

HOUSE BILL NO. 548

INTRODUCED BY STRIZICH, KLAMPE, J. RICE, WILSON, COBB,
BARNHART, BROOKE, BOHLINGER, ECK, SWANSON,
DOWELL, CHRISTIAENS

IN THE HOUSE

FEBRUARY 10, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 13, 1993	ON MOTION, REREFERRED TO COMMITTEE ON BUSINESS & ECONOMIC DEVELOPMENT.
FEBRUARY 19, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 20, 1993	PRINTING REPORT.
FEBRUARY 22, 1993	SECOND READING, DO PASS.
FEBRUARY 23, 1993	ENGROSSING REPORT.
FEBRUARY 24, 1993	THIRD READING, PASSED. AYES, 88; NOES, 10.
	TRANSMITTED TO SENATE.

IN THE SENATE

MARCH 1, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON PUBLIC HEALTH, WELFARE, & SAFETY.
	FIRST READING.
MARCH 30, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN AS AMENDED. REPORT ADOPTED.
MARCH 31, 1993	SECOND READING, CONCURRED IN AS AMENDED.
APRIL 1, 1993	THIRD READING, CONCURRED IN. AYES, 46; NOES, 2.
	RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

APRIL 6, 1993

SECOND READING, AMENDMENTS NOT
CONCURRED IN.

APRIL 7, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE SENATE

APRIL 12, 1993

ON MOTION, CONFERENCE COMMITTEE
REQUESTED AND APPOINTED.

IN THE HOUSE

APRIL 17, 1993

SECOND READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

IN THE SENATE

APRIL 19, 1993

CONFERENCE COMMITTEE REPORT ADOPTED.

IN THE HOUSE

APRIL 20, 1993

THIRD READING, CONFERENCE COMMITTEE
REPORT ADOPTED.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1
2 INTRODUCED BY *House* BILL NO. *548*
3 *Barth* *Beaske* *Bokinger* *Ch* *Swanson* *Dawell*
4 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OR
5 DISTRIBUTION OF TOBACCO PRODUCTS TO A PERSON UNDER 18 YEARS
6 OF AGE; REQUIRING A LICENSE FOR RETAIL SALES OF TOBACCO
7 PRODUCTS; REQUIRING THE POSTING OF SIGNS; PROHIBITING THE
8 DISTRIBUTION OF TOBACCO PRODUCTS IN OTHER THAN SEALED
9 PACKAGES; RESTRICTING SALES FROM TOBACCO VENDING MACHINES;
10 PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC SCHOOL
11 PROPERTY; AUTHORIZING CERTAIN LOCAL REGULATIONS; AND
12 PROVIDING PENALTIES."

13
14 STATEMENT OF INTENT.

15 A statement of intent is required for this bill because
16 [section 11] grants the department of revenue authority to
17 adopt rules.

18 It is the intent of the legislature to reduce the number
19 of young people who use tobacco products, to recognize the
20 responsibility of retail sellers for contributing to the use
21 of tobacco products by young people, to establish a system
22 of regulations and sanctions prohibiting the sale or
23 distribution of tobacco products to young people, and to
24 provide for the posting of signs informing young people that
25 sales or distribution of tobacco products to them is

1 illegal.

2
3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

4 NEW SECTION. **Section 1. Short title.** [Sections 1
5 through 11] may be cited as the "Youth Access to Tobacco
6 Products Control Act".

7 NEW SECTION. **Section 2. Definitions.** For the purposes
8 of [sections 1 through 8], the following definitions apply:

9 (1) "Distribute" means:

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

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

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

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

20 (3) "License" means a retail tobacco product sales
21 license.

22 (4) "Person" means a natural person, company,
23 corporation, firm, partnership, organization, or other legal
24 entity.

25 (5) "Tobacco product" means a substance that contains

1 tobacco. The term includes cigarettes, cigars, snuff,
2 smoking tobacco, and smokeless tobacco.

3 NEW SECTION. Section 3. License for retail sale of
4 tobacco products. (1) A person may not sell tobacco products
5 at retail, whether over the counter, by vending machine, or
6 otherwise, without a license.

7 (2) A license for the retail sale of tobacco products
8 may be obtained from the department of revenue upon payment
9 of a license fee to be set by the department by rule. The
10 fee must be commensurate with the department's costs of
11 administering [sections 1 through 8].

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

14 NEW SECTION. Section 4. Signs. A retail seller of
15 tobacco products shall conspicuously display, at each place
16 on the premises at which tobacco products are sold, a sign
17 that is to be provided without charge by the department of
18 revenue that states: "It is illegal to sell or distribute
19 tobacco products to persons under 18 years of age."

20 NEW SECTION. Section 5. Sale or distribution of
21 tobacco products to persons under 18 years of age
22 prohibited. (1) A person may not sell or distribute a
23 tobacco product to an individual under 18 years of age,
24 whether over the counter, by vending machine, or otherwise.

25 (2) If there is a reasonable doubt as to the

1 individual's age, the seller shall require presentation of a
2 driver's license or other generally accepted identification
3 that includes a picture of the individual.

4 NEW SECTION. Section 6. Sales from tobacco vending
5 machines. Tobacco products may be sold through a vending
6 machine only in:

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

9 (2) places to which individuals under 18 years of age
10 are not permitted access; and

11 (3) places where the vending machine is under the
12 direct supervision of the owner or an employee of the
13 establishment. The sale of tobacco products from a vending
14 machine under direct supervision of the owner or an employee
15 of the establishment is considered a sale of tobacco
16 products by that person for purposes of [section 5].

17 NEW SECTION. Section 7. Distribution of tobacco
18 products in other than sealed packages prohibited. A person
19 may not distribute a tobacco product for commercial purposes
20 in other than a sealed package that is provided by the
21 manufacturer and that contains the health warning required
22 by federal law.

23 NEW SECTION. Section 8. Penalties. (1) Failure to
24 obtain a license as required by [section 3] or to post signs
25 as provided in [section 4] is punishable by a civil penalty

1 of \$100.

