

HOUSE BILL NO. 149

INTRODUCED BY R. MARSHALL, E. STAFMAN, N. NICOL, J. WINDY BOY, E. BUTTREY, J. ETCHART, K. LOVE, E. BYRNE, C. SCHOMER, J. FULLER, B. MITCHELL, K. ZOLNIKOV, A. REGIER, C. HINKLE, Z. WIRTH, D. ZOLNIKOV

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

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

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

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

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

2

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

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

8 (b) The term does not include a tobacco product, a vapor product, or a product regulated as a drug
9 or device by the United States food and drug administration under Chapter V of the Federal Food, Drug, and
10 Cosmetic Act.

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

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

19

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

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

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

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

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

7
8 (B) The retail sales of ~~alternative nicotine products or ANY~~ vapor products must be made at
9 locations that prohibit individuals who are under 18 years of age from entering the premises.

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

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

14 (4) A retail seller of alternative nicotine products or vapor products shall conspicuously display, at
15 each place on the premises at which alternative nicotine products or vapor products are displayed and sold, a
16 sign that is to be provided without charge by the department of revenue that states: "Montana law prohibits the
17 sale of alternative nicotine products and vapor products to persons under 18 years of age."

18
19 **NEW SECTION. Section 4. Sales of alternative nicotine products or vapor products through**
20 **vending machines restricted.** (1) Alternative nicotine products and vapor products may be sold through a
21 vending machine only in places where alcoholic beverages are sold and consumed on the premises and where
22 the vending machine is under the direct line-of-sight supervision of the owner or an employee of the
23 establishment. The alternative nicotine products or vapor products must be in a vending machine that contains
24 only alternative nicotine products or vapor products.

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

28 (3) The sale of alternative nicotine products or vapor products from a vending machine under the

1 direct line-of-sight supervision of an owner or employee is considered a sale of alternative nicotine products or
2 vapor products by the owner or employee for the purposes of [section 3].

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

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

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

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

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

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

15 (e) A seventh or subsequent offense is punishable by suspension of the license for 1 year.

16 (3) After 2 years from the first violation, if a person has not received notice of any further violations,
17 a second violation is considered a first violation for the purposes of subsection (2).

18 (4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless civil
19 penalties are paid in full.

20 (5) Fees assessed pursuant to this section must be deposited in the state general fund.

21
22 **NEW SECTION. Section 6. Inspection and notification of violation required.** (1) The department
23 of public health and human services shall conduct inspections of persons selling or distributing alternative
24 nicotine products or vapor products to determine compliance with [sections 1 through 8]. Inspections may be
25 conducted directly by the department of public health and human services or may be provided for by contract
26 let by the department of public health and human services.

27 (2) Persons found to be in violation of the requirements of [sections 1 through 8] or the rules of the
28 department of public health and human services a fourth and subsequent time must be notified in writing by the

1 department of public health and human services of the facts of the violation and the penalties provided by
2 [sections 1 through 8].

3 (3) The department of public health and human services shall provide documentation of alleged
4 violations of [sections 1 through 8] to the department of revenue.

5
6 **NEW SECTION. Section 7. Minors not liable for possession or attempt to purchase.** An
7 individual under 18 years of age assisting in the enforcement of [sections 1 through 8] is not liable under a civil
8 or criminal law for the possession of or the attempt to purchase an alternative nicotine product or vapor product
9 for the purposes of enforcing [sections 1 through 8].

10
11 **NEW SECTION. Section 8. Local regulations.** A local government may by ordinance adopt
12 regulations on the subjects of [sections 1 through 8] that are no more stringent than [sections 1 through 8].

