

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO NICOTINE AND
5 VAPOR PRODUCTS; PROHIBITING DISTRIBUTING, SELLING, OR THE ATTEMPT TO SELL VAPOR
6 PRODUCTS CONTAINING NICOTINE UNLESS INCLUDED IN A DIRECTORY MAINTAINED AND
7 ENFORCED BY THE ATTORNEY GENERAL; REQUIRING MANUFACTURERS OF VAPOR PRODUCTS
8 CONTAINING NICOTINE TO CERTIFY THAT THEIR VAPOR PRODUCTS ARE IN COMPLIANCE WITH
9 FEDERAL MARKETING AUTHORIZATION REQUIREMENTS; PROVIDING A STATUTORY
10 APPROPRIATION; PROVIDING DEFINITIONS; ESTABLISHING REPORTING REQUIREMENTS;
11 PROVIDING AN APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-
12 11-102, 16-11-118, 16-11-120, 16-11-128, 16-11-132, 16-11-141, 16-11-159, AND 17-7-502, MCA; AND
13 PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

16
17 NEW SECTION. **Section 1. Definitions.** As used in this chapter, the following definitions apply:

- 18 (1) "FDA" means the United States food and drug administration.
- 19 (2) "Importer" means a person or entity in a state or territory of the United States to whom vapor
20 products that are manufactured outside the United States are shipped, delivered, or consigned for resale.
- 21 (3) "Retailer" means a person, other than a wholesaler, who is licensed by the department of
22 revenue and who is engaged in the business of selling vapor products to the ultimate consumer.
- 23 (4) "Timely filed premarket tobacco product application" means an application pursuant to 21
24 U.S.C. 387j for a vapor product containing nicotine derived from tobacco marketed in the United States as of
25 August 8, 2016, that was submitted to the United States food and drug administration on or before September
26 9, 2020, and accepted for filing.
- 27 (5) "Units sold" means the number of individual vapor products containing nicotine sold in the state
28 by the applicable vapor product manufacturer, whether directly or through a wholesaler, retailer, or similar

1 intermediary or intermediaries, during a given year or quarter.

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

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

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

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

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

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

13

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

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

23 (b) the vapor product manufacturer submitted a timely filed premarket tobacco product application
24 for the vapor product containing nicotine to the FDA pursuant to 21 U.S.C. 387j, and the application either
25 remains under review by the FDA or has received a denial order that has been and remains stayed by the FDA
26 or court order, rescinded by the FDA, or vacated by a court; or

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

- 1 tobacco application requirements.
- 2 (2) The certification form must:
- 3 (a) separately list each brand name, product name, category, including but not limited to
- 4 disposable vapor product, power unit, device, e-liquid cartridge, and e-liquid pod, and flavor for each vapor
- 5 product containing nicotine that is sold in this state;
- 6 (b) identify the number of units sold in the state during the preceding calendar year for each brand
- 7 family and product name;
- 8 (c) indicate by an asterisk a brand family or product name of a vapor product containing nicotine
- 9 sold in the state during the preceding calendar year that is no longer being sold in the state as of the date of the
- 10 certification;
- 11 (d) identify by name and address a vapor product manufacturer of vapor products containing
- 12 nicotine; and
- 13 (e) certify that the vapor product manufacturer has appointed an agent for service of process and
- 14 has provided notice as required by [section 9].
- 15 (3) An annual certification form must be accompanied by:
- 16 (a) a copy of:
- 17 (i) the marketing granted order issued by the FDA pursuant to 21 U.S.C. 387j;
- 18 (ii) the acceptance letter issued by the FDA pursuant to 21 U.S.C. 387j for a timely filed premarket
- 19 tobacco product application;
- 20 (iii) a document issued by the FDA or by a court confirming that the premarket tobacco product
- 21 application has received a denial order that has been and remains stayed by the FDA or court order, rescinded
- 22 by the FDA, or vacated by a court; or
- 23 (iv) a document issued by the FDA demonstrating that the vapor product containing nicotine is
- 24 temporarily exempt from the premarket tobacco product application requirements; and
- 25 (b) a nonrefundable payment of \$2,500 for each vapor product containing nicotine the first time a
- 26 vapor product manufacturer submits a certification form for that product, and \$1,000 for each vapor product
- 27 containing nicotine each time a vapor product manufacturer submits an annual certification form for that product
- 28 afterward.

