

HOUSE BILL 378

Introduced by Pavlovich, et al.

1/23	Introduced
1/23	Referred to Business & Economic Development
1/24	First Reading
2/12	Hearing
2/12	Committee Report--Bill Passed as Amended
2/14	2nd Reading Passed
2/16	3rd Reading Passed
	Transmitted to Senate
2/18	First Reading
2/18	Referred to Public Health, Welfare & Safety
3/11	Hearing
3/13	Tabled in Committee

1 *House* BILL NO. *378*
 2 INTRODUCED BY *Carlson Thomas E. Olson*
 3 *William D. Dewart Kelly Payne*
 4 *Samuel J. Green* A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OF
 5 TOBACCO PRODUCTS TO AND THE PURCHASE OF TOBACCO PRODUCTS BY
 6 PERSONS UNDER 18 YEARS OF AGE; PREEMPTING LOCAL GOVERNMENT
 7 REGULATIONS; AND PROVIDING PENALTIES."
 8 *Altahe N. Davis* *Burr* *Ward* *Snyder* *Demet*
 9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
Carlfield *Bob Brown* *William*

10 NEW SECTION. Section 1. Definitions. As used in

11 [sections 1 through 3], the following definitions apply:

- 12 (1) "Center of youth activities" means a playground,
- 13 school, or other facility when the facility is being used
- 14 primarily by persons under 18 years of age for recreational,
- 15 educational, or other purposes.
- 16 (2) "Person" means an individual, partnership,
- 17 association, or corporation.
- 18 (3) "Proof of age" means a driver's license or other
- 19 generally accepted means of identification that contains a
- 20 picture of the individual and appears on its face to be
- 21 valid.
- 22 (4) "Sample" means a tobacco product distributed for
- 23 tobacco product promotional purposes to the general public
- 24 at no cost or at nominal cost. "Sampling" means the
- 25 distribution of tobacco product samples to the general

1 public for tobacco product promotional purposes.

2 NEW SECTION. Section 2. Sale and distribution of

- 3 tobacco products to and purchase by minors prohibited --
- 4 penalties. (1) It is unlawful for a person to sell at retail
- 5 a tobacco product to a person under 18 years of age or to
- 6 distribute a sample to a person under 18 years of age.
- 7 (2) It is unlawful for a person to engage in tobacco
- 8 product sampling in or on any public park, street, or
- 9 sidewalk that is within 500 feet of a center of youth
- 10 activities.
- 11 (3) It is unlawful for a person who is under the age of
- 12 18 years of age to purchase or attempt to purchase or
- 13 receive or attempt to receive a tobacco product or sample.
- 14 (4) Tobacco products may be sold through a vending
- 15 machine only in:
- 16 (a) factories, businesses, offices, and other places
- 17 not open to the general public;
- 18 (b) places to which persons under 18 years of age are
- 19 not permitted access;
- 20 (c) places where alcoholic beverages are offered for
- 21 sale; and
- 22 (d) places where the vending machine is under the
- 23 supervision of the owner or an employee of the
- 24 establishment.
- 25 (5) A person selling tobacco products at retail,



1 supervising a tobacco product vending machine, or
 2 distributing tobacco product samples shall require proof of
 3 age from a prospective purchaser or recipient if an ordinary
 4 person would conclude on the basis of appearance that the
 5 prospective purchaser or recipient may be under 18 years of
 6 age.

7 (6) (a) Except as provided in subsections (6)(b) and
 8 (6)(c), the knowing or purposeful retail sale or
 9 distribution of a tobacco product in violation of this
 10 section or failure to request proof of age as required by
 11 this section is punishable by a fine not to exceed:

12 (i) \$100 for the first conviction;

13 (ii) \$500 for a conviction preceded by a conviction
 14 within the past 365 days; and

15 (iii) \$1,000 for a conviction preceded by two
 16 convictions within the past 730 days.

17 (b) If the offense is by an employee of the owner of a
 18 retail establishment or an employee of a sample distributor,
 19 only the employee is guilty of the offense unless the sale
 20 or distribution was ordered or knowingly allowed by the
 21 employer.

22 (c) If a sale in violation of this section is made
 23 through a vending machine, the owner of the establishment is
 24 guilty of a criminal offense punishable by a fine not to
 25 exceed \$100 except that if the owner has made an employee

1 responsible for supervising the vending machine, the
 2 employee is guilty of the offense and punishable by a fine
 3 not to exceed \$100 unless the owner ordered or knowingly
 4 allowed the sale.

5 (d) Reasonable reliance on proof of age and a
 6 reasonable belief that a person appears to be 18 years of
 7 age or older are defenses to a prosecution under this
 8 section.

9 (e) A person may not be prosecuted for more than one
 10 violation of this section in a single day.

11 (7) A person alleged to have violated subsection (3)
 12 may be tried under the Montana Youth Court Act.

13 NEW SECTION. **Section 3.** Notice. The owner of an
 14 establishment at which tobacco products are sold at retail
 15 shall post the following notice in a conspicuous place in
 16 the establishment: "By law, tobacco products may be sold
 17 only to persons 18 years of age or older." This notice must
 18 also be conspicuously attached to any vending machine
 19 located in the establishment. An owner who knowingly or
 20 purposely fails to post the notice is punishable by a fine
 21 not to exceed \$200.

22 NEW SECTION. **Section 4.** Local government preemption. A
 23 local government, including one with self-government powers,
 24 may not regulate the subjects of [sections 1 through 4].

