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 2 INTRODUCTION BY *House BILL NO. 539*
 3 *Boff Gosfield Dan Beck Gok Miller*
 4 *Christina Clark Simpkins Jackson James Wells*
 5 *B. Bam Rae*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS
 5 CONTROL ACT; ASSESSING TOBACCO EDUCATION FEES; REQUIRING LICENSE SUSPENSIONS FOR
 6 PERSONS FAILING TO COMPLY WITH THE LAW; PROVIDING FOR THE DISPLAY OF WARNING SIGNS;
 7 REQUIRING CIGARETTES TO BE SOLD IN A PACKAGE CONTAINING THE USUAL AND CUSTOMARY
 8 NUMBER OF CIGARETTES; AUTHORIZING MORE STRINGENT LOCAL REGULATIONS; PROVIDING
 9 STATUTORY APPROPRIATIONS; AND AMENDING SECTIONS 16-11-144, 16-11-304, 16-11-307,
 10 16-11-308, 16-11-311, AND 17-7-502, MCA."

11
 12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
 14 **Section 1.** Section 16-11-144, MCA, is amended to read:

15 "16-11-144. **Revocation or suspension of license.** (1) The department may revoke or suspend the
 16 license of any wholesaler, subjobber, retailer, ~~or cigarette vendor,~~ or person licensed under 16-11-303 for
 17 failure to comply with any provision of this part ~~or of,~~ The Montana Cigarette Sales Act (Title 16, chapter
 18 10), the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3), and or with any
 19 lawful rule of the department made pursuant to ~~said~~ those laws.

20 (2) Any A person aggrieved by ~~such~~ a revocation or suspension may apply to the department for
 21 a hearing, which shall must be open to the public, and may further appeal to the court.

22 (3) When a license has been ~~duly~~ revoked, ~~no~~ a license ~~shall~~ may not again ~~issue~~ be issued to ~~such~~
 23 the licensee for a period of 1 year ~~thereafter~~ after revocation. When a license has been ~~duly~~ suspended,
 24 the suspension may be for any period not to exceed 1 year.

25 (4) Any A person who ~~shall sell~~ sells cigarettes after ~~his~~ the person's license has been revoked or
 26 suspended is guilty of a misdemeanor and ~~shall~~ must be punished as ~~hereinafter~~ provided in this part, and
 27 all cigarettes in ~~his~~ the person's possession ~~shall~~ must be seized and forfeited to the state."

28
 29 **Section 2.** Section 16-11-304, MCA, is amended to read:

30 "16-11-304. **Signs.** A retail seller of tobacco products shall conspicuously display, at each place

1 on the premises at which tobacco products are displayed and sold, a sign that is to be provided without
2 charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to
3 persons under 18 years of age."

4
5 **Section 3.** Section 16-11-307, MCA, is amended to read:

6 "**16-11-307. Distribution of tobacco products in other than sealed packages prohibited.** A person
7 may not distribute a tobacco product for commercial purposes in other than a sealed package that is
8 provided by the manufacturer and that contains the health warning required by federal law. The sealed
9 package must contain the usual and customary number of cigarettes sold in one package."

10
11 **Section 4.** Section 16-11-308, MCA, is amended to read:

12 "**16-11-308. Penalties Tobacco education fee.** (1) Failure to obtain a license as required by
13 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of \$100.

14 (2) A person who violates 16-11-305(1) ~~may be punished by a civil penalty of \$100. A subsequent~~
15 ~~violation within 1 year is punishable by a civil penalty of \$200. A third violation is punishable by a civil~~
16 ~~penalty of \$300 if two violations occurred within the 2 year period prior to that violation. A fourth violation~~
17 ~~is punishable by a civil penalty of \$500 if three or more violations occurred within the 2 year period prior~~
18 ~~to that violation.~~ within a 3-year period shall be punished as follows:

19 (a) A first offense is punishable by a written notice of violation to be sent by the department of
20 corrections and human services to the owner of the establishment.

21 (b) A second offense is punishable by assessment against the owner of the establishment of a
22 tobacco education fee of \$500, and the employee or other person who sold the tobacco product, the
23 establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read
24 and view the tobacco education material.

25 (c) A third offense is punishable by suspension of the licenses required by 16-11-120 and
26 16-11-303 for 3 months.

27 (d) A fourth and subsequent offense is punishable by suspension of the licenses required by
28 16-11-120 and 16-11-303 for 1 year.

29 (3) A person who violates 16-11-307 within a 3-year period may be punished under either
30 subsection (1) or (2).

1 (4) After 2 years from the first violation, if a person has not received notice of any further
2 violations, a second violation is considered a first violation for the purposes of this section.