13
14 **Section 9.** Section 7-1-111, MCA, is amended to read:

15 **"7-1-111. Powers denied.** A local government unit with self-government powers is prohibited from
16 exercising the following:

17 (1) any power that applies to or affects any private or civil relationship, except as an incident to the
18 exercise of an independent self-government power;

19 (2) any power that applies to or affects the provisions of 7-33-4128 or Title 39, except that subject
20 to those provisions, it may exercise any power of a public employer with regard to its employees;

21 (3) any power that applies to or affects the public school system, except that a local unit may
22 impose an assessment reasonably related to the cost of any service or special benefit provided by the unit and
23 shall exercise any power that it is required by law to exercise regarding the public school system;

24 (4) any power that prohibits the grant or denial of a certificate of compliance or a certificate of
25 public convenience and necessity pursuant to Title 69, chapter 12;

26 (5) any power that establishes a rate or price otherwise determined by a state agency;

27 (6) any power that applies to or affects any determination of the department of environmental
28 quality with regard to any mining plan, permit, or contract;

1 (7) any power that applies to or affects any determination by the department of environmental
2 quality with regard to a certificate of compliance;

3 (8) any power that defines as an offense conduct made criminal by state statute, that defines an
4 offense as a felony, or that fixes the penalty or sentence for a misdemeanor in excess of a fine of \$500, 6
5 months' imprisonment, or both, except as specifically authorized by statute;

6 (9) any power that applies to or affects the right to keep or bear arms;

7 (10) any power that applies to or affects a public employee's pension or retirement rights as
8 established by state law, except that a local government may establish additional pension or retirement
9 systems;

10 (11) any power that applies to or affects the standards of professional or occupational competence
11 established pursuant to Title 37 as prerequisites to the carrying on of a profession or occupation;

12 (12) except as provided in 7-3-1105, 7-3-1222, 7-21-3214, or 7-31-4110, any power that applies to
13 or affects Title 75, chapter 7, part 1, or Title 87;

14 (13) (a) any power that applies to or affects landlords, as defined in 70-24-103 and 70-33-103, when
15 that power is intended to license landlords or to regulate their activities with regard to tenants beyond what is
16 provided in Title 70, chapters 24, 25, and 33; or

17 (b) any power to deviate from or add to the exclusive application of the provisions of:

18 (i) the Montana Residential Landlord and Tenant Act of 1977, Title 70, chapter 24;

19 (ii) residential tenants' security deposit law in Title 70, chapter 25; or

20 (iii) the Montana Residential Mobile Home Lot Rental Act, Title 70, chapter 33.

21 (14) subject to 7-32-4304, any power to enact ordinances prohibiting or penalizing vagrancy;

22 (15) subject to 80-10-110, any power to regulate the registration, packaging, labeling, sale, storage,
23 distribution, use, or application of commercial fertilizers or soil amendments, except that a local government
24 may enter into a cooperative agreement with the department of agriculture concerning the use and application
25 of commercial fertilizers or soil amendments. This subsection is not intended to prevent or restrict a local
26 government from adopting or implementing zoning regulations or fire codes governing the physical location or
27 siting of fertilizer manufacturing, storage, and sales facilities.

28 (16) subject to 80-5-136(10), any power to regulate the cultivation, harvesting, production,

1 processing, sale, storage, transportation, distribution, possession, use, and planting of agricultural seeds or
2 vegetable seeds as defined in 80-5-120. This subsection is not intended to prevent or restrict a local
3 government from adopting or implementing zoning regulations or building codes governing the physical location
4 or siting of agricultural or vegetable seed production, processing, storage, sales, marketing, transportation, or
5 distribution facilities.

