HOUSE BILL NO. 525

INTRODUCED BY A. REGIER

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO NICOTINE AND VAPOR PRODUCTS; PROHIBITING DISTRIBUTING, SELLING, OR THE ATTEMPT TO SELL VAPOR PRODUCTS CONTAINING NICOTINE UNLESS INCLUDED IN A DIRECTORY MAINTAINED AND ENFORCED BY THE ATTORNEY GENERAL; REQUIRING MANUFACTURERS OF VAPOR PRODUCTS CONTAINING NICOTINE TO CERTIFY THAT THEIR VAPOR PRODUCTS ARE IN COMPLIANCE WITH FEDERAL MARKETING AUTHORIZATION REQUIREMENTS; APPLYING THE TAX ON TOBACCO PRODUCTS TO VAPOR PRODUCTS THAT CONTAIN NICOTINE; PROVIDING A STATUTORY APPROPRIATION; PROVIDING DEFINITIONS; ESTABLISHING REPORTING REQUIREMENTS; PROVIDING AN APPROPRIATION; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-11-102, 16-11-118, 16-11-119, 16-11-120, 16-11-128, 16-11-132, 16-11-141, 16-11-159, AND 17-7-502, MCA; AND PROVIDING AN EFFECTIVE DATE, AN APPLICABILITY DATE, AND A TERMINATION DATE."

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

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

(1) "Disposable vapor product" has the same meaning as "vapor product" as defined in this section except that a disposable vapor product is a prefilled, self-contained product designed for one-time use.

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

~~(2)~~(3) "Importer" means a person or entity in a state or territory of the United States to whom vapor products that are manufactured outside the United States are shipped, delivered, or consigned for resale.

~~(3)~~(4) "Retailer" means a person, other than a wholesaler, who is licensed by the department of revenue and who is engaged in the business of selling vapor products to the ultimate consumer.

~~(4)~~(5) "Timely filed premarket tobacco product application" means an application pursuant to 21 U.S.C. 387j for a vapor product containing nicotine derived from tobacco marketed in the United States as of August 8, 2016, that was submitted to the United States food and drug administration on or before September

9, 2020, and accepted for filing.

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

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

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

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

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

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

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

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

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

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