 considered as an advance payment and must be added to the price of the cigarette papers and recovered from
9 the ultimate consumer or user. Any person selling cigarette papers at retail shall state or separately display in
10 the licensed premises a notice of the tax included in the selling price and charged or payable pursuant to this
11 section. The provisions of this section do not affect the method of collection of the tax.

12
13 **NEW SECTION. Section 7. Tax insignia.** (1) Except as provided in this section, the wholesaler of any
14 cigarette papers shall cause to be securely affixed to the cigarette papers the required insignia denoting the
15 applicable tax.

16 (2) The insignia must be properly applied prior to sale, under rules adopted by the department.

17 (3) Retailers licensed under [sections 1 through 34] may buy, sell, or have in their possession only
18 cigarette papers that have on each package the insignia provided for in [sections 1 through 34]. The insignia
19 provided for in [sections 1 through 34] may be sold only to and must be affixed only by licensed wholesalers.

20 (4) If any cigarette papers without the insignia affixed are found in the place of business of any
21 unlicensed wholesaler, retailer, or other person, the presumption is that the cigarette papers are kept in that
22 place of business in violation of the provisions of [sections 1 through 34].

23 (5) This section does not apply to a wholesaler who has cigarette papers in possession that are either
24 to be shipped or consigned to an Indian tribe that has entered into a cooperative agreement with the state or to
25 a military reservation.

26
27 **NEW SECTION. Section 8. Insignia discount.** Each licensed wholesaler is entitled to purchase an
28 insignia at full face value of the insignia less 5% of the face value upon payment for the insignia as defrayment
29 of the costs of affixing the insignia and precollecting the tax on behalf of the state.

30

1 **NEW SECTION. Section 9. Tax meter machine -- tax stamp-applying machine -- purchase of**
2 **stamps.** (1) The department may authorize any licensed wholesaler to use a tax meter machine to imprint an
3 insignia upon each package of cigarette papers imported, delivered, or sold in this state. The insignia must be
4 approved by the department. Each package of cigarette papers imported into or delivered or sold in this state
5 must be marked with the proper insignia of the tax-stamping meter, and any original package of cigarette papers
6 so marked may be lawfully possessed and sold within the state by any licensed wholesaler. The department
7 shall supervise and check the operation of the tax meter machines. Before using the machine, the operator of
8 the machine shall take the machine's meter to the county treasurer of the county in which the machine is
9 operated. The county treasurer shall set the meter for the number of packages specified and required by the
10 operator. Prior to setting the meter, the county treasurer shall charge the operator the amount of money proper
11 for the setting, less the expense defrayment provided for in [section 8]. The county treasurer shall collect this
12 amount in advance unless the department has allowed the purchaser credit as provided in [section 11]. The
13 county treasurer shall report to the department on forms prescribed by the department the name of the licensed
14 wholesaler and the number of packages for which the meter was set and shall forward to the department any
15 amounts collected from the licensee.

16 (2) (a) The department may authorize a licensed wholesaler to affix tax stamps to packages of cigarette
17 papers with a heat-applied machine approved by the department. The department shall supervise and check
18 the operation of the stamp-applying machine.

19 (b) Tax stamps applied as provided in this subsection (2) must be purchased from the department, and
20 payment for the stamps must accompany the order unless the department has allowed the purchaser to delay
21 payment as provided in [section 11].

22
23 **NEW SECTION. Section 10. Resale of insignia prohibited -- rebate.** A wholesaler may not resell
24 to any other wholesaler any insignia purchased from the department. A wholesaler who has on hand any meter
25 settings or tax insignia at the time of discontinuing the business of selling cigarette papers may apply to the
26 department and be paid the face value of the meter settings or tax insignia less the amount of the expense
27 defrayment allowed by [section 8].

28
29 **NEW SECTION. Section 11. When payment for insignia due.** The department may permit a licensed
30 wholesaler to pay for the insignia purchased, or affixation of insignia, within 30 days. To be eligible to defer

1 payment, a wholesaler shall file with the department either a surety bond or other cash security, as approved
2 by the department, for the amount that the department may fix, but not in excess of an amount equal to the
3 maximum insignia purchases incurred for any 30-day period in the previous calendar year. Any newly licensed
4 wholesaler shall pay on a cash basis for 1 complete calendar year, after which the department may permit the
5 wholesaler 30 days to pay for the purchase or affixation of insignia and shall require a bond or security as
6 provided in this section.