2 (2) A person who violates [section 5(1)] may be
3 punished by a civil penalty of \$100. A subsequent violation
4 within 1 year is punishable by a civil penalty of \$250. A
5 third violation is punishable by a civil penalty of \$500 if
6 two violations occurred within the 2-year period prior to
7 that violation. A fourth violation is punishable by a civil
8 penalty of \$1,000 if three or more violations occurred
9 within the 2-year period prior to that violation.

10 (3) (a) A person who violates [section 7] is guilty of
11 a misdemeanor and upon conviction is liable for a civil
12 penalty of not more than \$300 for the first violation. A
13 subsequent violation is punishable by a civil penalty of not
14 more than \$500. A third or subsequent violation is
15 punishable by a civil penalty of not more than \$1,000.

16 (b) For a third or subsequent violation of [section 7]
17 by a person licensed under [section 3], the license may be
18 suspended or revoked for not more than 1 year after a
19 hearing in accordance with the contested case provisions of
20 the Montana Administrative Procedure Act.

21 (4) A license holder is not subject to a civil penalty
22 under subsection (2) for a violation by his employee or
23 agent if the sale was without the knowledge of the license
24 holder and the license holder shows that the license holder
25 had in place a system to prevent violations of [section

1 5(1)].

2 (5) (a) The county attorney of the county in which a
3 civil penalty is imposed under subsection (2) shall inform
4 the department of revenue of the imposition of the penalty.

5 (b) The department shall suspend the person's license
6 for:

7 (i) 7 days if the civil penalty imposed was for a
8 second violation within a 1-year period;

9 (ii) 1 to 6 months if the civil penalty imposed was for
10 a third violation within a 2-year period; and

11 (iii) 9 to 18 months if the civil penalty imposed was
12 for a fourth or subsequent violation within a 2-year period.

13 (c) If, within a 2-year period, civil penalties are
14 imposed for three or more violations of [section 5(1)] at
15 each of three or more premises under common ownership or
16 control, the department shall suspend all licenses issued to
17 all premises under that common ownership for a period of 9
18 to 18 months.

19 NEW SECTION. Section 9. Use of tobacco product in
20 public school building or property prohibited. (1) An
21 individual may not use a tobacco product in a public school
22 building or property during school hours.

23 (2) Subsection (1) does not apply to the use of a
24 tobacco product:

25 (a) in a classroom or on other school property as part

1 of a lecture, demonstration, or educational forum sanctioned
2 by a school administrator or faculty member concerning the
3 risks associated with use of a tobacco product;

4 (b) as a part of a play, performance, or other
5 theatrical event sanctioned by a school administrator or
6 faculty member; or

7 (c) after school hours by persons in a tobacco,
8 alcohol, or drug rehabilitation, counseling, or control
9 group using school facilities for a meeting or event that is
10 in furtherance of the group's goals and that is sanctioned
11 by a school administrator or other public official.

12 (3) The principal of an elementary or secondary school,
13 or the principal's designee, may enforce this section.

14 (4) For the purposes of this section, the following
15 definitions apply:

16 (a) "Public school building or property":

17 (i) means public land, fixtures, buildings, or other
18 property owned or occupied by an institution for the
19 teaching of minor children that is established and
20 maintained under the laws of the state of Montana at public
21 expense; and

22 (ii) includes school playgrounds, school steps, parking
23 lots, administration buildings, athletic facilities,
24 gymnasiums, locker rooms, stadiums, and school buses.

25 (b) "Tobacco product" means a substance that contains

1 tobacco, including cigarettes, cigars, snuff, smoking
2 tobacco, and smokeless tobacco.

3 NEW SECTION. **Section 10.** Local regulations. A local
4 government may by ordinance adopt regulations on the
5 subjects of [sections 1 through 9] that are as stringent as
6 [sections 1 through 9].

7 NEW SECTION. **Section 11.** Rulemaking authority. The
8 department of revenue may adopt rules to implement [sections
9 1 through 8].

-End-

STATE OF MONTANA - FISCAL NOTE
Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0548, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act prohibiting the sale or distribution of tobacco products to a person under 18 years of age; requiring a license for retail sales of tobacco products; requiring the posting of signs; prohibiting the distribution of tobacco products in other than sealed packages; restricting sales from tobacco vending machines; prohibiting the use of tobacco products on public school property; authorizing certain local regulations; and providing penalties.

ASSUMPTIONS:

1. Enforcement of this proposal will be done at the local level.
2. This bill would be effective October 1, 1993.
3. The license for retail of tobacco products (under this proposal) is in addition to any other cigarette license fees.
4. It is estimated that 2,200 licenses will be issued each year under this proposal.
5. The administrative costs for signs and licensing would be \$3,988 in FY 94 and \$1,433 each year thereafter, funded from cigarette tax revenues.

FISCAL IMPACT:

Expenditures:

Income Tax Div (Pg 06)

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
FTE	123.45	123.45	0	123.45	123.45	0
Personal Services	\$ 3,296,520	\$ 3,296,520	\$ 0	\$ 3,305,267	\$ 3,305,267	\$ 0
Operating Expenses	1,424,031	1,428,019	3,988	1,390,128	1,391,561	1,433
Equipment	72,561	72,561	0	52,971	52,971	0
Total	\$ 4,793,112	\$ 4,797,100	\$ 3,988	\$ 4,748,366	\$ 4,749,799	\$ 1,433
General Fund	\$ 4,298,112	\$ 4,298,112	\$ 0	\$ 4,238,366	\$ 4,239,799	\$ 0
State Special	495,000	498,988	3,988	510,000	511,433	1,433
Total	\$ 4,793,112	\$ 4,797,100	\$ 3,988	\$ 4,748,366	\$ 4,749,799	\$ 1,433

Revenues:

Inestimable. Reduced consumption of tobacco products by minors would reduce cigarette tax revenues.

David Lewis 2-15-93
DAVID LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

William S. Strizich 2/16/93
WILLIAM S. STRIZICH, PRIMARY SPONSOR DATE

Fiscal Note for HB0548, as introduced.