6 (17) any power that prohibits the operation of a mobile amateur radio station from a motor vehicle,
7 including while the vehicle is in motion, that is operated by a person who holds an unrevoked and unexpired
8 official amateur radio station license and operator's license, "technician" or higher class, issued by the federal
9 communications commission of the United States;

10 (18) subject to 76-2-240 and 76-2-340, any power that prevents the erection of an amateur radio
11 antenna at heights and dimensions sufficient to accommodate amateur radio service communications by a
12 person who holds an unrevoked and unexpired official amateur radio station license and operator's license,
13 "technician" or higher class, issued by the federal communications commission of the United States;

14 (19) any power to require a fee and a permit for the movement of a vehicle, combination of vehicles,
15 load, object, or other thing of a size exceeding the maximum specified in 61-10-101 through 61-10-104 on a
16 highway that is under the jurisdiction of an entity other than the local government unit;

17 (20) any power to enact an ordinance governing the private use of an unmanned aerial vehicle in
18 relation to a wildfire;

19 (21) any power as prohibited in 7-1-121(2) affecting, applying to, or regulating the use, disposition,
20 sale, prohibitions, fees, charges, or taxes on auxiliary containers, as defined in 7-1-121(4);

21 (22) any power that provides for fees, taxation, or penalties based on carbon or carbon use in
22 accordance with 7-1-116;

23 (23) any power to require an employer, other than the local government unit itself, to provide an
24 employee or class of employees with a wage or employment benefit that is not required by state or federal law;

25 (24) any power to enact an ordinance prohibited in 7-5-103 or a resolution prohibited in 7-5-121 and
26 any power to bring a retributive action against a private business owner as prohibited in 7-5-103(2)(d)(iv) and 7-
27 5-121(2)(c)(iv);

28 (25) any power to prohibit the sale of alternative nicotine products or vapor products as provided in

1 16-11-313(1) [section 8];

2 (26) any power to control the amount of rent charged for private residential or commercial property.

3 Private residential property does not include property in which the local government unit has a property interest
4 or in which the local government unit has an interest through a housing authority.

5 (27) any power to require additional licensing when the state is the original issuer of the license;

6 (28) any power to prohibit or impede the connection or reconnection of an electric, natural gas,
7 propane, or other energy or utility service provided by a public utility, municipal utility, cooperative utility, or
8 other energy or fuel provider;

9 (29) any power to prohibit the purchase or use of any fuel derived from petroleum, including but not
10 limited to methane, propane, gasoline, and diesel fuel, or the installation or use of any vehicles, vessels, tools,
11 or commercial and residential appliances that burn or transport petroleum fuels; or

12 (30) any power to require that buildings be constructed to have solar panels or wiring, batteries, or
13 other equipment for solar panels or electric vehicles."
14

15 **Section 10.** Section 16-11-122, MCA, is amended to read:

16 **"16-11-122. License fees -- renewal.** (1) Each application for a wholesaler's license or a tobacco
17 product vendor's license must be accompanied by a fee of \$50.

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

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

20 (4) ~~Each application for a license to sell either alternative nicotine products or vapor products must~~
21 ~~be accompanied by a fee of \$20.~~

22 (5)(4) The fees for the licenses in subsections (2) and (3) may be paid by credit card and may be
23 discounted for payment processing charges paid by the department to a third party.

24 (6)(5) These licenses must be renewed annually on or before the anniversary date established by
25 rule by the board of review established in 30-16-302 and upon payment of the annual fee are effective for 1
26 year, without proration, and are not transferable."
27

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

1 **"16-11-302. Definitions.** For the purposes of 16-11-301 through 16-11-308, the following definitions
2 apply:

3 ~~(1) (a) "Alternative nicotine product" means any manufactured noncombustible product containing~~
4 ~~nicotine derived from tobacco that is intended for human consumption, whether chewed, absorbed, dissolved,~~
5 ~~or ingested by any other means.~~

6 ~~(b) The term does not include a tobacco product, a vapor product, or a product regulated as a drug~~
7 ~~or device by the United States food and drug administration under Chapter V of the Federal Food, Drug, and~~
8 ~~Cosmetic Act.~~

9 ~~(2)(1)~~ "Distribute" means:

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

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

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

14 ~~(3)(2)~~ "Health warning" means a tobacco product label required by federal law and intended to alert
15 users of the product to the health risks associated with tobacco use. The term includes warning labels required
16 under the Federal Cigarette Labeling and Advertising Act and the Comprehensive Smokeless Tobacco Health
17 Education Act of 1986.

