

HOUSE BILL NO. 910

INTRODUCED BY M. CAFERRO

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR THE TAXATION OF VAPOR PRODUCTS;
REVISING THE DEFINITION OF "TOBACCO PRODUCTS"; AMENDING SECTION 16-11-102, MCA; AND
PROVIDING AN APPLICABILITY DATE."

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

Section 1. Section 16-11-102, MCA, is amended to read:

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

(a) "Contraband" means:

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

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

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

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

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

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

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

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

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

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

(ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the

1 type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by
2 consumers as a cigarette; or

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

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

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

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

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

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

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

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

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

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

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

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

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

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

28 (n) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling

1 tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco
2 product vending machines.

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

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

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

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

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

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

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

24 (ii) The term does not include:

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

28 (B) filters, rolling papers, pipes, or a device described in subsection (2)(s)(i)(B).

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

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

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

7 (v) "Wholesaler" means a person who:

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

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

13 NEW SECTION. Section 2. **Applicability.** [This act] applies to tobacco products sold by wholesalers
14 after June 30, 2025.

15 - END -