HB 548

RE-REFERRED AND
APPROVED BY COMM. ON
BUSINESS & INDUSTRY

HOUSE BILL NO. 548

INTRODUCED BY STRIZICH, KLAMPE, J. RICE, WILSON, COBB,
BARNHART, BROOKE, BOHLINGER, ECK, SWANSON,
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A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OR
DISTRIBUTION OF TOBACCO PRODUCTS TO A PERSON UNDER 18 YEARS
OF AGE; REQUIRING A LICENSE FOR RETAIL SALES OF TOBACCO
PRODUCTS; REQUIRING THE POSTING OF SIGNS; PROHIBITING THE
DISTRIBUTION OF TOBACCO PRODUCTS IN OTHER THAN SEALED
PACKAGES; RESTRICTING SALES FROM TOBACCO VENDING MACHINES;
~~PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC SCHOOL~~
~~PROPERTY~~; AUTHORIZING CERTAIN LOCAL REGULATIONS; AND
PROVIDING PENALTIES."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section ~~11~~ 10] grants the department of revenue authority
to adopt rules.

It is the intent of the legislature to reduce the number
of young people who use tobacco products, to recognize the
responsibility of retail sellers for contributing to the use
of tobacco products by young people, to establish a system
of regulations and sanctions prohibiting the sale or
distribution of tobacco products to young people, and to

provide for the posting of signs informing young people that
sales or distribution of tobacco products to them is
illegal.

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through ~~11~~ 10] may be cited as the "Youth Access to Tobacco
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NEW SECTION. **Section 2. Definitions.** For the purposes
of [sections 1 through 8], the following definitions apply:

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(a) to give, deliver, or sell;

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

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

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required by federal law and intended to alert users of the
product to the health risks associated with tobacco use. The
term includes warning labels required under the Federal
Cigarette Labeling and Advertising Act and the Comprehensive
Smokeless Tobacco Health Education Act of 1986.

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license.

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corporation, firm, partnership, organization, or other legal

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3 tobacco. The term includes cigarettes, cigars, snuff,
4 smoking tobacco, and smokeless tobacco.

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6 tobacco products. (1) A person may not sell tobacco products
7 at retail, whether over the counter, by vending machine, or
8 otherwise, without a license.

9 (2) A license for the retail sale of tobacco products
10 may be obtained from the department of revenue upon payment
11 of a license fee to be set by the department by rule. The
12 fee must be commensurate with the department's costs of
13 administering [sections 1 through 8].

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15 deposited in the general fund.

16 NEW SECTION. Section 4. Signs. A retail seller of
17 tobacco products shall conspicuously display, at each place
18 on the premises at which tobacco products are sold, a sign
19 that is to be provided without charge by the department of
20 revenue that states: "~~It is illegal to sell or distribute~~
21 MONTANA LAW PROHIBITS THE SALE OF tobacco products to
22 persons under 18 years of age."

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24 tobacco products to persons under 18 years of age
25 prohibited. (1) A person may not sell or distribute a

1 tobacco product to an individual under 18 years of age,
2 whether over the counter, by vending machine, or otherwise.

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

7 NEW SECTION. Section 6. Sales from tobacco vending
8 machines. Tobacco products may be sold through a vending
9 machine only in:

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

12 (2) places to which individuals under 18 years of age
13 are not permitted access; and

14 (3) PLACES WHERE ALCOHOLIC BEVERAGES, AS DEFINED IN
15 16-1-106, ARE OFFERED FOR SALE; AND

16 ~~{3}~~(4) places where the vending machine is under the
17 direct supervision of the owner or an employee of the
18 establishment. The sale of tobacco products from a vending
19 machine under direct supervision of the owner or an employee
20 of the establishment is considered a sale of tobacco
21 products by that person for purposes of [section 5].

22 NEW SECTION. Section 7. Distribution of tobacco
23 products in other than sealed packages prohibited. A person
24 may not distribute a tobacco product for commercial purposes
25 in other than a sealed package that is provided by the

manufacturer and that contains the health warning required by federal law.

NEW SECTION. Section 8. Penalties. (1) Failure to obtain a license as required by [section 3] or to post signs as provided in [section 4] is punishable by a civil penalty of \$100.

(2) A person who violates [section 5(1)] may be punished by a civil penalty of \$100. A subsequent violation within 1 year is punishable by a civil penalty of ~~\$250~~ \$200. A third violation is punishable by a civil penalty of ~~\$500~~ \$300 if two violations occurred within the 2-year period prior to that violation. A fourth violation is punishable by a civil penalty of ~~\$1,000~~ \$500 if three or more violations occurred within the 2-year period prior to that violation.

(3) (a) A person who violates [section 7] is guilty of a misdemeanor and upon conviction is liable for a civil penalty of not more than ~~\$300~~ \$100 for the first violation. A subsequent violation is punishable by a civil penalty of not more than ~~\$500~~ \$200. A third or subsequent violation is punishable by a civil penalty of not more than ~~\$1,000~~ \$500.

(b) ~~For a third or subsequent violation of [section 7] by a person licensed under [section 3], the license may be suspended or revoked for not more than 1 year after a hearing in accordance with the contested case provisions of the Montana Administrative Procedure Act.~~

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of [section 5(1)].

(5) (a) The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty.

~~(b) The department shall suspend the person's license for:~~

~~(i) 7 days if the civil penalty imposed was for a second violation within a 1-year period;~~

~~(ii) 1 to 6 months if the civil penalty imposed was for a third violation within a 2-year period; and~~

~~(iii) 9 to 18 months if the civil penalty imposed was for a fourth or subsequent violation within a 2-year period.~~

~~(c) If, within a 2-year period, civil penalties are imposed for three or more violations of [section 5(i)] at each of three or more premises under common ownership or control, the department shall suspend all licenses issued to all premises under that common ownership for a period of 9 to 18 months.~~

NEW SECTION. Section 9. Use of tobacco product in public school building or property prohibited. (1) An

1 individual--may-not-use-a-tobacco-product-in-a-public-school
2 building-or-property-during-school-hours-

3 {2}--Subsection-(1)-does-not-apply-to-the-use-of-a
4 tobacco-product-

5 {a}--in-a-classroom-or-on-other-school-property-as-part
6 of-a-lecture-demonstration-or-educational-forum-sanctioned
7 by-a-school-administrator-or-faculty-member--concerning--the
8 risks-associated-with-use-of-a-tobacco-product-