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

5

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

9

10 NEW SECTION. Section 4. Notice of changes. A vapor product manufacturer required to submit a
 11 certification form pursuant to [section 2] shall notify the attorney general within 30 days of any material change
 12 to the certification form, including the issuance or denial of a marketing authorization or other order by the FDA
 13 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
 14 vapor product containing nicotine to be introduced or delivered into interstate commerce for commercial
 15 distribution in the United States.

16

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

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

28 (3) A vapor product manufacturer or the vapor product manufacturer's vapor products containing

1 nicotine may not be included or retained in the directory if the attorney general determines that any of the
2 following apply:

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

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

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

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

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

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

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

17

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

21 (1) The attorney general may not remove the vapor product manufacturer or the vapor product
22 manufacturer's vapor products containing nicotine from the directory until at least 30 days after the vapor
23 product manufacturer has been given notice of an intended action. Notice is sufficient and immediately received
24 by a vapor product manufacturer if the notice is sent either electronically or by facsimile to an electronic mail
25 address or facsimile number provided by the vapor product manufacturer in its most recent certification filed
26 under [sections 2(2) and (3)].

27 (2) The vapor product manufacturer has 30 days from the date the attorney general provides
28 notice under subsection (1) to cure all identified deficiencies. Failure to cure the deficiencies to the attorney

1 general's satisfaction may result in the attorney general removing the vapor product manufacturer or the
2 manufacturer's vapor products containing nicotine from the directory.

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

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

12

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

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

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

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

27 (4) After 60 days following publication of the directory, the attorney general may begin enforcing
28 this chapter, and vapor products containing nicotine not listed in the directory and intended for sale in this state

1 are subject to seizure, forfeiture, and destruction or disposal and may not be purchased or sold for retail sale in
2 this state except as provided in subsections (2) and (3) of this section. The cost of the seizure, forfeiture, and
3 destruction or disposal must be borne by the retailer, wholesaler, or importer from whom the vapor products
4 containing nicotine are confiscated.

5

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

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

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

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

17 (c) For a fourth or subsequent violation of this type within a 12-month period, the civil penalty is
18 \$1,000 for each individual vapor product containing nicotine offered for sale in violation of this chapter and a
19 licensee's license must be suspended for 1 year.

20 (2) A vapor product manufacturer whose vapor products containing nicotine are not listed in the
21 directory and who causes the vapor products containing nicotine that are not listed to be sold for retail sale in
22 this state or to a consumer in this state, whether directly or through a retailer, wholesaler, importer, or similar
23 intermediary or intermediaries, is subject to a civil penalty of \$10,000 for each individual vapor product
24 containing nicotine offered for sale in violation of this chapter. In addition, any vapor product manufacturer that
25 falsely represents any information required by a certification form is guilty of a misdemeanor for each false
26 representation.

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

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

3
4 **NEW SECTION. Section 9. Agent for service of process.** (1) A nonresident or foreign vapor
5 product manufacturer that has not registered to do business in the state as a foreign corporation or business
6 entity shall, as a condition precedent to having its vapor products containing nicotine on the directory, appoint,
7 and continually engage without interruption the services of an agent in this state to act as an agent for the
8 service of process on whom all process and any action or proceeding against it concerning or arising out of the
9 enforcement of this chapter may be served in any manner authorized by law. The service constitutes legal and
10 valid service of process on the vapor product manufacturer. The vapor product manufacturer shall provide the
11 name, address, phone number, and proof of the appointment and availability of the agent to the satisfaction of
12 the attorney general.