3 (5) A license may not be reissued after suspension under subsection (1)(c) or (1)(d) unless tobacco
4 education fees are paid in full.

5 ~~(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for~~
6 ~~a civil penalty of not more than \$100 for the first violation. A subsequent violation is punishable by a civil~~
7 ~~penalty of not more than \$200. A third or subsequent violation is punishable by a civil penalty of not more~~
8 ~~than \$500.~~

9 ~~(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his~~
10 ~~employee or agent if the sale was without the knowledge of the license holder and the license holder shows~~
11 ~~that the license holder had in place a system to prevent violations of 16-11-305(1).~~

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

14 (6) Tobacco education fees must be assessed and collected by the department of corrections and
15 human services. Notice of an assessment pursuant to this section must be made by the department of
16 corrections and human services within 30 days of the alleged violation by certified letter addressed to the
17 establishment owner or manager. The notice must include the opportunity for an assessment conference
18 on the matter within 15 days after notice is given at the request of the owner or manager. An assessment
19 conference is not a contested case as defined in the Montana Administrative Procedure Act. The
20 department of corrections and human services shall keep minutes by audio recording or in writing of each
21 assessment conference, and the minutes are public records.

22 (7) In a license suspension proceeding under subsection (8), a final determination by the
23 department of corrections and human services that a person has violated the requirements of 16-11-304,
24 16-11-305(1), or 16-11-307 is conclusive and binding upon the person committing the violation and the
25 department of revenue. The determination by the department of corrections and human services is not
26 subject to administrative or judicial appeal pursuant to the Montana Administrative Procedure Act.

27 (8) The tobacco education material referred to in this section must be provided by the department
28 of corrections and human services in the form of written and video self-teaching materials. Upon
29 completion of the self-teaching materials, the establishment owner or manager shall execute a written
30 statement on a form provided by the department of corrections and human services verifying that the

1 employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall
2 return the statement and the self-teaching video to the department of corrections and human services.

3 (9) Upon the fourth and subsequent violation of this section, the department of corrections and
4 human services shall notify the department of revenue in writing to initiate suspension of the licenses
5 required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged fourth violation
6 and of the referral of the licensee's record of violations to the department of revenue for suspension of the
7 licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of
8 violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review
9 of the record of violations, the department of revenue declines to initiate suspension proceedings, the fourth
10 violation may not be charged against the licensee for the purposes of this section.

11 (10) Fees assessed pursuant to this section must be deposited in an account in the state special
12 revenue fund. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502,
13 to the department of corrections and human services to defray the costs of the tobacco education program.
14 One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the
15 department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144
16 and this section."

17
18 **NEW SECTION. Section 5. Inspection and notification of violation required.** (1) The department
19 of corrections and human services shall conduct inspections of persons selling or distributing tobacco
20 products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307.
21 Inspections may be conducted directly by the department of corrections and human services or may be
22 provided for by contract or by other means. Persons found to be in violation of the requirements of this
23 part or the rules of the department of corrections and human services must be notified in writing by the
24 department of corrections and human services of the facts of the violation and the penalties provided by
25 this part.

26 (2) The department of corrections and human services shall provide documentation of alleged
27 violations of 16-11-303, 16-11-305, 16-11-306, and 16-11-307 to the department of revenue.

28
29 **Section 6.** Section 16-11-311, MCA, is amended to read:

30 **"16-11-311. Local regulations.** A local government may by ordinance adopt regulations on the

1 subjects of 16-11-301 through 16-11-308 that are ~~no~~ more stringent than 16-11-301 through 16-11-308."
2

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

4 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
5 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
6 without the need for a biennial legislative appropriation or budget amendment.

7 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
8 with both of the following provisions:

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

10 (b) The law or portion of the law making a statutory appropriation must specifically state that a
11 statutory appropriation is made as provided in this section.

12 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
13 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
14 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
15 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101;
16 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301;
17 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361;
18 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
19 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321;
20 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107;
21 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222;
22 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;
23 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

24 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
25 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
26 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
27 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
28 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
29 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
30 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for

1 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
2 July 1, 1995.)"

3

4 **NEW SECTION. Section 8. Codification instruction.** [Section 5] is intended to be codified as an
5 integral part of Title 16, chapter 11, part 3, and the provisions of Title 16, chapter 11, part 3, apply to
6 [section 5].

7

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0539, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill amending the Youth Access to Tobacco Products Control Act, authorizing more stringent local regulations and providing statutory appropriations.