9 {b}--as-a-part-of-a-play--performance--or--other
10 theatrical-event-sanctioned-by-a-school-administrator--or
11 faculty-member--or

12 {c}--after-school-hours-by-persons-in-a-tobacco
13 alcohol-or-drug-rehabilitation--counseling--or--control
14 group-using-school-facilities-for-a-meeting-or-event-that-is
15 in-furtherance-of-the-group's-goals-and-that-is-sanctioned
16 by-a-school-administrator-or-other-public-official-

17 {3}--The-principal-of-an-elementary-or-secondary-school
18 or-the-principal's-designee-may-enforce-this-section-

19 {4}--For-the-purposes-of-this-section--the-following
20 definitions-apply-

21 {a}--"Public-school-building-or-property"-

22 {1}--means-public-land--fixtures-buildings-or-other
23 property-owned-or-occupied-by-an-institution-for-the
24 teaching-of-minor-children-that-is-established-and
25 maintained-under-the-laws-of-the-state-of-Montana-at-public

1 expense-and

2 {11}--includes-school-playgrounds-school-steps--parking
3 lots--administration-buildings--athletic-facilities
4 gymnasiums-locker-rooms-stadiums-and-school-buses-

5 {b}--"Tobacco-product"--means-a-substance-that-contains
6 tobacco--including-cigarettes-cigars--snuff--smoking
7 tobacco-and-smokeless-tobacco-

8 NEW SECTION. Section 9. Local regulations. A local
9 government may by ordinance adopt regulations on the
10 subjects of [sections 1 through 9 8] that are as NO MORE
11 stringent as THAN [sections 1 through 9 8].

12 NEW SECTION. Section 10. Rulemaking authority. The
13 department of revenue may adopt rules to implement [sections
14 1 through 8].

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2 INTRODUCED BY STRIZICH, KLAMPE, J. RICE, WILSON, COBB,

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~~(3)~~(4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco products by that person for purposes of [section 5].

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11 \$300 if two violations occurred within the 2-year period
12 prior to that violation. A fourth violation is punishable by
13 a civil penalty of \$1,000 \$500 if three or more violations
14 occurred within the 2-year period prior to that violation.

15 (3) (a) A person who violates [section 7] is guilty of
16 a misdemeanor and upon conviction is liable for a civil
17 penalty of not more than \$300 \$100 for the first violation.
18 A subsequent violation is punishable by a civil penalty of
19 not more than \$500 \$200. A third or subsequent violation is
20 punishable by a civil penalty of not more than \$1,000 \$500.

21 (b) ~~For a third or subsequent violation of [section 7]~~
22 ~~by a person licensed under [section 3], the license may be~~
23 ~~suspended or revoked for not more than 1 year after a~~
24 ~~hearing in accordance with the contested case provisions of~~
25 ~~the Montana Administrative Procedure Act.~~

1 (4) A license holder is not subject to a civil penalty
2 under subsection (2) for a violation by his employee or
3 agent if the sale was without the knowledge of the license
4 holder and the license holder shows that the license holder
5 had in place a system to prevent violations of [section
6 5(1)].

7 (5) (a) The county attorney of the county in which a
8 civil penalty is imposed under subsection (2) shall inform
9 the department of revenue of the imposition of the penalty.

10 (b) ~~The department shall suspend the person's license~~
11 ~~for:~~

12 (i) ~~7 days if the civil penalty imposed was for a~~
13 ~~second violation within a 1-year period;~~

14 (ii) ~~1 to 6 months if the civil penalty imposed was for~~
15 ~~a third violation within a 2-year period; and~~

16 (iii) ~~9 to 18 months if the civil penalty imposed was~~
17 ~~for a fourth or subsequent violation within a 2-year period;~~

18 (c) ~~If within a 2-year period, civil penalties are~~
19 ~~imposed for three or more violations of [section 5(1)] at~~
20 ~~each of three or more premises under common ownership or~~
21 ~~control, the department shall suspend all licenses issued to~~
22 ~~all premises under that common ownership for a period of 9~~
23 ~~to 18 months;~~

24 NEW SECTION. Section 9. Use of tobacco product in
25 public school building or property prohibited. (1) An

individual may not use a tobacco product in a public school building or property during school hours.

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official;

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public

expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, stadiums, and school buses;

(b) "Tobacco product" means a substance that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

NEW SECTION. Section 9. Local regulations. A local government may by ordinance adopt regulations on the subjects of [sections 1 through 9 8] that are as NO MORE stringent as THAN [sections 1 through 9 8].

NEW SECTION. Section 10. Rulemaking authority. The department of revenue may adopt rules to implement [sections 1 through 8].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 3
March 29, 1993

Page 2 of 3
March 29, 1993

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration House Bill No. 548 (third reading copy -- blue), respectfully report that House Bill No. 548 be amended as follows and as so amended be concurred in.

Signed: *Dorothy Eck*
Senator Dorothy Eck, Chair

That such amendments read:

1. Title, line 13.

Following: "7"

Insert: "PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC SCHOOL PROPERTY;"

2. Page 1, line 18.

Strike: "10"

Insert: "11"

3. Page 2, line 7.

Strike: "10"

Insert: "11"

4. Page 2, line 12.

Following: "deliver,"

Insert: "sample,"

5. Page 2, line 13.

Following: "deliver,"

Insert: "sample,"

6. Page 2, line 14.

Following: "deliver,"

Insert: "sample,"

7. Page 2, line 15.

Following: "deliver,"

Insert: "sample,"

8. Page 3, line 2.

Following: "substance"

Insert: "intended for human consumption"

9. Page 3, line 8.

Following: "license"

Insert: "obtained from the department of revenue"

10. Page 3, lines 11 through 13.

Following: "fee" on line 11

Strike: remainder of line 11 through "[sections 1 through 8]" on line 13

Insert: "of \$5 per year or fraction of a year for each premise or location at which tobacco products are sold at retail. A license is effective from the date of issuance to July 1 following the date of issuance. The license is a personal privilege and not a right and is not transferable or assignable in any manner"

11. Page 4, line 13.

Following: "and"

Insert: "and"

12. Page 4, lines 14 and 15.

Strike: subsection (3) in its entirety

Renumber: subsequent subsection

13. Page 8, line 8.

Following: line 7

Insert: "NEW SECTION. Section 9. Use of tobacco product in public school building or property prohibited. (1) An individual may not use a tobacco product in a public school building or property during school hours.