25 NEW SECTION. **Section 5.** Codification instruction.

LC 0394/01

1 [Sections 1 through 4] are intended to be codified as an
2 integral part of Title 45, chapter 5, part 6, and the
3 provisions of Title 45 apply to [sections 1 through 4].

-End-

APPROVED BY COMM. ON BUSINESS
AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 378

INTRODUCED BY PAVLOVICH, THOMAS, ELLISON, WALLIN, M. HANSON,
GILBERT, KELLER, HAYNE, ELLIS, MCCAFFREE, TUNBY, SIMPKINS,
KASTEN, STANG, DRISCOLL, J. RICE, PHILLIPS, GRINDE, SWIFT,
DAILY, GERVAIS, STRIZICH, MCCARTHY, NATHE, LARSON, DAVIS,
MENAHAN, QUILICI, FORRESTER, O'KEEFE, KILPATRICK, MERCER,
HARRINGTON, NISBET, THAYER, GROSFIELD, DEVLIN, BURNETT,
HARP, TVEIT, LYNCH, STIMATZ, RYE, CODY, MAZUREK,

B. BROWN, WILLIAMS, GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OF
TOBACCO PRODUCTS TO AND THE PURCHASE OF TOBACCO PRODUCTS BY
PERSONS UNDER 18 YEARS OF AGE; PREEMPTING LOCAL GOVERNMENT
REGULATIONS; AND PROVIDING PENALTIES."

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

NEW SECTION. **Section 1. Definitions.** As used in
[sections 1 through 3], the following definitions apply:

(1) "Center of youth activities" means a playground,
school, or other facility when the facility is being used
primarily by persons under 18 years of age for recreational,
educational, or other purposes.

(2) "Person" means an individual, partnership,
association, or corporation.

(3) "Proof of age" means a driver's license or other

generally accepted means of identification that contains a
picture of the individual and appears on its face to be
valid.

(4) "Sample" means a tobacco product distributed for
tobacco product promotional purposes to the general public
at no cost or at nominal cost. "Sampling" means the
distribution of tobacco product samples to the general
public for tobacco product promotional purposes.

NEW SECTION. **Section 2. Sale and distribution of
tobacco products to and purchase by minors prohibited --
penalties.** (1) It is unlawful for a person to sell at retail
a tobacco product to a person under 18 years of age or to
distribute a sample to a person under 18 years of age.

(2) It is unlawful for a person to engage in tobacco
product sampling in or on any public park, street, or
sidewalk that is within 500 feet of a center of youth
activities.

(3) It is unlawful for a person who is under the age of
18 years of age to purchase or ~~attempt-to-purchase-or~~
~~receive-or-attempt-to~~ receive a tobacco product or sample.

(4) Tobacco products may be sold through a vending
machine only in:

(a) factories, businesses, offices, and other places
not open to the general public;

(b) places to which persons under 18 years of age are

1 not permitted access;

2 (c) places where alcoholic beverages are offered for
3 sale; and

4 (d) places where the vending machine is under the
5 supervision of the owner or an employee of the
6 establishment.

7 (5) A person selling tobacco products at retail,
8 supervising a tobacco product vending machine, or
9 distributing tobacco product samples shall require proof of
10 age from a prospective purchaser or recipient if an ordinary
11 person would conclude on the basis of appearance that the
12 prospective purchaser or recipient may be under 18 years of
13 age.

14 (6) (a) Except as provided in subsections (6)(b) and
15 (6)(c), the knowing or purposeful retail sale, PURCHASE, or
16 distribution of a tobacco product in violation of this
17 section or failure to request proof of age as required by
18 this section is punishable by a CIVIL fine not to exceed:

19 (i) \$100 for the first conviction;

20 (ii) \$500 for a conviction preceded by a conviction
21 within the past 365 days; and

22 (iii) \$1,000 for a conviction preceded by two
23 convictions within the past 730 days.

24 (b) If the offense is by an employee of the owner of a
25 retail establishment or an employee of a sample distributor,

1 only the employee is guilty of the offense unless the sale
2 or distribution was ordered or knowingly allowed by the
3 employer.

4 (c) If a sale in violation of this section is made
5 through a vending machine, the owner of the establishment is
6 guilty of a ~~criminal~~ CIVIL offense punishable by a fine not
7 to exceed \$100 except that if the owner has made an employee
8 responsible for supervising the vending machine, the
9 employee is guilty of the offense and punishable by a fine
10 not to exceed \$100 unless the owner ordered or knowingly
11 allowed the sale.

12 (d) Reasonable reliance on proof of age and a
13 reasonable belief that a person appears to be 18 years of
14 age or older are defenses to a prosecution under this
15 section.

16 (e) A person may not be prosecuted for more than one
17 violation of this section in a single day.

18 (7) A person alleged to have violated subsection (3)
19 may be tried under the Montana Youth Court Act.

20 NEW SECTION. Section 3. Notice. The owner of an
21 establishment at which tobacco products are sold at retail
22 shall post the following notice in a conspicuous place in
23 the establishment: "By law, tobacco products may be sold
24 only to persons 18 years of age or older." This notice must
25 also be conspicuously attached to any vending machine

1 located in the establishment. An owner who knowingly or
2 purposely fails to post the notice is punishable by a fine
3 not to exceed \$200.

4 NEW SECTION. **Section 4.** Local government preemption. A
5 local government, including one with self-government powers,
6 may not regulate the subjects of [sections 1 through 4].

7 NEW SECTION. **Section 5.** Codification instruction.
8 [Sections 1 through 4] are intended to be codified as an
9 integral part of Title 45, chapter 5, part 6, and the
10 provisions of Title 45 apply to [sections 1 through 4].

-End-

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THIRD READING

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