ASSUMPTIONS:

1. The Department of Corrections and Human Services (DCHS) will contract with outside vendors in compliance with the Administrative Rules of Montana for the inspections of any wholesaler, subjobber, retailer, cigarette vendor, or person licensed under 16-11-303, MCA, for failure to comply with the provisions of the Montana Cigarette Sales Act. The funding for this contract will be from existing Substance Abuse Prevention and Treatment Block Grant funds.
2. The tobacco education fees must be deposited in an account in the state special revenue fund. One-half of the money in this account is statutorily appropriated to DCHS to defray the costs of the tobacco education program. One-half of the money in this account is statutorily appropriated to the Department of Revenue (DOR) to defray its costs of implementing the provisions of this bill.
3. It is assumed that all fines collected will be expended for the purposes intended by law.
6. DCHS estimates there will be 20 second or subsequent violations in FY96, creating \$10,000 in revenue (20 x \$500), and 15 second or subsequent violations in FY97, creating \$7,500 in revenue.

FISCAL IMPACT:

Expenditures:


	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
DCHS & DOR:		
Operating expenses	10,000	10,000

Funding:

Tobacco education SSR (02)	10,000	10,000
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Revenues:

Fines (02)	10,000	10,000
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DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


LOREN SOFT, PRIMARY SPONSOR DATE

Fiscal Note for HB0539, as introduced

HB 539

HOUSE BILL NO. 539

INTRODUCED BY SOFT, GROSFIELD, KLAMPE, PECK, ECK, MCGEE, CHRISTIAENS, CLARK,
SIMPKINS, JACOBSON, GRIMES, WELLS, BROWN, BARNHART

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; ASSESSING TOBACCO EDUCATION FEES; REQUIRING LICENSE SUSPENSIONS FOR PERSONS FAILING TO COMPLY WITH THE LAW; PROVIDING FOR THE DISPLAY OF WARNING SIGNS; ~~REQUIRING CIGARETTES TO BE SOLD IN A PACKAGE CONTAINING THE USUAL AND CUSTOMARY NUMBER OF CIGARETTES;~~ PROHIBITING THE SALE OF SINGLE CIGARETTES; AUTHORIZING MORE STRINGENT LOCAL REGULATIONS; PROVIDING STATUTORY APPROPRIATIONS; AND AMENDING SECTIONS 16-11-144, 16-11-304, 16-11-307, 16-11-308, 16-11-311, AND 17-7-502, MCA."

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

Section 1. Section 16-11-144, MCA, is amended to read:

"**16-11-144. Revocation or suspension of license.** (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, ~~or cigarette vendor, or person licensed under 16-11-303~~ for failure to comply with any provision of this part ~~or of~~ The Montana Cigarette Sales Act (Title 16, chapter 10), the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3), and or with any lawful rule of the department made pursuant to ~~said~~ those laws.

(2) ~~Any~~ A person aggrieved by ~~such~~ a revocation or suspension may apply to the department for a hearing, which ~~shall~~ must be open to the public, and may further appeal to the court.

(3) When a license has been ~~duly~~ revoked, ~~no~~ a license ~~shall~~ may not again ~~issue~~ be issued to ~~such~~ the licensee for a period of 1 year ~~thereafter~~ after revocation. When a license has been ~~duly~~ suspended, the suspension may be for any period not to exceed 1 year.

(4) ~~Any~~ A person who ~~shall sell~~ sells cigarettes after ~~his~~ the person's license has been revoked or suspended is guilty of a misdemeanor and ~~shall~~ must be punished as ~~hereinafter~~ provided in this part, and all cigarettes in ~~his~~ the person's possession ~~shall~~ must be seized and forfeited to the state."

Section 2. Section 16-11-304, MCA, is amended to read:

1 **"16-11-304. Signs.** A retail seller of tobacco products shall conspicuously display, at each place
 2 on the premises at which tobacco products are displayed and sold, a sign that is to be provided without
 3 charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to
 4 persons under 18 years of age."

5
 6 **Section 3.** Section 16-11-307, MCA, is amended to read:

7 **"16-11-307. Distribution of tobacco products in other than sealed packages prohibited.** A person
 8 may not distribute a tobacco product for commercial purposes in other than a sealed package that is
 9 provided by the manufacturer and that contains the health warning required by federal law. ~~The sealed~~
 10 ~~package must contain the usual and customary number of cigarettes sold in one package.~~ SINGLE
 11 CIGARETTES MAY NOT BE SOLD."

12
 13 **Section 4.** Section 16-11-308, MCA, is amended to read:

14 **"16-11-308. Penalties Tobacco education fee.** (1) Failure to obtain a license as required by
 15 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of \$100. THE
 16 DEPARTMENT MAY COLLECT THE PENALTY IN THE MANNER PROVIDED FOR THE COLLECTION OF
 17 OTHER DEBTS.