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official.

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

AM Amd. Coord.
AS Sec. of Senate

Sen. Klarny
Senator Carrying Bill

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(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, stadiums, and school buses.

(b) "Tobacco product" means a substance intended for human consumption that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco."

14. Page 8, line 10.

Strike: "8"

Insert: "9"

15. Page 8, line 11.

Strike: "8"

Insert: "9"

-END-


SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 7:06 pm

Mr. Chairman: I move to amend House Bill No. 548 (third reading copy -- blue).

ADOPT

REJECT

Signed: 

Senator Barry "Spook" Stang

That such amendments read:

Amend the Senate standing committee report on House Bill No. 548 of the committee on Public Health, Welfare, and Safety dated March 29, 1993, as follows:

Strip amendment No. 10 in its entirety

Amend House Bill No. 548 (third reading -- blue) copy as follows:

1. Page 3, lines 10 through 15.

Following: "revenue"

Insert: "."

Strike: "upon" on line 10 through " 8]." on line 15

-END-

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 31, 1993 7:14 pm

Mr. Chairman: I move to amend House Bill No. 548 (third reading copy -- blue).

ADOPT

REJECT

Signed: 

Senator Bob Pipinich

That such amendments read:

1. Page 4, line 14.

Following: line 13

Insert: "(3) places where alcoholic beverages are sold and consumed on the premises; and"

Renumber: subsequent subsection

-END-

1 HOUSE BILL NO. 548

2 INTRODUCED BY STRIZICH, KLAMPE, J. RICE, WILSON, COBB,

3 BARNHART, BROOKE, BOHLINGER, ECK, SWANSON,

4 DOWELL, CHRISTIAENS

5
6 A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OR
7 DISTRIBUTION OF TOBACCO PRODUCTS TO A PERSON UNDER 18 YEARS
8 OF AGE; REQUIRING A LICENSE FOR RETAIL SALES OF TOBACCO
9 PRODUCTS; REQUIRING THE POSTING OF SIGNS; PROHIBITING THE
10 DISTRIBUTION OF TOBACCO PRODUCTS IN OTHER THAN SEALED
11 PACKAGES; RESTRICTING SALES FROM TOBACCO VENDING MACHINES;
12 ~~PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC SCHOOL~~
13 ~~PROPERTY;~~ PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC
14 SCHOOL PROPERTY; AUTHORIZING CERTAIN LOCAL REGULATIONS; AND
15 PROVIDING PENALTIES."

17 STATEMENT OF INTENT

18 A statement of intent is required for this bill because
19 [section ~~11~~ 10 11] grants the department of revenue
20 authority to adopt rules.

21 It is the intent of the legislature to reduce the number
22 of young people who use tobacco products, to recognize the
23 responsibility of retail sellers for contributing to the use
24 of tobacco products by young people, to establish a system
25 of regulations and sanctions prohibiting the sale or

1 distribution of tobacco products to young people, and to
2 provide for the posting of signs informing young people that
3 sales or distribution of tobacco products to them is
4 illegal.
5

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

7 NEW SECTION. Section 1. Short title. [Sections 1
8 through ~~11~~ 10 11] may be cited as the "Youth Access to
9 Tobacco Products Control Act".

10 NEW SECTION. Section 2. Definitions. For the purposes
11 of [sections 1 through 8], the following definitions apply:

12 (1) "Distribute" means:

13 (a) to give, deliver, SAMPLE, or sell;14 (b) to offer to give, deliver, SAMPLE, or sell; or

15 (c) to cause or hire another person to give, deliver,
16 SAMPLE, or sell or offer to give, deliver, SAMPLE, or sell.

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

23 (3) "License" means a retail tobacco product sales
24 license.

25 (4) "Person" means a natural person, company,

corporation, firm, partnership, organization, or other legal entity.

(5) "Tobacco product" means a substance INTENDED FOR HUMAN CONSUMPTION that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

NEW SECTION. Section 3. License for retail sale of tobacco products. (1) A person may not sell tobacco products at retail, whether over the counter, by vending machine, or otherwise, without a license OBTAINED FROM THE DEPARTMENT OF REVENUE.

(2) A license for the retail sale of tobacco products may be obtained from the department of revenue, upon payment of--a--license--fee--to--be--set--by--the--department--by--rule--The fee--must--be--commensurate--with--the--department's--costs--of administering--(sections--1--through--8)--

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

NEW SECTION. Section 4. Signs. A retail seller of tobacco products shall conspicuously display, at each place on the premises at which tobacco products are sold, a sign that is to be provided without charge by the department of revenue that states: "It is illegal to sell or distribute MONTANA LAW PROHIBITS THE SALE OF tobacco products to persons under 18 years of age."

NEW SECTION. Section 5. Sale or distribution of tobacco products to persons under 18 years of age prohibited. (1) A person may not sell or distribute a tobacco product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

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

NEW SECTION. Section 6. Sales from tobacco vending machines. Tobacco products may be sold through a vending machine only in:

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

(2) places to which individuals under 18 years of age are not permitted access; and AND

(3) PLACES WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED ON THE PREMISES; AND

(3)--PLACES WHERE ALCOHOLIC BEVERAGES, AS DEFINED IN 16-1-1067, ARE OFFERED FOR SALE; AND

(3)(4)(3)(4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco

products by that person for purposes of [section 5].

NEW SECTION. Section 7. Distribution of tobacco products in other than sealed packages prohibited. A person may not distribute a tobacco product for commercial purposes in other than a sealed package that is provided by the manufacturer and that contains the health warning required by federal law.

NEW SECTION. Section 8. Penalties. (1) Failure to obtain a license as required by [section 3] or to post signs as provided in [section 4] is punishable by a civil penalty of \$100.