13 (2) The vapor product manufacturer shall provide notice to the attorney general at least 30 days
14 prior to termination of the authority of an agent and shall further provide proof to the satisfaction of the attorney
15 general of the appointment of a new agent no less than 5 days prior to the termination of an existing agent
16 appointment. If an agent terminates an agency appointment, the vapor product manufacturer shall notify the
17 attorney general of the termination within 5 days and include proof to the satisfaction of the attorney general of
18 the appointment of a new agent.

19
20 **NEW SECTION. Section 10. Bond requirement for nonresident or foreign vapor product**
21 **manufacturers.** (1) A nonresident or foreign vapor product manufacturer that has not registered to do business
22 in the state as a foreign corporation or business entity shall, as a condition to having its name or its vapor
23 products containing nicotine listed and retained in the directory, submit to the attorney general a surety bond or
24 other cash security payable to the state of Montana in the amount of \$25,000 the first time the nonresident or
25 foreign vapor product manufacturer files a certification pursuant to [section 2]. The bond must be posted by a
26 corporate surety located within the United States.

27 (2) The bond must be conditioned on the performance by the nonresident or foreign vapor product
28 manufacturer of all requirements and obligations imposed by this chapter. A surety on a nonresident or foreign

1 vapor product manufacturer's bond must be liable up to the amount of the bond, and the state may execute on
 2 the surety bond for the payment of fines and penalties imposed on the nonresident or foreign vapor product
 3 manufacturer under this section and for the costs of seizure and destruction of vapor products containing
 4 nicotine sold in violation of this section. If the state executes on the surety bond, it may require the nonresident
 5 or foreign vapor product manufacturer to provide an additional bond as a condition precedent for retaining the
 6 nonresident or foreign vapor product manufacturer or its vapor products containing nicotine in the directory. The
 7 state may also require an initial and subsequent bond in excess of \$25,000 if the nonresident or foreign vapor
 8 product manufacturer's volume of sales, conduct, or other circumstances merit a larger bond.

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

19
 20 **NEW SECTION. Section 11. Inspections.** (1) (a) A retailer, wholesaler, or importer that sells or
 21 resells vapor products containing nicotine in this state is subject to up to four unannounced compliance checks
 22 annually for the purposes of enforcing this chapter. The department of revenue, attorney general, and
 23 department of public health and human services has authority to inspect all retailers, wholesalers, and
 24 importers that sell or resell vapor products containing nicotine in this state.

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

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

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

7
8 **NEW SECTION. Section 12. Rules.** The attorney general may promulgate rules necessary to effect
9 the purposes of [sections 1 through 15].

10
11 **NEW SECTION. Section 13. Fees and penalties -- appropriations -- use.** (1) There is a dedicated
12 state special revenue account within the state special revenue fund established in 17-2-102, to be administered
13 by the attorney general. The account consists of fees and penalties collected by the attorney general pursuant
14 to [sections 1 through 15] and is statutorily appropriated, pursuant to 17-7-502, to the department of justice.
15 Except as provided in subsection (2), money in the account must be used by the attorney general for the
16 purpose of administering the provisions of this chapter and to establish and maintain the directory created in
17 this chapter.

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

20
21 **NEW SECTION. Section 14. Reporting of information.** (1) No later than 20 days after the end of
22 each calendar quarter, and more frequently if directed by the attorney general, each wholesaler shall submit
23 information that the attorney general requires to facilitate compliance with this section by vapor product
24 manufacturers, including but not limited to a list by brand family and product name of the total units sold by the
25 wholesaler during the preceding calendar quarter. The wholesaler shall maintain and make available to the
26 attorney general all invoices and documentation of sales of all vapor products containing nicotine and any other
27 information relied on in reporting to the attorney general for a period of 5 years.

28 (2) The department of revenue is authorized to disclose to the attorney general any information

1 received by it and requested by the attorney general for the purposes of determining compliance with and
2 enforcing the provisions of this chapter. The department of revenue and the attorney general shall share the
3 information received under this chapter with each other and may share the information with other federal, state,
4 or local agencies only for the purposes of enforcement of this chapter or the corresponding laws of other states.