18 (2) A person who violates 16-11-305(1) ~~OR 16-11-307~~ ~~may be punished by a civil penalty of~~
 19 ~~\$100. A subsequent violation within 1 year is punishable by a civil penalty of \$200. A third violation is~~
 20 ~~punishable by a civil penalty of \$300 if two violations occurred within the 2 year period prior to that~~
 21 ~~violation. A fourth violation is punishable by a civil penalty of \$500 if three or more violations occurred~~
 22 ~~within the 2 year period prior to that violation.~~ within a 3-year period shall be punished as follows:

23 (A) A FIRST THROUGH THIRD OFFENSE IS PUNISHABLE BY A VERBAL NOTIFICATION OF
 24 VIOLATION.

25 ~~(a)~~(B) A first FOURTH offense is punishable by a written notice of violation to be sent by the
 26 department of corrections and human services to the owner of the establishment.

27 ~~(b)~~(C) A second FIFTH offense is punishable by assessment against the owner of the establishment
 28 of a tobacco education fee of \$500, and the employee or other person who sold the tobacco product, the
 29 establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read
 30 and view the tobacco education material.

1 ~~(e)(D) A third SIXTH offense is punishable by suspension of the licenses required by 16-11-120~~
2 ~~and 16-11-303 for 3 months.~~

3 ~~(d)(E) A fourth SEVENTH and subsequent offense is punishable by suspension of the licenses~~
4 ~~required by 16-11-120 and 16-11-303 for 1 year.~~

5 ~~(3) A person who violates 16-11-307 within a 3-year period may be punished under either~~
6 ~~subsection (1) or (2).~~

7 ~~(4)(3) After 2 years from the first violation, if a person has not received notice of any further~~
8 ~~violations, a second violation is considered a first violation for the purposes of this section.~~

9 ~~(5)(4) A license may not be reissued after suspension under subsection (1)(e) (2)(D) or (1)(d) (2)(E)~~
10 ~~unless tobacco education fees are paid in full.~~

11 ~~(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for~~
12 ~~a civil penalty of not more than \$100 for the first violation. A subsequent violation is punishable by a civil~~
13 ~~penalty of not more than \$200. A third or subsequent violation is punishable by a civil penalty of not more~~
14 ~~than \$500.~~

15 ~~(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his~~
16 ~~employee or agent if the sale was without the knowledge of the license holder and the license holder shows~~
17 ~~that the license holder had in place a system to prevent violations of 16-11-305(1).~~

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

20 ~~(6)(5) Tobacco education fees must be assessed and collected by the department of corrections~~
21 ~~and human services. Notice of an assessment pursuant to this section must be made by the department~~
22 ~~of corrections and human services within 30 days of the alleged violation by certified letter addressed to~~
23 ~~the establishment owner or manager. The notice must include the opportunity for an assessment~~
24 ~~conference on the matter within 15 days after notice is given at the request of the owner or manager. An~~
25 ~~assessment conference is not a contested case as defined in the Montana Administrative Procedure Act.~~
26 ~~The department of corrections and human services shall keep minutes by audio recording or in writing of~~
27 ~~each assessment conference, and the minutes are public records~~ OF ASSESSMENT MUST PROVIDE AN
28 OPPORTUNITY FOR A HEARING PURSUANT TO THE PROVISIONS OF THE MONTANA ADMINISTRATIVE
29 PROCEDURE ACT. WITHIN 30 DAYS FROM THE DATE THE NOTICE OF ASSESSMENT WAS MAILED, THE
30 OWNER OR MANAGER SHALL NOTIFY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES

1 THAT THE OWNER OR MANAGER OBJECTS TO THE ASSESSMENT AND REQUEST A HEARING
2 PURSUANT TO THIS SECTION.

3 ~~(7)(6)~~ In a license suspension proceeding under ~~subsection (8)~~ SUBSECTIONS (2)(D) AND (2)(E),
4 a final determination by the department of corrections and human services that a person has violated the
5 requirements of 16-11-304, 16-11-305(1), or 16-11-307 is conclusive and binding upon the person
6 committing the violation and the department of revenue. The determination by the department of
7 corrections and human services is not subject to administrative or judicial appeal pursuant to the Montana
8 Administrative Procedure Act ISSUED UNDER SUBSECTION (6) THAT A PERSON HAS VIOLATED
9 16-11-305(1) OR 16-11-307, MAY NOT BE REHEARD BY THE DEPARTMENT.