7
8 **NEW SECTION. Section 12. Records of wholesalers.** All wholesalers shall keep for 5 years all
9 invoices of cigarette papers purchased and imported, all receipts issued and insignia purchased, and an
10 accurate record of all sales of cigarette papers, showing the name and address of each purchaser, the date of
11 sale, the quantity of each kind sold, the name of any carrier, the shipping point, and the destination. A wholesaler
12 shall permit the department and the department of justice and their assistants, authorized agents, or
13 representatives to examine all cigarette papers, invoices, receipts, books, paper, memoranda, and records as
14 may be necessary to determine compliance with [sections 1 through 34].

15
16 **NEW SECTION. Section 13. Disposition of taxes.** Revenue from the tax on cigarette papers collected
17 under the provisions of [section 5] must be deposited to the state general fund and may be appropriated to
18 operate and enforce the provisions of [sections 1 through 34] or to the department of public health and human
19 services for services provided by the department of public health and human services, including tobacco use
20 prevention.

21
22 **NEW SECTION. Section 14. Cigarette paper licenses -- fees -- renewal.** (1) Every wholesaler,
23 subjobber, retailer, or cigarette paper vendor shall obtain a license from the department before engaging in the
24 business of wholesaler, subjobber, retailer, or cigarette paper vendor. A separate application and a separate
25 license is required for each place of business owned, controlled, or operated by the wholesaler, subjobber,
26 retailer, or cigarette paper vendor within the state. Application forms must include the type and general
27 description of applicant organizations, names of all known owners, and other pertinent information that the
28 department may require by rule.

29 (2) Each application for a wholesaler's license must be accompanied by a fee of \$50.

30 (3) Each application for a subjobber's license must be accompanied by a fee of \$50.

1 (4) Each application for a retailer's license must be accompanied by a fee of \$5.

2 (5) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be
3 discounted for payment processing charges paid by the department to a third party.

4 (6) These licenses must be renewed annually on or before the anniversary date established by rule by
5 the board of review, established in 30-16-302, and upon payment of the annual fee, are effective for 1 year,
6 without proration, and are not transferable.

7 (7) The department shall comply with rules issued by the board of review, established in 30-16-302, with
8 respect to the form of electronic verification of information required or acceptable for licensing purposes.

9 (8) [Sections 1 through 34] do not prevent a person from being licensed as both a wholesaler and a
10 retailer.

11
12 **NEW SECTION. Section 15. Vending machines not places of business.** Cigarette paper vending
13 machines may not be considered as places of business, but a report of each machine must be made on forms
14 prescribed by the department. The form must include the name and address of the cigarette paper vendor, the
15 assigned location of each machine, the best machine identification available, the type of business, and other
16 information that the department may require for proper administration of [sections 1 through 34].

17
18 **NEW SECTION. Section 16. Display of license.** (1) Each license must be prominently displayed on
19 the licensed premises, and a separate license must be displayed at each place of business owned, controlled,
20 or operated by the wholesaler, subjobber, retailer, or cigarette paper vendor.

21 (2) Each cigarette paper vendor shall affix a license decal furnished by the department in a prominent
22 position on each vending machine.

23
24 **NEW SECTION. Section 17. Disposition of license fees.** All license fees collected under the
25 provisions of [sections 1 through 34] must be deposited in the general fund and may be appropriated to operate
26 and enforce the provisions of [sections 1 through 34] or may be appropriated to the department of public health
27 and human services for tobacco use prevention or for other services provided by the department of public health
28 and human services.

29
30 **NEW SECTION. Section 18. Transporting cigarette papers without insignia -- invoices and**

1 **delivery tickets required -- stop and inspection authorized.** (1) It is unlawful for a person to transport into this
2 state, receive, carry, or move from place to place within this state, except in the course of interstate commerce,
3 any cigarette papers that do not bear the insignia required by [sections 1 through 34].

4 (2) (a) Whenever transporting unstamped cigarette papers, a person shall possess invoices or delivery
5 tickets for the cigarette papers that show the name and address of the consignor or seller, the name of the
6 consignee or purchaser, and the quantity and brands of the cigarette papers being transported.

7 (b) The cigarette papers transported are subject to seizure, forfeiture, and sale as provided in [sections
8 22, 28, and 34] and this section if:

9 (i) there are no invoices or delivery tickets;

10 (ii) the name or address of the consignee or purchaser is falsified; or

11 (iii) the consignee or purchaser is not authorized to possess unstamped cigarette papers.

12 (3) Transportation of cigarette papers from a point outside the state to a point in another state is not a
13 violation of this section if the person transporting the unstamped cigarette papers possesses adequate invoices
14 or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state
15 consignee or purchaser.