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

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

13
14 **NEW SECTION. Section 15. Annual reports.** Starting January 31, 2026, and annually afterward, the
15 attorney general shall provide a report to the revenue interim committee in accordance with 5-11-210 regarding
16 the status of the directory, including a discussion of the date of initial publication, dates of updated versions,
17 and issues the attorney general has encountered related to making updates to the directory, revenue and
18 expenditures related to the administration of this section, and any enforcement activities undertaken by the
19 attorney general. The report must be accompanied by the most recent version of the directory.

20

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

22 **"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the context
23 requires otherwise:

24 (a) "Contraband" means:

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

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

- 1 (iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;
2 (iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or
3 (v) any cigarettes or tobacco products that violate 16-10-306; or
4 (vi) any vapor products containing nicotine that are not included in the directory established under
5 [sections 2 through 6].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (l) (i) "Premium cigar" means any roll of tobacco that is hand wrapped in 100% whole tobacco
10 leaf, is not wrapped by a machine, and does not contain a filter, tip, or any characterizing nontobacco flavor.

11 (ii) The term does not include a cigarette.

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

13 (n) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling
14 tobacco products or vapor products to the ultimate consumer. The term includes a person who operates fewer
15 than 10 tobacco product or vapor product vending machines.

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

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

21 (q) "Sole distributor" means a person who either causes a unique brand of tobacco products to be
22 manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco
23 products or is the exclusive distributor of a brand of tobacco products within the continental United States.

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

28 (s) "Tobacco product" means cigarettes and all other products containing tobacco that are

1 intended for human consumption or use.

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

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

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

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

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

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

19 (x) "Wholesale price" means the established price for which a manufacturer sells a tobacco
20 product to a wholesaler or a vapor product manufacturer sells a vapor product to a wholesaler or any other
21 person before any discount or reduction.

22 (y) "Wholesaler" means a person who:

23 (i) purchases tobacco products from a manufacturer or vapor products from a vapor product
24 manufacturer for the purpose of selling tobacco products or vapor products to subjobbers, tobacco product
25 vendors, vapor product vendors, wholesalers, or retailers; or

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

1

2 **Section 17.** Section 16-11-118, MCA, is amended to read:

3 **"16-11-118. Records of wholesalers, subjobbers, tobacco product vendors, vapor product**
4 **vendors, and retailers.** (1) All wholesalers and subjobbers shall keep for 3 years all:

- 5 (a) invoices of tobacco products and vapor products that are purchased, imported, or sold;
- 6 (b) all receipts issued and insignia purchased; and
- 7 (c) an accurate record of all sales of tobacco products and vapor products, showing the name and
- 8 address of each purchaser, the date of sale, the quantity of each kind sold, the name of any carrier, the
- 9 shipping point, and the destination.

10 (2) All retailers, ~~and tobacco product vendors,~~ and vapor product vendors shall keep for 3 years all
11 invoices of tobacco products and vapor products purchased and received, showing the date of each purchase,
12 the brand purchased, the quantity of each brand purchased, and an accurate record of the total sales of
13 tobacco products.

14 (3) A wholesaler, retailer, subjobber, ~~or tobacco product vendor,~~ or vapor product vendor shall
15 permit the department and the department of justice and their assistants, authorized agents, or representatives
16 to examine all tobacco products, invoices, receipts, books, paper, memoranda, and records as may be
17 necessary to determine compliance with this chapter.

18 (4) A person that violates the provisions of subsections (1) through (3) is subject to civil penalties
19 as determined by the department of not less than \$1,000 or more than \$10,000."