10 ~~(8)(7)~~ The tobacco education material referred to in this section must be provided by the
11 department of corrections and human services in the form of written and video self-teaching materials.
12 Upon completion of the self-teaching materials, the establishment owner or manager shall execute a written
13 statement on a form provided by the department of corrections and human services verifying that the
14 employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall
15 return the statement and the self-teaching video to the department of corrections and human services.

16 ~~(9)(8)~~ Upon the ~~fourth~~ SIXTH and subsequent violation of this section, the department of
17 corrections and human services shall notify the department of revenue in writing to initiate suspension of
18 the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged
19 ~~fourth~~ violation and of the referral of the licensee's record of violations to the department of revenue for
20 suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review
21 the record of violations and may initiate license suspension proceedings in accordance with 16-11-144.
22 If, upon a review of the record of violations, the department of revenue declines to initiate suspension
23 proceedings, the ~~fourth~~ violation may not be charged against the licensee for the purposes of this section.

24 ~~(10)(9)~~ Fees assessed pursuant to this section must be deposited in an account in the state special
25 revenue fund. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502,
26 to the department of corrections and human services to defray the costs of the tobacco education program.
27 One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the
28 department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144
29 and this section."

30

1 **NEW SECTION. Section 5. Inspection and notification of violation required.** (1) The department
 2 of corrections and human services shall conduct inspections of persons selling or distributing tobacco
 3 products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307.
 4 Inspections may be conducted directly by the department of corrections and human services or may be
 5 provided for by contract ~~or by other means~~. Persons found to be in violation of the requirements of this
 6 part or the rules of the department of corrections and human services must be notified in writing by the
 7 department of corrections and human services of the facts of the violation and the penalties provided by
 8 this part.

9 (2) The department of corrections and human services shall provide documentation of alleged
 10 violations of 16-11-303, 16-11-305, ~~16-11-306~~, and 16-11-307 to the department of revenue.

11
 12 **Section 6.** Section 16-11-311, MCA, is amended to read:

13 **"16-11-311. Local regulations.** A local government may by ordinance adopt regulations on the
 14 subjects of 16-11-301 through 16-11-308 that are ~~no~~ more stringent than 16-11-301 through 16-11-308."
 15

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

17 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 18 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
 19 without the need for a biennial legislative appropriation or budget amendment.

20 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
 21 with both of the following provisions:

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

23 (b) The law or portion of the law making a statutory appropriation must specifically state that a
 24 statutory appropriation is made as provided in this section.

25 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
 26 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
 27 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
 28 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101;
 29 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301;
 30 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361;

1 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
2 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321;
3 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107;
4 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222;
5 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;
6 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

7 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
8 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
9 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
10 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
11 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
12 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
13 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
14 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
15 July 1, 1995.)"

16

17 NEW SECTION. **Section 8. Codification instruction.** [Section 5] is intended to be codified as an
18 integral part of Title 16, chapter 11, part 3, and the provisions of Title 16, chapter 11, part 3, apply to
19 [section 5].

20

-END-

HOUSE BILL NO. 539

INTRODUCED BY SOFT, GROSFIELD, KLAMPE, PECK, ECK, MCGEE, CHRISTIAENS, CLARK,
SIMPKINS, JACOBSON, GRIMES, WELLS, BROWN, BARNHART

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; ASSESSING TOBACCO EDUCATION FEES; REQUIRING LICENSE SUSPENSIONS FOR PERSONS FAILING TO COMPLY WITH THE LAW; PROVIDING FOR THE DISPLAY OF WARNING SIGNS; ~~REQUIRING CIGARETTES TO BE SOLD IN A PACKAGE CONTAINING THE USUAL AND CUSTOMARY NUMBER OF CIGARETTES; PROHIBITING THE SALE OF SINGLE CIGARETTES; AUTHORIZING MORE STRINGENT LOCAL REGULATIONS;~~ PROVIDING STATUTORY APPROPRIATIONS; AND AMENDING SECTIONS 16-11-144, 16-11-304, 16-11-307, 16-11-308, ~~16-11-311~~, AND 17-7-502, MCA."

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

Section 1. Section 16-11-144, MCA, is amended to read:

"16-11-144. Revocation or suspension of license. (1) The department may revoke or suspend the license of any wholesaler, subjobber, retailer, ~~or cigarette vendor, or person licensed under 16-11-303~~ for failure to comply with any provision of this part ~~or of~~ The Montana Cigarette Sales Act (Title 16, chapter 10), the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3), and or with any lawful rule of the department made pursuant to ~~said~~ those laws.

(2) ~~Any A~~ A person aggrieved by ~~such a~~ a revocation or suspension may apply to the department for a hearing, ~~which shall~~ must be open to the public, and may further appeal to the court.