(2) A person who violates [section 5(1)] may be punished by a civil penalty of \$100. A subsequent violation within 1 year is punishable by a civil penalty of \$250 \$200. A third violation is punishable by a civil penalty of \$500 \$300 if two violations occurred within the 2-year period prior to that violation. A fourth violation is punishable by a civil penalty of ~~\$1,000~~ \$500 if three or more violations occurred within the 2-year period prior to that violation.

(3) ~~(a)~~ A person who violates [section 7] is guilty of a misdemeanor and upon conviction is liable for a civil penalty of not more than ~~\$300~~ \$100 for the first violation. A subsequent violation is punishable by a civil penalty of not more than ~~\$500~~ \$200. A third or subsequent violation is punishable by a civil penalty of not more than ~~\$1,000~~ \$500.

~~(b) For a third or subsequent violation of {section--7} by--a--person--licensed--under--{section--3},--the--license--may--be suspended--or--revoked--for--not--more--than--1--year--after--a hearing--in--accordance--with--the--contested--case--provisions--of the--Montana--Administrative--Procedure--Act;~~

(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his employee or agent if the sale was without the knowledge of the license holder and the license holder shows that the license holder had in place a system to prevent violations of [section 5(1)].

(5) ~~(a)~~ The county attorney of the county in which a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of the penalty.

~~(b) The--department--shall--suspend--the--person's--license for~~

~~(i) 7 days if the civil penalty imposed was for a second violation within a 1-year period;~~

~~(ii) 1 to 6 months if the civil penalty imposed was for a third violation within a 2-year period; and~~

~~(iii) 9 to 18 months if the civil penalty imposed was for a fourth or subsequent violation within a 2-year period;~~

~~(c) If, within a 2-year period, civil penalties are imposed for three or more violations of {section--5(1)} at each of three or more premises under common ownership or~~

control; the department shall suspend all licenses issued to all premises under that common ownership for a period of 90 to 180 months.

NEW SECTION. Section 9. Use of tobacco product in public school building or property prohibited. (1) An individual may not use a tobacco product in a public school building or property during school hours.

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official.

(3) The principal of an elementary or secondary school or the principal's designee may enforce this section.

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, stadiums, and school buses.

(b) "Tobacco product" means a substance that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

NEW SECTION. SECTION 9. USE OF TOBACCO PRODUCT IN PUBLIC SCHOOL BUILDING OR PROPERTY PROHIBITED. (1) AN INDIVIDUAL MAY NOT USE A TOBACCO PRODUCT IN A PUBLIC SCHOOL BUILDING OR PROPERTY DURING SCHOOL HOURS.

(2) SUBSECTION (1) DOES NOT APPLY TO THE USE OF A TOBACCO PRODUCT:

(A) IN A CLASSROOM OR ON OTHER SCHOOL PROPERTY AS PART OF A LECTURE, DEMONSTRATION, OR EDUCATIONAL FORUM SANCTIONED BY A SCHOOL ADMINISTRATOR OR FACULTY MEMBER CONCERNING THE RISKS ASSOCIATED WITH USE OF A TOBACCO PRODUCT;

(B) AS A PART OF A PLAY, PERFORMANCE, OR OTHER THEATRICAL EVENT SANCTIONED BY A SCHOOL ADMINISTRATOR OR FACULTY MEMBER; OR

(C) AFTER SCHOOL HOURS BY PERSONS IN A TOBACCO, ALCOHOL, OR DRUG REHABILITATION, COUNSELING, OR CONTROL GROUP USING SCHOOL FACILITIES FOR A MEETING OR EVENT THAT IS IN FURTHERANCE OF THE GROUP'S GOALS AND THAT IS SANCTIONED BY A SCHOOL ADMINISTRATOR OR OTHER PUBLIC OFFICIAL.

(3) THE PRINCIPAL OF AN ELEMENTARY OR SECONDARY SCHOOL, OR THE PRINCIPAL'S DESIGNEE, MAY ENFORCE THIS SECTION.

(4) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(A) "PUBLIC SCHOOL BUILDING OR PROPERTY":

(I) MEANS PUBLIC LAND, FIXTURES, BUILDINGS, OR OTHER PROPERTY OWNED OR OCCUPIED BY AN INSTITUTION FOR THE TEACHING OF MINOR CHILDREN THAT IS ESTABLISHED AND MAINTAINED UNDER THE LAWS OF THE STATE OF MONTANA AT PUBLIC EXPENSE; AND

(II) INCLUDES SCHOOL PLAYGROUNDS, SCHOOL STEPS, PARKING LOTS, ADMINISTRATION BUILDINGS, ATHLETIC FACILITIES, GYMNASIUMS, LOCKER ROOMS, STADIUMS, AND SCHOOL BUSES.

(B) "TOBACCO PRODUCT" MEANS A SUBSTANCE INTENDED FOR HUMAN CONSUMPTION THAT CONTAINS TOBACCO, INCLUDING CIGARETTES, CIGARS, SNUFF, SMOKING TOBACCO, AND SMOKELESS TOBACCO.

NEW SECTION. Section 10. Local regulations. A local government may by ordinance adopt regulations on the subjects of [sections 1 through 9 8 9] that are as NO MORE

1 stringent ~~as~~ THAN [sections 1 through 9 8 9].

2 NEW SECTION. Section 11. Rulemaking authority. The
3 department of revenue may adopt rules to implement [sections
4 1 through 8].

-End-

Conference Committee
on House Bill 548
Report No. 1, April 16, 1993

April 16, 1993
Page 2 of 2

Page 1 of 2

Mr. Speaker and Mr. President:

We, your Conference Committee on House Bill 548 met and considered House Bill 548 and recommend that the bill (reference copy -- salmon) be amended as follows:

1. Page 8, line 25.
Strike: "OR"

2. Page 9, line 5
Following: "OFFICIAL"
Insert: "; or

(d) by nonstudent adults in any area designated as a smoking area by the school administrator or by the board of trustees of the school district"

3. Page 9, line 18.
Strike: "STADIUMS,"

4. Page 9, line 25.
Strike: "9"
Insert: "8"

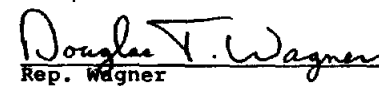
5. Page 9, line 1.
Strike: "9"
Insert: "8"

And, that this Conference Committee report be adopted.