20

21 **Section 18.** Section 16-11-120, MCA, is amended to read:

22 **"16-11-120. Tobacco product ~~-- vapor product~~ -- licenses.** Every wholesaler, subjobber, retailer, ~~or~~
23 tobacco product vendor, or vapor product vendor shall obtain a license from the department before engaging in
24 the business of wholesaler, subjobber, retailer, ~~or tobacco product vendor,~~ or vapor product vendor. A separate
25 application and a separate license is required for each place of business owned, controlled, or operated by the
26 wholesaler, subjobber, retailer, ~~or tobacco product vendor,~~ or vapor product vendor within the state of Montana.
27 Application forms must include the type and general description of applicant organizations, names of all known
28 owners, and other pertinent information that the department may require by rule. The department shall comply

1 with rules issued by the board of review established in 30-16-302 with respect to the form of electronic
2 verification of information required or acceptable for licensing purposes."

3

4 **Section 19.** Section 16-11-128, MCA, is amended to read:

5 **"16-11-128. Tobacco product and vapor product sales reporting requirements.** (1) Prior to
6 delivering, mailing, or shipping tobacco products or vapor products into Montana to a person other than a
7 licensed wholesaler or retailer, a person who accepts purchase orders for tobacco product sales shall file a
8 statement with the department. The statement must set forth:

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

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

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

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

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

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

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

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

26

27 **Section 20.** Section 16-11-132, MCA, is amended to read:

28 **"16-11-132. Unlawful to sell tobacco products or vapor products without valid license --**

1 **exceptions.** (1) Unless approved by the department, a person may not sell, offer to sell, or possess with intent
2 to sell any tobacco products or vapor products, at wholesale or retail, unless the person's license is current and
3 valid under the provisions of this part.

4 (2) A person may not sell, offer to sell, or possess with intent to sell any tobacco products or vapor
5 products, at wholesale or retail, to a resident or nonresident wholesaler, subjobber, tobacco product vendor, or
6 retailer who is not licensed under this part or who is not licensed by the state in which the person sells, offers to
7 sell, or intends to sell tobacco products or vapor products. However, a wholesaler, subjobber, tobacco product
8 vendor, vapor product vendor, or retailer licensed under the provisions of this chapter may sell cigarettes to any
9 person, wholesaler, subjobber, tobacco product vendor, vapor product vendor, or retailer not licensed under
10 this chapter if:

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

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

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

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

22 (3) (4) A person violating the provisions of this section shall be punished as provided in 16-11-148,
23 and all tobacco products and vapor products in the person's possession must be seized, forfeited, and
24 destroyed pursuant to 16-11-147, 16-11-158, and 16-11-159."

25

26 **Section 21.** Section 16-11-141, MCA, is amended to read:

27 **"16-11-141. Powers of arrest -- search and seizure.** (1) The department of justice is a criminal
28 justice agency. Designated agents of the department of justice have peace officer status and may arrest any

1 person violating any provision of this chapter, enter a complaint before any court of competent jurisdiction, and
2 lawfully search and seize and use as evidence contraband found in the possession of any person or in any
3 place.

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

9

10 **Section 22.** Section 16-11-159, MCA, is amended to read:

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

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

16 (b) file a copy of the inventory with the department if the tobacco product or vapor product is
17 contraband under part 1 of this chapter or with the department of justice if the tobacco product or vapor product
18 is contraband under parts 4 or 5 of this chapter.

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

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

1 contraband was seized.

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

3

4 **Section 23.** Section 17-7-502, MCA, is amended to read:

5 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory

6 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without

7 the need for a biennial legislative appropriation or budget amendment.

8 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with

9 both of the following provisions:

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

11 (b) The law or portion of the law making a statutory appropriation must specifically state that a

12 statutory appropriation is made as provided in this section.

13 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; 5-11-120; 5-

14 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-

15 807; 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;

16 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-

17 117; 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],

18 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-

19 320; 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-

20 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;

21 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-

22 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-

23 213; 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-

24 321; 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-

25 150; 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-

26 112; 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-

27 1-603; 87-5-909; 90-1-115; 90-1-205; 90-1-504; 90-6-331; and 90-9-306.