18 ~~(4)(3)~~ "License" means a retail tobacco product sales license.

19 ~~(5)(4)~~ "Person" means a natural person, company, corporation, firm, partnership, organization, or
20 other legal entity.

21 ~~(6)(5)~~ (a) "Tobacco product" means a substance intended for human consumption that contains
22 tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

23 (b) The term does not include an alternative nicotine product, a vapor product, or a product
24 regulated as a drug or device by the United States food and drug administration under Chapter V of the Federal
25 Food, Drug, and Cosmetic Act.

26 ~~(7) (a) "Vapor product" means a noncombustible product that may contain nicotine and that uses a~~
27 ~~heating element, power source, electronic circuit, or other electronic, chemical, or mechanical means,~~
28 ~~regardless of shape or size, to produce vapor from a solution or other substance. The term includes an~~

1 ~~electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device and a vapor~~
2 ~~cartridge or other container that may contain nicotine in a solution or other form that is intended to be used with~~
3 ~~or in an electronic cigarette, electronic cigar, electronic cigarillo, electronic pipe, or similar product or device.~~

4 (b) ~~—The term does not include a product regulated as a drug or device by the United States food~~
5 ~~and drug administration under Chapter V of the Federal Food, Drug, and Cosmetic Act."~~

6

7 **Section 12.** Section 16-11-303, MCA, is amended to read:

8 **"16-11-303. License for retail sale of tobacco products ~~— alternative nicotine products — vapor~~**

9 **products.** (1) A person may not sell tobacco products, ~~alternative nicotine products, or vapor products~~ at retail,
10 whether over the counter, by vending machine, or otherwise, without a license obtained from the department of
11 revenue.

12 (2) A license for the retail sale of tobacco products, ~~alternative nicotine products, or vapor products~~
13 may be obtained from the department of revenue.

14 (3) The fee collected by the department must be deposited in the general fund."

15

16 **Section 13.** Section 16-11-304, MCA, is amended to read:

17 **"16-11-304. Signs.** A retail seller of tobacco products, ~~alternative nicotine products, or vapor products~~

18 shall conspicuously display, at each place on the premises at which tobacco products, ~~alternative nicotine~~
19 ~~products, or vapor products~~ are displayed and sold, a sign that is to be provided without charge by the
20 department of revenue that states: "Montana law prohibits the sale of tobacco products, ~~alternative nicotine~~
21 ~~products, and vapor products~~ to persons under 18 years of age.""

22

23 **Section 14.** Section 16-11-305, MCA, is amended to read:

24 **"16-11-305. Sale or distribution of tobacco products, ~~alternative nicotine products, or vapor~~**

25 **products to persons under 18 years of age prohibited.** (1) A person may not sell or distribute a tobacco
26 product, ~~alternative nicotine product, or vapor product~~ to an individual under 18 years of age, whether over the
27 counter, by vending machine, or otherwise.

28 (2) If there is a reasonable doubt as to the individual's age, the seller shall require presentation of

1 a driver's license or other generally accepted identification that includes a picture of the individual.

2 (3) If the seller scans a person's government or tribal-issued identification, the seller shall handle
3 data and metadata from the scan in accordance with 16-3-313."
4

5 **Section 15.** Section 16-11-306, MCA, is amended to read:

6 **"16-11-306. Sales of tobacco, ~~alternative nicotine products, or vapor products~~ through vending**

7 **machines restricted.** (1) Tobacco products, ~~alternative nicotine products, and vapor products~~ may be sold
8 through a vending machine only in places where alcoholic beverages are sold and consumed on the premises
9 and where the vending machine is under the direct line-of-sight supervision of the owner or an employee of the
10 establishment. The tobacco products, ~~alternative nicotine products, or vapor products~~ must be in a vending
11 machine that contains only tobacco products, ~~alternative nicotine products, or vapor products~~.