16 (4) If the department, its authorized agent, the department of justice, or a peace officer of the state has
17 knowledge or reasonable grounds to believe that a vehicle is transporting cigarette papers in violation of this
18 section, the department, its agent, the department of justice, or a peace officer may stop and inspect the vehicle.

19 (5) A person violating the provisions of this section is guilty of a misdemeanor.
20

21 **NEW SECTION. Section 19. Unlawful to sell cigarette papers without valid license -- exceptions.**

22 (1) A person may not sell, offer to sell, or possess with intent to sell any cigarette papers, at wholesale or retail,
23 unless the person's license is current and valid under the provisions of [sections 1 through 34].

24 (2) A person may not sell, offer to sell, or possess with intent to sell any cigarette papers, at wholesale
25 or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under [sections 1
26 through 34] or who is not licensed by the state in which the person sells, offers to sell, or intends to sell cigarette
27 papers. However, a wholesaler, subjobber, or retailer licensed under the provisions of [sections 1 through 34]
28 may sell cigarette papers to any person, wholesaler, subjobber, or retailer not licensed under [sections 1 through
29 34] if:

30 (a) the person, wholesaler, subjobber, or retailer is exempt from state cigarette paper taxation

1 provisions;

2 (b) the person, wholesaler, subjobber, or retailer furnishes documentary evidence of exemption from
3 state cigarette paper taxation provisions; and

4 (c) the person, wholesaler, subjobber, or retailer signs a receipt of purchase for any cigarette papers
5 evidencing an exemption from state cigarette paper taxation provisions.

6 (3) A person violating the provisions of this section is guilty of a misdemeanor and shall be punished
7 as provided in [sections 1 through 34], and all cigarette papers in the person's possession must be seized and
8 forfeited to the state.

9

10 **NEW SECTION. Section 20. Sale and use of cigarette papers without insignia unlawful.** A person
11 who sells any package of cigarette papers that does not bear the insignia required by [sections 1 through 34]
12 and a person who uses or consumes a cigarette paper within this state, taken from a package that does not bear
13 the required insignia, is guilty of a misdemeanor.

14

15 **NEW SECTION. Section 21. Forged license stamp or insignia.** A person who makes, alters, forges,
16 or counterfeits any license stamp or insignia provided for in [sections 1 through 34] or who assists in making,
17 altering, forging, or counterfeiting any license stamp or insignia provided for in [sections 1 through 34] or who
18 has in the person's possession any altered, forged, counterfeit, or spurious stamp, license, or insignia with intent
19 to defraud the state is guilty of forgery.

20

21 **NEW SECTION. Section 22. Powers of arrest -- search and seizure.** The department of justice is
22 a criminal justice agency. Designated agents of the department of justice have peace officer status and may
23 arrest any person violating any provision of [sections 1 through 34], enter a complaint before any court of
24 competent jurisdiction, and lawfully search and seize and use as evidence any unlawful or unlawfully possessed
25 license, stamp, or insignia found in the possession of any person or in any place.

26

27 **NEW SECTION. Section 23. Duties of county attorneys and peace officers.** In the enforcement of
28 [sections 1 through 34], the department of justice may request assistance, and it is the duty of any county
29 attorney or any peace officer in this state to assist the department of justice in the enforcement of [sections 1
30 through 34].

1

2 **NEW SECTION. Section 24. Penalties and interest for unpaid cigarette paper tax.** (1) If a person
3 fails or refuses to pay the tax required by [sections 1 through 34] when due, the department shall proceed to
4 determine the tax due from the information that the department can obtain and shall assess the tax plus penalty
5 and interest as provided in 15-1-216.

6 (2) In the case of any violation of [sections 1 through 34], the department may sue, in the judicial district
7 where the department maintains its principal office, for the amount of the unpaid tax, penalty, and costs,
8 including reasonable expense of the department in effecting collection of the unpaid tax and penalty. Whenever
9 the court finds that the failure to pay the tax has been willful, the court shall, in addition, assess damages equal
10 to three times the amount of the tax found to be due.

11

12 **NEW SECTION. Section 25. Revocation or suspension of license.** (1) The department may revoke
13 or suspend the license of any wholesaler, subjobber, retailer, or cigarette paper vendor for failure to comply with
14 any provision of [sections 1 through 34] or with any lawful rule of the department made pursuant to [sections 1
15 through 34].

16 (2) A person aggrieved by a revocation or suspension may apply to the department for a hearing that
17 must be open to the public. If the person is aggrieved by the decision of the department, the person may further
18 appeal to the district court.

19 (3) When a license has been revoked, a license may not be issued to the licensee for a period of 1 year
20 after revocation. When a license has been suspended, the suspension may be for any period not to exceed 1
21 year.