28 (4) There is a statutory appropriation to pay the principal, interest, premiums, and any costs or fees

1 associated with issuing, paying, securing, redeeming, or defeasing all bonds, notes, or other obligations, as due
2 in the ordinary course or when earlier called for redemption or defeased, that have been authorized and issued
3 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
4 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined
5 by the state treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have
6 statutory appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the
7 inclusion of 19-20-604 terminates contingently when the amortization period for the teachers' retirement
8 system's unfunded liability is 10 years or less; pursuant to sec. 73, Ch. 44, L. 2007, the inclusion of 19-6-410
9 terminates contingently upon the death of the last recipient eligible under 19-6-709(2) for the supplemental
10 benefit provided by 19-6-709; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on
11 occurrence of contingency; pursuant to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117
12 terminates June 30, 2025; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304 terminates
13 September 30, 2025; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027;
14 pursuant to sec. 10, Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027; pursuant to secs.
15 11, 12, and 14, Ch. 343, L. 2019, the inclusion of 15-35-108 terminates June 30, 2027; pursuant to sec. 1, Ch.
16 408, L. 2019, the inclusion of 17-7-215 terminates June 30, 2029; pursuant to secs. 1, 2, 3, Ch. 139, L. 2021,
17 the inclusion of 53-9-113 terminates June 30, 2027; pursuant to sec. 8, Ch. 200, L. 2021, the inclusion of 10-4-
18 310 terminates July 1, 2031; pursuant to secs. 3, 4, Ch. 404, L. 2021, the inclusion of 30-10-1004 terminates
19 June 30, 2027; pursuant to sec. 5, Ch. 548, L. 2021, the inclusion of 50-1-115 terminates June 30, 2025;
20 pursuant to secs. 5 and 12, Ch. 563, L. 2021, the inclusion of 22-3-1004 is effective July 1, 2027; pursuant to
21 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-
22 113, and 81-7-106 terminates June 30, 2029; pursuant to sec. 9, Ch. 44, L. 2023, the inclusion of 15-1-142
23 terminates December 31, 2025; pursuant to sec. 10, Ch. 47, L. 2023, the inclusion of 15-1-2302 terminates
24 June 30, 2025; pursuant to sec. 2, Ch. 374, L. 2023, the inclusion of 10-3-802 terminates June 30, 2031;
25 pursuant to sec. 12, Ch. 558, L. 2023, the inclusion of 20-9-250 terminates December 31, 2029; pursuant to
26 sec. 4, Ch. 621, L. 2023, the inclusion of 22-1-327 terminates July 1, 2029; pursuant to sec. 24, Ch. 722, L.
27 2023, the inclusion of 17-7-133 terminates June 30, 2027; pursuant to sec. 10, Ch. 758, L. 2023, the inclusion
28 of 44-4-1506 terminates June 30, 2027; and pursuant to sec. 10, Ch. 764, L. 2023, the inclusion of 15-1-143

1 terminates December 31, 2025.)"

2

3 NEW SECTION. Section 24. Appropriation. There is appropriated \$300,000 from the general fund
4 to the attorney general for the biennium beginning July 1, 2025, for establishing and initially administering the
5 directory created by [sections 1 through 15].

6

7 NEW SECTION. Section 25. Codification instruction. [Sections 1 through 15] are intended to be
8 codified as a new chapter in Title 16, and the provisions of Title 16 apply to [sections 1 through 15].

9

10 NEW SECTION. Section 26. Severability. If a part of [this act] is invalid, all valid parts that are
11 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
12 the part remains in effect in all valid applications that are severable from the invalid applications.

13

14 NEW SECTION. Section 27. Effective date. [This act] is effective July 1, 2025.

15

16 NEW SECTION. Section 28. Applicability. [This act] applies to vapor products sold on or after
17 March 1, 2026.

18

19 NEW SECTION. Section 29. Termination. [Section 23] terminates July 1, 2033.

20

- END -