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

15 (3) The sale of tobacco products, ~~alternative nicotine products, or vapor products~~ from a vending
16 machine under the direct line-of-sight supervision of an owner or employee is considered a sale of tobacco
17 products, ~~alternative nicotine products, or vapor products~~ by the owner or employee for the purposes of 16-11-
18 305."
19

20 **Section 16.** Section 16-11-308, MCA, is amended to read:

21 **"16-11-308. Civil penalties -- license suspension -- tobacco education fee.** (1) Failure to obtain a
22 license, as required by 16-11-303, failure to post signs, as provided in 16-11-304, or the manufacture or sale of
23 cigarettes or rolling tobacco in violation of the minimum package size requirements of 16-11-111 or 16-11-307
24 is punishable by a civil penalty of \$100. The department may collect the penalty in the manner provided for the
25 collection of other debts.

26 (2) A person who violates 16-11-305(1) or 16-11-307(1) at any one location within a 3-year period
27 shall be punished as follows:

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

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

3 (c) A fifth offense is punishable by assessment against the owner of the establishment of a
4 tobacco education fee of \$500. The employee or other person who sold the tobacco product, ~~alternative~~
5 ~~nicotine product, or vapor product,~~ the establishment manager, and the establishment owner, if the owner is a
6 sole proprietor or partner, shall read and view the tobacco education material.

7 (d) A sixth offense under 16-11-305(1) or 16-11-307(1) or a third offense under 16-11-307(2) is
8 punishable by suspension of the licenses required by 16-11-120 and 16-11-303 for 3 months.

9 (e) A seventh and subsequent offense under 16-11-305(1) or 16-11-307(1) or a fourth and
10 subsequent offense under 16-11-307(2) is punishable by suspension of the licenses required by 16-11-120 and
11 16-11-303 for 1 year.

12 (3) After 2 years from the first violation, if a person has not received notice of any further violations,
13 a second violation is considered a first violation for the purposes of subsection (2).

14 (4) A license may not be reissued after suspension under subsection (2)(d) or (2)(e) unless
15 tobacco education fees or civil penalties are paid in full.

16 (5) Tobacco education fees must be assessed and collected by the department of public health
17 and human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made by
18 the department of public health and human services within 30 days of the alleged violation by certified letter
19 addressed to the establishment owner or manager. The notice of assessment against the owner of the
20 establishment must provide an opportunity for a hearing. The hearing may be conducted using electronic
21 equipment and must comply with the provisions of the Montana Administrative Procedure Act. Within 30 days
22 from the date on which the notice of assessment was mailed, the owner or manager shall notify the department
23 of public health and human services that the owner or manager objects to the assessment and request a
24 hearing pursuant to this subsection.

25 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-
26 11-305(1) or 16-11-307(1) is punishable by an assessment of a tobacco education fee of \$25 against the
27 employee who sold the tobacco product, ~~alternative nicotine product, or vapor product~~ if the employee is not the
28 owner of the establishment. The tobacco education fee must be assessed and collected by the department of

1 public health and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this
2 subsection must be made by the department of public health and human services by certified letter addressed
3 to the employee. The notice of assessment must provide an opportunity for a hearing. The hearing may be
4 conducted using electronic equipment and must comply with the provisions of the Montana Administrative
5 Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall
6 notify the department of public health and human services that the employee objects to the assessment and
7 requests a hearing pursuant to this subsection.

8 (7) The tobacco education material referred to in this section must be provided by the department
9 of public health and human services in the form of written and video self-teaching materials. The education
10 materials may be used only for the purposes provided in this section. Upon completion of the self-teaching
11 materials, the establishment owner or manager shall execute a written statement on a form provided by the
12 department of public health and human services verifying that the employee, owner, or manager, as
13 appropriate, has read and viewed the self-teaching material and shall return the statement and the self-teaching
14 video to the department of public health and human services.