(3) When a license has been ~~duly~~ duly revoked, ~~no a license shall may not again issue be issued to such~~ the licensee for a period of 1 year thereafter after revocation. When a license has been ~~duly~~ duly suspended, the suspension may be for any period not to exceed 1 year.

(4) ~~Any A~~ A person who ~~shall sell~~ sells cigarettes after ~~his~~ the person's license has been revoked or suspended is guilty of a misdemeanor and ~~shall~~ must be punished as ~~hereinafter~~ provided in this part, and all cigarettes in ~~his~~ the person's possession ~~shall~~ must be seized and forfeited to the state."

Section 2. Section 16-11-304, MCA, is amended to read:

1 **"16-11-304. Signs.** A retail seller of tobacco products shall conspicuously display, at each place
 2 on the premises at which tobacco products are displayed and sold, a sign that is to be provided without
 3 charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to
 4 persons under 18 years of age."
 5

6 **Section 3.** Section 16-11-307, MCA, is amended to read:

7 **"16-11-307. Distribution of tobacco products in other than sealed packages prohibited.** A person
 8 may not distribute a tobacco product for commercial purposes in other than a sealed package that is
 9 provided by the manufacturer and that contains the health warning required by federal law. The sealed
 10 package must contain the usual and customary number of cigarettes sold in one package. SINGLE
 11 CIGARETTES MAY NOT BE SOLD.
 12

13 **Section 4.** Section 16-11-308, MCA, is amended to read:

14 **"16-11-308. Penalties Tobacco education fee.** (1) Failure to obtain a license as required by
 15 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of \$100. THE
 16 DEPARTMENT MAY COLLECT THE PENALTY IN THE MANNER PROVIDED FOR THE COLLECTION OF
 17 OTHER DEBTS.

18 (2) A person who violates 16-11-305(1) OR 16-11-307 ~~may be punished by a civil penalty of~~
 19 ~~\$100. A subsequent violation within 1 year is punishable by a civil penalty of \$200. A third violation is~~
 20 ~~punishable by a civil penalty of \$300 if two violations occurred within the 2 year period prior to that~~
 21 ~~violation. A fourth violation is punishable by a civil penalty of \$500 if three or more violations occurred~~
 22 ~~within the 2 year period prior to that violation. AT ANY ONE LOCATION~~ within a 3-year period shall be
 23 punished as follows:

24 (A) A FIRST THROUGH THIRD OFFENSE IS PUNISHABLE BY A VERBAL NOTIFICATION OF
 25 VIOLATION.

26 ~~(a)~~(B) A first FOURTH offense is punishable by a written notice of violation to be sent by the
 27 department of corrections and human services to the owner of the establishment.

28 ~~(b)~~(C) A second FIFTH offense is punishable by assessment against the owner of the establishment
 29 of a tobacco education fee of \$500, and the. THE employee or other person who sold the tobacco product,
 30 the establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall

1 read and view the tobacco education material.

2 ~~(e)(D) A third SIXTH offense is punishable by suspension of the licenses required by 16-11-120~~
3 ~~and 16-11-303 for 3 months.~~

4 ~~(d)(E) A fourth SEVENTH and subsequent offense is punishable by suspension of the licenses~~
5 ~~required by 16-11-120 and 16-11-303 for 1 year.~~

6 ~~(3) A person who violates 16-11-307 within a 3-year period may be punished under either~~
7 ~~subsection (1) or (2).~~

8 ~~(4)(3) After 2 years from the first violation, if a person has not received notice of any further~~
9 ~~violations, a second violation is considered a first violation for the purposes of this section.~~

10 ~~(5)(4) A license may not be reissued after suspension under subsection (1)(e) (2)(D) or (1)(d) (2)(E)~~
11 ~~unless tobacco education fees are paid in full.~~

12 ~~(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for~~
13 ~~a civil penalty of not more than \$100 for the first violation. A subsequent violation is punishable by a civil~~
14 ~~penalty of not more than \$200. A third or subsequent violation is punishable by a civil penalty of not more~~
15 ~~than \$500.~~

16 ~~(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his~~
17 ~~employee or agent if the sale was without the knowledge of the license holder and the license holder shows~~
18 ~~that the license holder had in place a system to prevent violations of 16-11-305(1).~~

