

SENATE BILL NO. 96

INTRODUCED BY F. SMITH

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE TAXATION OF TOBACCO PRODUCTS; REVISING THE DEFINITION OF "TOBACCO PRODUCTS" TO INCLUDE VAPOR PRODUCTS; APPLYING THE TOBACCO TAX TO VAPOR PRODUCTS; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-10-306 AND 16-11-102, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

**Section 1.** Section 16-10-306, MCA, is amended to read:

**"16-10-306. Cigarette and tobacco product labels -- federal requirements -- penalty.** (1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

- (a) tax, trademark, or copyright law; or
- (b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

- (a) the package is marked as manufactured for use outside of the United States;
- (b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or
- (c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the department, any agent of the department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action



1 under the civil enforcement provisions of Title 16, chapter 10, part 4.

2 (b) A violation of this section is criminally punishable by a fine in an amount not to exceed \$10,000.

3 (5) For the purposes of this section;

4 (a) "cigarette" has the meaning ~~defined~~ provided in 16-11-102; and

5 (b) "tobacco product" ~~means all products containing tobacco for human consumption or use except~~  
6 cigarettes has the meaning provided in 16-11-102."

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8 **Section 2.** Section 16-11-102, MCA, is amended to read:

9 **"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the context  
10 requires otherwise:

11 (a) "Contraband" means:

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

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

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

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

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

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

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

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

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

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

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

29 (iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance or  
30 the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or

1 purchased by consumers as a cigarette described in subsection (2)(a)(i).

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

4 (c) "Directory" means the tobacco product directory as provided in 16-11-504.

5 (d) "Full face value of insignia" means the total amount of the tax levied under this part.

6 (e) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under the  
7 provisions of this part.

8 (f) "Licensed retailer" means any person, other than a wholesaler, subjobber, or tobacco product vendor,  
9 who is licensed under the provisions of this part.

10 (g) "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person must  
11 be treated as a wholesaler.

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

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

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

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

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

21 (m) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling  
22 tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco  
23 product vending machines.

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

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

29 (p) "Sole distributor" means a person who either causes a unique brand of tobacco products to be  
30 manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco products

1 or is the exclusive distributor of a brand of tobacco products within the continental United States.

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

6 (r) (i) "Tobacco product" means: ~~cigarettes and all other products containing tobacco that are~~

7 (A) a product containing, made, or derived from tobacco or that contains nicotine that is intended for  
8 human consumption or use is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved,  
9 inhaled, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing  
10 tobacco, snuff, and snus; and

11 (B) any substance, regardless of whether it contains nicotine, consumed during the use of a device that  
12 can be used to deliver nicotine or another substance in any form, including aerosolized or vaporized, to the  
13 person inhaling from the device, including but not limited to an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

14 (ii) The term does not include:

15 (A) drugs, devices, or combination products, as defined in the Federal Food, Drug, and Cosmetic Act,  
16 authorized by the United States food and drug administration for sale as a tobacco cessation product or for other  
17 therapeutic purposes when the product is marketed and sold solely for such an approved purpose; or

18 (B) filters, rolling papers, pipes, or devices described in subsection (2)(r)(i)(B).

19 (s) (i) "Tobacco product vendor" means a person doing business in the state who purchases tobacco  
20 products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines that the  
21 person operates for a profit in premises or locations other than the person's own.

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

23 (t) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to  
24 a wholesaler or any other person before any discount or reduction.

25 (u) "Wholesaler" means a person who:

26 (i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to  
27 subjobbers, tobacco product vendors, wholesalers, or retailers; or

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

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1            NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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3            NEW SECTION. **Section 4. Applicability.** [This act] applies to noncigarette tobacco products sold by  
4 wholesalers after April 30, 2019.

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