For the House:


Rep. Behlinger, Chair


Rep. Strizich


Rep. Wagner

For the Senate:


Sen. Klampe, Chair


Sen. Pipinich


Sen. Rye

ADOPT

REJECT

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CCR#1
HB548
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HOUSE BILL NO. 548

INTRODUCED BY STRIZICH, KLAMPE, J. RICE, WILSON, COBB,
BARNHART, BROOKE, BOHLINGER, ECK, SWANSON,
DOWELL, CHRISTIAENS

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING THE SALE OR
DISTRIBUTION OF TOBACCO PRODUCTS TO A PERSON UNDER 18 YEARS
OF AGE; REQUIRING A LICENSE FOR RETAIL SALES OF TOBACCO
PRODUCTS; REQUIRING THE POSTING OF SIGNS; PROHIBITING THE
DISTRIBUTION OF TOBACCO PRODUCTS IN OTHER THAN SEALED
PACKAGES; RESTRICTING SALES FROM TOBACCO VENDING MACHINES;
~~PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC SCHOOL~~
~~PROPERTY;~~ PROHIBITING THE USE OF TOBACCO PRODUCTS ON PUBLIC
SCHOOL PROPERTY; AUTHORIZING CERTAIN LOCAL REGULATIONS; AND
PROVIDING PENALTIES."

STATEMENT OF INTENT

A statement of intent is required for this bill because
[section ~~11~~ 10 11] grants the department of revenue
authority to adopt rules.

It is the intent of the legislature to reduce the number
of young people who use tobacco products, to recognize the
responsibility of retail sellers for contributing to the use
of tobacco products by young people, to establish a system
of regulations and sanctions prohibiting the sale or

distribution of tobacco products to young people, and to
provide for the posting of signs informing young people that
sales or distribution of tobacco products to them is
illegal.

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

NEW SECTION. **Section 1.** Short title. [Sections 1
through ~~11~~ 10 11] may be cited as the "Youth Access to
Tobacco Products Control Act".

NEW SECTION. **Section 2.** Definitions. For the purposes
of [sections 1 through 8], the following definitions apply:

(1) "Distribute" means:

(a) to give, deliver, SAMPLE, or sell;

(b) to offer to give, deliver, SAMPLE, or sell; or

(c) to cause or hire another person to give, deliver,
SAMPLE, or sell or offer to give, deliver, SAMPLE, or sell.

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

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

(4) "Person" means a natural person, company,

corporation, firm, partnership, organization, or other legal entity.

(5) "Tobacco product" means a substance INTENDED FOR HUMAN CONSUMPTION that contains tobacco. The term includes cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco.

NEW SECTION. Section 3. License for retail sale of tobacco products. (1) A person may not sell tobacco products at retail, whether over the counter, by vending machine, or otherwise, without a license OBTAINED FROM THE DEPARTMENT OF REVENUE.

(2) A license for the retail sale of tobacco products may be obtained from the department of revenue, upon payment of ~~a license fee to be set by the department by rule. The fee must be commensurate with the department's costs of administering sections 1 through 8.~~

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

NEW SECTION. Section 4. Signs. A retail seller of tobacco products shall conspicuously display, at each place on the premises at which tobacco products are sold, a sign that is to be provided without charge by the department of revenue that states: "It is illegal to sell or distribute MONTANA LAW PROHIBITS THE SALE OF tobacco products to persons under 18 years of age."

NEW SECTION. Section 5. Sale or distribution of tobacco products to persons under 18 years of age prohibited. (1) A person may not sell or distribute a tobacco product to an individual under 18 years of age, whether over the counter, by vending machine, or otherwise.

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

NEW SECTION. Section 6. Sales from tobacco vending machines. Tobacco products may be sold through a vending machine only in:

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

(2) places to which individuals under 18 years of age are not permitted access; and AND

(3) PLACES WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED ON THE PREMISES; AND

~~(3) PLACES WHERE ALCOHOLIC BEVERAGES, AS DEFINED IN 16-1-1067, ARE OFFERED FOR SALE; AND~~

~~(3)(4)~~ (4) places where the vending machine is under the direct supervision of the owner or an employee of the establishment. The sale of tobacco products from a vending machine under direct supervision of the owner or an employee of the establishment is considered a sale of tobacco

1 products by that person for purposes of [section 5].

2 NEW SECTION. Section 7. Distribution of tobacco
3 products in other than sealed packages prohibited. A person
4 may not distribute a tobacco product for commercial purposes
5 in other than a sealed package that is provided by the
6 manufacturer and that contains the health warning required
7 by federal law.

8 NEW SECTION. Section 8. Penalties. (1) Failure to
9 obtain a license as required by [section 3] or to post signs
10 as provided in [section 4] is punishable by a civil penalty
11 of \$100.

12 (2) A person who violates [section 5(1)] may be
13 punished by a civil penalty of \$100. A subsequent violation
14 within 1 year is punishable by a civil penalty of ~~\$250~~ \$200.
15 A third violation is punishable by a civil penalty of ~~\$500~~
16 \$300 if two violations occurred within the 2-year period
17 prior to that violation. A fourth violation is punishable by
18 a civil penalty of ~~\$1,000~~ \$500 if three or more violations
19 occurred within the 2-year period prior to that violation.

20 (3) ~~{a}~~ A person who violates [section 7] is guilty of
21 a misdemeanor and upon conviction is liable for a civil
22 penalty of not more than ~~\$300~~ \$100 for the first violation.
23 A subsequent violation is punishable by a civil penalty of
24 not more than ~~\$500~~ \$200. A third or subsequent violation is
25 punishable by a civil penalty of not more than ~~\$1,000~~ \$500.

1 ~~{b}--For a third or subsequent violation of {section--7}~~
2 ~~by--a--person--licensed--under--{section--3},--the--license--may--be~~
3 ~~suspended--or--revoked--for--not--more--than--1--year--after--a~~
4 ~~hearing--in--accordance--with--the--contested--case--provisions--of~~
5 ~~the--Montana--Administrative--Procedure--Act--~~

6 (4) A license holder is not subject to a civil penalty
7 under subsection (2) for a violation by his employee or
8 agent if the sale was without the knowledge of the license
9 holder and the license holder shows that the license holder
10 had in place a system to prevent violations of [section
11 5(1)].