22 (4) A person who sells cigarette papers while the person's license is revoked or suspended is guilty of
23 a misdemeanor and must be punished as provided in [sections 1 through 34], and all cigarette papers in the
24 person's possession must be seized and forfeited to the state.

25

26 **NEW SECTION. Section 26. Place where violation committed considered nuisance.** Each person
27 having possession or control of or who maintains a building or place where cigarette papers are sold in violation
28 of [sections 1 through 34] or who permits the cigarette papers to be sold in violation of [sections 1 through 34]
29 in any place or building possessed, controlled, or maintained by that person is guilty of maintaining and keeping
30 a nuisance. The building or place used, together with the personal property and fixtures used in connection with

1 the building, place, personal property, or fixtures, is considered a nuisance. The person must be enjoined and
2 the building, place, personal property, or fixtures abated as a nuisance at the instance of the state.

3
4 **NEW SECTION. Section 27. Penalty for forged license stamp or insignia.** A person found guilty
5 of forgery under [section 21] shall be punished by imprisonment in the state prison for not less than 1 year or
6 more than 14 years.

7
8 **NEW SECTION. Section 28. Seizure and forfeiture of unlawful cigarette papers.** (1) A motor
9 vehicle, airplane, conveyance, vehicle, or other means of transportation in which cigarette papers are being
10 unlawfully transported, together with the cigarette papers and other equipment or personal property used in
11 connection with and found in that transportation, is subject to seizure by the department of justice, its authorized
12 agent, a sheriff or deputy, or any other peace officer and is subject to forfeiture as provided in subsection (2).

13 (2) Upon the seizure of any cigarette papers and within 2 days after seizure, the person or officer
14 making the seizure shall deliver an inventory of the property seized to the person from whom the seizure was
15 made, or to any other person having a right or interest in the seized property, if known, and file a copy of the
16 inventory with the department.

17 (3) If a person other than the person from whom the property was seized as described in subsection
18 (2) does not notify the department in writing of a claim of ownership or right of possession of the items seized
19 within 15 days of the date of the inventory required in subsection (2), the seized property is considered forfeited.

20 (4) If a person notifies the department in writing of a claim of ownership or right of possession of the
21 items seized within 15 days of the date of inventory required in subsection (2), the person is entitled to a hearing
22 on the claim or right. The hearing must be held before the department director or the director's designee, with
23 the assistance of the department of justice, in accordance with the Montana Administrative Procedure Act. If the
24 aggregate value of the seized property is more than \$500, a person seeking the return of the property may, in
25 lieu of requesting a hearing, bring an action in the district court of the county in which the property was seized.

26
27 **NEW SECTION. Section 29. Violation -- penalties.** Unless otherwise provided, the violation of any
28 provision of [sections 1 through 34] constitutes a misdemeanor. A person violating any provision of [sections 1
29 through 34] shall be punished by a fine of not less than \$100 or more than \$500 or by imprisonment in the county
30 jail for not less than 30 days or more than 6 months, or both. If the person is the holder of a license issued under

1 [sections 1 through 34], the license must be revoked by the department for 1 year.

2

3 **NEW SECTION. Section 30. Hearings before state tax appeal board.** A person aggrieved by any
4 action of the department or its authorized agents under the provisions of [sections 1 through 34], except for a
5 revocation of a license pursuant to [section 25], may apply to the state tax appeal board, in writing, for a hearing
6 or rehearing within 30 days after the action of the department or its authorized agents. The board shall promptly
7 consider the application, set the application for hearing, and notify the applicant of the time and place fixed for
8 the hearing or rehearing. The hearing or rehearing may be at the board's office or in the county in which the
9 applicant does business or resides. After the hearing or rehearing, the board may make any further or other
10 order that it considers proper and lawful and shall furnish a copy to the applicant. The department may order a
11 contested case hearing, as defined in 2-4-102, on any matter concerned with licensing in connection with the
12 administration of [sections 1 through 34] upon at least 10 days' notice in writing to the person or persons to be
13 investigated.

14

15 **NEW SECTION. Section 31. Appeal to district court.** Any person aggrieved by any action or decision
16 of the state tax appeal board or a licensing decision of the department made under the provisions of [sections
17 1 through 34] may appeal to the district court in accordance with the Montana Administrative Procedure Act.

18

19 **NEW SECTION. Section 32. Stamps affixed on cigarette papers -- exception.** Except for cigarette
20 papers sold on a military reservation, cigarette papers sold in Montana must have a Montana cigarette paper
21 tax stamp affixed prior to sale.