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

21 ~~(6)(5) Tobacco education fees must be assessed and collected by the department of corrections~~
22 ~~and human services. Notice of an assessment pursuant to this section must be made by the department~~
23 ~~of corrections and human services within 30 days of the alleged violation by certified letter addressed to~~
24 ~~the establishment owner or manager. The notice must include the opportunity for an assessment~~
25 ~~conference on the matter within 15 days after notice is given at the request of the owner or manager. An~~
26 ~~assessment conference is not a contested case as defined in the Montana Administrative Procedure Act.~~
27 ~~The department of corrections and human services shall keep minutes by audio recording or in writing of~~
28 ~~each assessment conference, and the minutes are public records OF ASSESSMENT MUST PROVIDE AN~~
29 ~~OPPORTUNITY FOR A HEARING PURSUANT TO THE PROVISIONS OF THE MONTANA ADMINISTRATIVE~~
30 ~~PROCEDURE ACT. WITHIN 30 DAYS FROM THE DATE THE NOTICE OF ASSESSMENT WAS MAILED, THE~~

1 OWNER OR MANAGER SHALL NOTIFY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
2 THAT THE OWNER OR MANAGER OBJECTS TO THE ASSESSMENT AND REQUEST A HEARING
3 PURSUANT TO THIS SECTION.

4 ~~(7)(6)~~ In a license suspension proceeding under ~~subsection (8)~~ SUBSECTIONS (2)(D) AND (2)(E),
5 a final determination by the department of corrections and human services that a person has violated the
6 requirements of 16-11-304, 16-11-305(1), or 16-11-307 is conclusive and binding upon the person
7 committing the violation and the department of revenue. The determination by the department of
8 corrections and human services is not subject to administrative or judicial appeal pursuant to the Montana
9 Administrative Procedure Act ISSUED UNDER SUBSECTION ~~(6)~~ (8) THAT A PERSON HAS VIOLATED
10 16-11-305(1) OR 16-11-307, MAY NOT BE REHEARD BY THE DEPARTMENT.

11 ~~(8)(7)~~ The tobacco education material referred to in this section must be provided by the
12 department of corrections and human services in the form of written and video self-teaching materials. THE
13 EDUCATION MATERIALS MAY BE USED ONLY FOR THE PURPOSES PROVIDED IN THIS SECTION. Upon
14 completion of the self-teaching materials, the establishment owner or manager shall execute a written
15 statement on a form provided by the department of corrections and human services verifying that the
16 employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall
17 return the statement and the self-teaching video to the department of corrections and human services.

18 ~~(9)(8)~~ Upon the ~~fourth~~ SIXTH and subsequent violation of this section, the department of
19 corrections and human services shall notify the department of revenue in writing to initiate suspension of
20 the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged
21 ~~fourth~~ violation and of the referral of the licensee's record of violations to the department of revenue for
22 suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review
23 the record of violations and may initiate license suspension proceedings in accordance with 16-11-144.
24 If, upon a review of the record of violations, the department of revenue declines to initiate suspension
25 proceedings, the ~~fourth~~ violation may not be charged against the licensee for the purposes of this section.

26 ~~(10)(9)~~ Fees assessed pursuant to this section must be deposited in an account in the state special
27 revenue fund. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502,
28 to the department of corrections and human services to defray the costs of the tobacco education program.
29 One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the
30 department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144

1 and this section."

2
3 **NEW SECTION. Section 5. Inspection and notification of violation required.** (1) The department
4 of corrections and human services shall conduct inspections of persons selling or distributing tobacco
5 products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307.
6 Inspections may be conducted directly by the department of corrections and human services or may be
7 provided for by contract ~~or by other means~~ **LET BY THE DEPARTMENT OF CORRECTIONS AND HUMAN**
8 **SERVICES.** Persons found to be in violation of the requirements of this part or the rules of the department
9 of corrections and human services **A FOURTH AND SUBSEQUENT TIME** must be notified in writing by the
10 department of corrections and human services of the facts of the violation and the penalties provided by
11 this part.

12 (2) The department of corrections and human services shall provide documentation of alleged
13 violations of 16-11-303, 16-11-305, ~~16-11-306~~, and 16-11-307 to the department of revenue.

14
15 ~~**Section 6. Section 16-11-311, MCA, is amended to read:**~~

16 ~~"**16-11-311. Local regulations.** A local government may by ordinance adopt regulations on the
17 subjects of 16-11-301 through 16-11-308 that are no more stringent than 16-11-301 through 16-11-308."~~

18
19 **NEW SECTION. SECTION 6. MINORS NOT LIABLE FOR POSSESSION. AN INDIVIDUAL UNDER**
20 **18 YEARS OF AGE ASSISTING IN THE ENFORCEMENT OF THIS PART IS NOT LIABLE UNDER A CIVIL OR**
21 **CRIMINAL LAW FOR THE POSSESSION OF A TOBACCO PRODUCT POSSESSED FOR THE PURPOSES OF**
22 **ENFORCING THIS PART.**

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

25 "**17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
26 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
27 without the need for a biennial legislative appropriation or budget amendment.