12 (5) ~~{a}~~ The county attorney of the county in which a
13 civil penalty is imposed under subsection (2) shall inform
14 the department of revenue of the imposition of the penalty.

15 ~~{b}--The--department--shall--suspend--the--person's--license~~
16 ~~for:~~

17 ~~{i}--7--days--if--the--civil--penalty--imposed--was--for--a~~
18 ~~second--violation--within--a--1--year--period;~~

19 ~~{ii}--1--to--6--months--if--the--civil--penalty--imposed--was--for~~
20 ~~a--third--violation--within--a--2--year--period;--and~~

21 ~~{iii}--9--to--18--months--if--the--civil--penalty--imposed--was~~
22 ~~for--a--fourth--or--subsequent--violation--within--a--2--year--period;~~

23 ~~{c}--If--within--a--2--year--period,--civil--penalties--are~~
24 ~~imposed--for--three--or--more--violations--of--{section--5(1)}--at~~
25 ~~each--of--three--or--more--premises--under--common--ownership--or~~

control; the department shall suspend all licenses issued to all premises under that common ownership for a period of 9 to 10 months.

NEW SECTION. Section 9. Use of tobacco product in public school building or property prohibited; (i) An individual may not use a tobacco product in a public school building or property during school hours.

(2) Subsection (1) does not apply to the use of a tobacco product:

(a) in a classroom or on other school property as part of a lecture, demonstration, or educational forum sanctioned by a school administrator or faculty member concerning the risks associated with use of a tobacco product;

(b) as a part of a play, performance, or other theatrical event sanctioned by a school administrator or faculty member; or

(c) after school hours by persons in a tobacco, alcohol, or drug rehabilitation, counseling, or control group using school facilities for a meeting or event that is in furtherance of the group's goals and that is sanctioned by a school administrator or other public official;

(3) The principal of an elementary or secondary school, or the principal's designee, may enforce this section;

(4) For the purposes of this section, the following definitions apply:

(a) "Public school building or property":

(i) means public land, fixtures, buildings, or other property owned or occupied by an institution for the teaching of minor children that is established and maintained under the laws of the state of Montana at public expense; and

(ii) includes school playgrounds, school steps, parking lots, administration buildings, athletic facilities, gymnasiums, locker rooms, stadiums, and school buses;

(b) "Tobacco product" means a substance that contains tobacco, including cigarettes, cigars, snuff, smoking tobacco, and smokeless tobacco;

NEW SECTION. SECTION 9. USE OF TOBACCO PRODUCT IN PUBLIC SCHOOL BUILDING OR PROPERTY PROHIBITED. (1) AN INDIVIDUAL MAY NOT USE A TOBACCO PRODUCT IN A PUBLIC SCHOOL BUILDING OR PROPERTY DURING SCHOOL HOURS.

(2) SUBSECTION (1) DOES NOT APPLY TO THE USE OF A TOBACCO PRODUCT:

(A) IN A CLASSROOM OR ON OTHER SCHOOL PROPERTY AS PART OF A LECTURE, DEMONSTRATION, OR EDUCATIONAL FORUM SANCTIONED BY A SCHOOL ADMINISTRATOR OR FACULTY MEMBER CONCERNING THE RISKS ASSOCIATED WITH USE OF A TOBACCO PRODUCT;

(B) AS A PART OF A PLAY, PERFORMANCE, OR OTHER THEATRICAL EVENT SANCTIONED BY A SCHOOL ADMINISTRATOR OR FACULTY MEMBER; OR

(C) AFTER SCHOOL HOURS BY PERSONS IN A TOBACCO, ALCOHOL, OR DRUG REHABILITATION, COUNSELING, OR CONTROL GROUP USING SCHOOL FACILITIES FOR A MEETING OR EVENT THAT IS IN FURTHERANCE OF THE GROUP'S GOALS AND THAT IS SANCTIONED BY A SCHOOL ADMINISTRATOR OR OTHER PUBLIC OFFICIAL; OR

(D) BY NONSTUDENT ADULTS IN ANY AREA DESIGNATED AS A SMOKING AREA BY THE SCHOOL ADMINISTRATOR OR BY THE BOARD OF TRUSTEES OF THE SCHOOL DISTRICT.

(3) THE PRINCIPAL OF AN ELEMENTARY OR SECONDARY SCHOOL, OR THE PRINCIPAL'S DESIGNEE, MAY ENFORCE THIS SECTION.

(4) FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING DEFINITIONS APPLY:

(A) "PUBLIC SCHOOL BUILDING OR PROPERTY":

(I) MEANS PUBLIC LAND, FIXTURES, BUILDINGS, OR OTHER PROPERTY OWNED OR OCCUPIED BY AN INSTITUTION FOR THE TEACHING OF MINOR CHILDREN THAT IS ESTABLISHED AND MAINTAINED UNDER THE LAWS OF THE STATE OF MONTANA AT PUBLIC EXPENSE; AND

(II) INCLUDES SCHOOL PLAYGROUNDS, SCHOOL STEPS, PARKING LOTS, ADMINISTRATION BUILDINGS, ATHLETIC FACILITIES, GYMNASIUMS, LOCKER ROOMS, STADIUMS, AND SCHOOL BUSES.

(B) "TOBACCO PRODUCT" MEANS A SUBSTANCE INTENDED FOR HUMAN CONSUMPTION THAT CONTAINS TOBACCO, INCLUDING CIGARETTES, CIGARS, SNUFF, SMOKING TOBACCO, AND SMOKELESS TOBACCO.

NEW SECTION. Section 10. Local regulations. A local government may by ordinance adopt regulations on the subjects of [sections 1 through 9 8 9 8] that are as NO MORE stringent as THAN [sections 1 through 9 8 9 8].

NEW SECTION. Section 11. Rulemaking authority. The department of revenue may adopt rules to implement [sections 1 through 8].

-End-