22

23 **NEW SECTION. Section 33. Possession or unauthorized transport of unstamped cigarette**
24 **papers -- civil penalty.** (1) In lieu of the criminal penalties provided in [sections 18, 27, and 29], the department
25 may assess a person who unlawfully possesses or transports unstamped cigarette papers a civil penalty of \$250
26 for the first full or partial pack of unstamped cigarette papers and \$10 for each additional full or partial pack of
27 unstamped cigarette papers.

28 (2) The department shall determine the amount of the penalty provided in subsection (1) and notify the
29 person who unlawfully possessed or transported the unstamped cigarette papers of the amount. The penalty
30 is due and payable on the date of the notice. A penalty not paid when due is subject to interest at the rate of 10%

1 a year.

2

3 **NEW SECTION. Section 34. Sale or retention of forfeited property -- use of sale proceeds.** (1)

4 When property is forfeited under [section 28], the department may:

5 (a) retain the property or any part of the property for official use or, upon application by a law
6 enforcement agency of this state, another state, the District of Columbia, or the United States, for the exclusive
7 use of enforcing the provisions of [sections 5, 18, 28, and 32 through 34] or the laws of another state, the District
8 of Columbia, or the United States; or

9 (b) after advertising, sell the property at public auction to the highest bidder. The department, before
10 delivering a seized item, shall first require stamps to be affixed, if applicable.

11 (2) The proceeds of a sale under this section must be applied first to paying the expenses of any
12 investigation leading to the seizure of the items, including costs incurred by a local, state, tribal, or federal law
13 enforcement agency, and of the forfeiture and sale proceedings, including the expenses of seizure,
14 maintenance, custody, and court costs. The balance of the proceeds, less an amount that is based on the value
15 of the property seized on an Indian reservation and that is allocated to a tribe pursuant to a state-tribal
16 cooperative agreement, must be deposited in the state general fund.

17

18 **Section 35.** Section 16-11-302, MCA, is amended to read:

19 **"16-11-302. Definitions.** For the purposes of 16-11-301 through 16-11-308, the following definitions
20 apply:

21 (1) "Distribute" means:

22 (a) to give, deliver, sample, or sell;

23 (b) to offer to give, deliver, sample, or sell; or

24 (c) to cause or hire another person to give, deliver, sample, or sell or offer to give, deliver, sample, or
25 sell.

26 (2) "Health warning" means a tobacco product label required by federal law and intended to alert users
27 of the product to the health risks associated with tobacco use. The term includes warning labels required under
28 the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health
29 Education Act of 1986.

30 (3) "License" means a retail tobacco product sales license.

1 (4) "Person" means a natural person, company, corporation, firm, partnership, organization, or other
2 legal entity.

3 (5) "Tobacco product" means a substance intended for human consumption that contains tobacco. The
4 term includes cigarettes, cigars, snuff, smoking tobacco, ~~and smokeless tobacco,~~ and cigarette papers, as
5 defined in [section 1]."

6
7 **Section 36.** Section 30-16-301, MCA, is amended to read:

8 **"30-16-301. Business registration and licensing plan -- administration.** (1) The provisions of
9 16-11-120, 16-11-122, [section 14], 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217, 30-16-104,
10 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, and 82-15-105
11 constitute a means of implementing a preliminary plan for streamlined registration and licensing procedures.
12 Sections 16-11-120, 16-11-122, [section 14], 30-12-203, 30-13-203, 30-13-206, 30-13-210, 30-13-217,
13 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 80-7-106, 81-9-201, 81-20-201, and
14 82-15-105 provide that certain licenses selected by the board of review must allow for:

- 15 (a) an anniversary date for license renewal that is set by the board of review;
16 (b) an electronic means of verifying the information required in the license application; and
17 (c) credit card discounts in relation to fees required for licensure.

18 (2) The department shall designate an employee in charge of administering the plan whose duties
19 include those of executive secretary of the board of review."

20
21 **NEW SECTION. Section 37. Notification to tribal governments.** The secretary of state shall send
22 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
23 band of Chippewa.

24
25 **NEW SECTION. Section 38. Codification instruction.** [Sections 1 through 34] are intended to be
26 codified as an integral part of Title 16, chapter 11, and the provisions of Title 16, chapter 11, apply to [sections
27 1 through 34].

28
29 **NEW SECTION. Section 39. Saving clause.** [This act] does not affect rights and duties that matured,
30 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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NEW SECTION. **Section 40. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 41. Applicability.** [This act] applies to cigarette papers in the possession of wholesalers on July 1, 2003.

- END -