15 (8) Upon the sixth and subsequent violation of this section, the department of public health and
16 human services shall notify the department of revenue in writing to initiate suspension of the licenses required
17 by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and of the referral of
18 the licensee's record of violations to the department of revenue for suspension of the licenses pursuant to 16-
19 11-144 and this section. The department of revenue shall review the record of violations and may initiate
20 license suspension proceedings in accordance with 16-11-144. If, upon a review of the record of violations, the
21 department of revenue declines to initiate suspension proceedings, the violation may not be charged against
22 the licensee for the purposes of this section.

23 (9) Fees assessed pursuant to this section must be deposited in the state general fund."
24

25 **Section 17.** Section 16-11-309, MCA, is amended to read:

26 **"16-11-309. Inspection and notification of violation required.** (1) The department of public health
27 and human services shall conduct inspections of persons selling or distributing tobacco products, ~~alternative~~
28 ~~nicotine products, or vapor products~~ to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-

1 306, and 16-11-307. Inspections may be conducted directly by the department of public health and human
2 services or may be provided for by contract let by the department of public health and human services. Persons
3 found to be in violation of the requirements of this part or the rules of the department of public health and
4 human services a fourth and subsequent time must be notified in writing by the department of public health and
5 human services of the facts of the violation and the penalties provided by this part.

6 (2) The department of public health and human services shall provide documentation of alleged
7 violations of 16-11-303, 16-11-305, and 16-11-307 to the department of revenue."
8

9 **Section 18.** Section 16-11-310, MCA, is amended to read:

10 **"16-11-310. Minors not liable for possession or attempt to purchase.** An individual under 18
11 years of age assisting in the enforcement of this part is not liable under a civil or criminal law for the possession
12 of or the attempt to purchase a tobacco product, ~~alternative nicotine product, or vapor product~~ for the purposes
13 of enforcing this part."
14

15 **Section 19.** Section 16-11-311, MCA, is amended to read:

16 **"16-11-311. Local regulations.** A local government may by ordinance adopt regulations on the
17 subjects of 16-11-301 through 16-11-308, ~~including alternative nicotine or vapor products as provided in 16-11-~~
18 ~~313, that are no more stringent than 16-11-301 through 16-11-308 and 16-11-313. This section does not apply~~
19 ~~to regulations affecting alternative nicotine products or vapor products as provided in [sections 1 through 8]."~~
20

21 **Section 20.** Section 30-16-301, MCA, is amended to read:

22 **"30-16-301. Business registration and licensing plan -- administration.** (1) The provisions of 16-
23 11-120, 16-11-122, [section 2], 30-12-203, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-
24 214, 50-57-201 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 constitute a
25 means of implementing a preliminary plan for streamlined registration and licensing procedures. Sections 16-
26 11-120, 16-11-122, 30-12-203, 30-16-104, 50-50-201, 50-50-203, 50-50-205, 50-50-207, 50-50-214, 50-57-201
27 through 50-57-206, 50-57-208, 80-7-106, 81-9-201, 81-20-201, and 82-15-105 provide that certain licenses
28 selected by the board of review must allow for:

- 1 (a) an anniversary date for license renewal that is set by the board of review;
- 2 (b) an electronic means of verifying the information required in the license application; and
- 3 (c) payment of fees required for licensure by credit card, debit card, or other commercially
- 4 acceptable means as provided in 15-1-231.

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

7

8 **Section 21.** Section 45-5-623, MCA, is amended to read:

9 **"45-5-623. Unlawful transactions with children.** (1) Except as provided for in 16-6-305, a person
10 commits the offense of unlawful transactions with children if the person knowingly:

- 11 (a) sells or gives explosives to a child except as authorized under appropriate city ordinances;
- 12 (b) sells or gives intoxicating substances other than alcoholic beverages to a child;
- 13 (c) sells or gives an alcoholic beverage to a person under 21 years of age;
- 14 (d) sells or gives to a child a tobacco product, ~~alternative nicotine product, or vapor product,~~ as
- 15 defined in 16-11-302, or an alternative nicotine or vapor product, as defined in [section 1];
- 16 (e) sells or gives to a child a synthetic marijuana product, as defined in 16-12-102;
- 17 (f) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a
- 18 child without authorization of the parent or guardian; or
- 19 (g) tattoos or provides a body piercing on a child without the explicit in-person consent of the
- 20 child's parent or guardian. For purposes of this subsection (1)(g), "tattoo" and "body piercing" have the meaning
- 21 provided in 50-48-102. Failure to adequately verify the identity of a parent or guardian is not an excuse for
- 22 violation of this subsection (1)(g).

23 (2) A person convicted of the offense of unlawful transactions with children shall be fined an
24 amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A
25 person convicted of a second offense of unlawful transactions with children shall be fined an amount not to
26 exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler's
27 comments for contingent termination of certain text.)"

28

1 **Section 22.** Section 45-5-637, MCA, is amended to read:

2 **"45-5-637. Possession or consumption of tobacco products, alternative nicotine products, or**
3 **vapor products by persons under 18 years of age prohibited -- unlawful attempt to purchase --**

4 **penalties.** (1) A person under 18 years of age who knowingly possesses or consumes a tobacco product,
5 ~~alternative nicotine product, or vapor product~~, as defined in 16-11-302, or an alternative nicotine product or
6 vapor product, as defined in [section 1], commits the offense of possession or consumption of a tobacco
7 product, alternative nicotine product, or vapor product.

8 (2) A person convicted of possession or consumption of a tobacco product, alternative nicotine
9 product, or vapor product:

10 (a) shall be fined \$50 for a first offense, no less than \$75 or more than \$100 for a second offense,
11 and no less than \$100 or more than \$250 for a third or subsequent offense; or

12 (b) may be adjudicated on a petition alleging the person to be a youth in need of intervention under
13 the provisions of the Montana Youth Court Act provided for in Title 41, chapter 5.

14 (3) A person convicted of possession or consumption of a tobacco product, alternative nicotine
15 product, or vapor product may also be required to perform community service or to attend a tobacco cessation
16 program.

17 (4) A person under 18 years of age commits the offense of attempt to purchase a tobacco product,
18 alternative nicotine product, or vapor product if the person knowingly attempts to purchase a tobacco product,
19 ~~alternative nicotine product, or vapor product~~, as defined in 16-11-302, or an alternative nicotine product or
20 vapor product, as defined in [section 1]. A person convicted of attempt to purchase a tobacco product,
21 alternative nicotine product, or vapor product:

22 (a) for a first offense, shall be fined \$50 and may be ordered to perform community service;

23 (b) for a second or subsequent offense, shall be fined an amount not to exceed \$100 and may be
24 ordered to perform community service.

25 (5) The fines collected under subsections (2) and (4) must be deposited to the credit of the general
26 fund of the local government that employs the arresting officer, or if the arresting officer is an officer of the
27 highway patrol, the fines must be credited to the county general fund in the county in which the arrest was
28 made."

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Section 23. Section 50-50-207, MCA, is amended to read:

"50-50-207. Expiration date of license. (1) Except as provided in subsection (2), licenses expire on December 31 following the date of issue unless canceled for cause.

(2) License renewals provided for in 16-11-122, [section 2], 30-12-203(5)(a), 50-50-201, 80-7-106, and 82-15-105 expire on the anniversary date established by rule by the board of review established in 30-16-302."

NEW SECTION. **Section 24. Repealer.** The following section of the Montana Code Annotated is repealed:

16-11-313. Alternative nicotine products and vapor products -- local ordinance or resolution -- prohibition.

NEW SECTION. **Section 25. Codification instruction.** [Sections 1 through 8] are intended to be codified as a new chapter in Title 16, and the provisions of Title 16 apply to [sections 1 through 8].

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