28 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
29 with both of the following provisions:

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

1 (b) The law or portion of the law making a statutory appropriation must specifically state that a
2 statutory appropriation is made as provided in this section.

3 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
4 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
5 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
6 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101;
7 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301;
8 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361;
9 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
10 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321;
11 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107;
12 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222;
13 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;
14 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

15 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
16 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
17 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
18 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
19 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
20 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
21 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
22 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
23 July 1, 1995.)"

24
25 **NEW SECTION. Section 8. Codification instruction. ~~[Section 5] is [SECTIONS 5 AND 6] ARE~~**
26 **intended to be codified as an integral part of Title 16, chapter 11, part 3, and the provisions of Title 16,**
27 **chapter 11, part 3, apply to ~~[section 5] [SECTIONS 5 AND 6].~~**

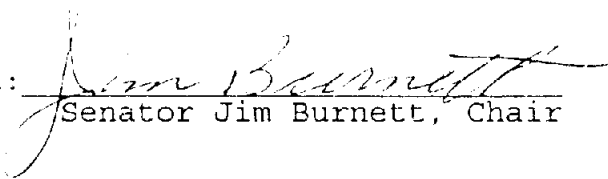
28 -END-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 16, 1995

MR. PRESIDENT:

We, your committee on Public Health, Welfare, and Safety having had under consideration HB 539 (third reading copy -- blue), respectfully report that HB 539 be amended as follows and as so amended be concurred in.

Signed: 
Senator Jim Burnett, Chair

That such amendments read:

1. Page 3, line 9.

Strike: "this section"

Insert: "subsection (2)"

2. Page 3, line 22.

Strike: "this section"

Insert: "subsection (2) and this subsection"

3. Page 3, line 28.

Following: "ASSESSMENT"

Insert: "against the owner of the establishment"

4. Page 4, line 3.

Strike: "SECTION"

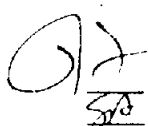
Insert: "subsection"

5. Page 4, lines 4 through 10.

Strike: subsection (6) in its entirety

Insert: "(6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of 16-11-305(1) or 16-11-307 is punishable by an assessment of a tobacco education fee of \$25 against the employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco education fee must be assessed and collected by the department of corrections and human services. Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made by the department of corrections and human services by certified letter addressed to the employee. The notice of assessment must provide an opportunity for a hearing pursuant to the provisions of the Montana Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was mailed, the employee shall notify the department of corrections and human services that the employee objects to the assessment and requests a hearing pursuant to this subsection."

-END-


Amd. Coord.
Sec. of Senate

Sen. Grosfield
Senator Carrying Bill

HB 539
SENATE
611124SC.SRF

1 HOUSE BILL NO. 539

2 INTRODUCED BY SOFT, GROSFIELD, KLAMPE, PECK, ECK, MCGEE, CHRISTIAENS, CLARK,

3 SIMPKINS, JACOBSON, GRIMES, WELLS, BROWN, BARNHART

4
 5 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS
 6 CONTROL ACT; ASSESSING TOBACCO EDUCATION FEES; REQUIRING LICENSE SUSPENSIONS FOR
 7 PERSONS FAILING TO COMPLY WITH THE LAW; PROVIDING FOR THE DISPLAY OF WARNING SIGNS;
 8 ~~REQUIRING CIGARETTES TO BE SOLD IN A PACKAGE CONTAINING THE USUAL AND CUSTOMARY~~
 9 ~~NUMBER OF CIGARETTES; PROHIBITING THE SALE OF SINGLE CIGARETTES; AUTHORIZING MORE~~
 10 ~~STRINGENT LOCAL REGULATIONS; PROVIDING STATUTORY APPROPRIATIONS; AND AMENDING~~
 11 SECTIONS 16-11-144, 16-11-304, 16-11-307, 16-11-308, ~~16-11-311~~, AND 17-7-502, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:14
15 **Section 1.** Section 16-11-144, MCA, is amended to read:

16 **"16-11-144. Revocation or suspension of license.** (1) The department may revoke or suspend the
 17 license of any wholesaler, subjobber, retailer, ~~or cigarette vendor, or person licensed under 16-11-303~~ for
 18 failure to comply with any provision of this part ~~or of~~ The Montana Cigarette Sales Act (Title 16, chapter
 19 10), the Youth Access to Tobacco Products Control Act (Title 16, chapter 11, part 3), and or with any
 20 lawful rule of the department made pursuant to ~~said those~~ laws.

21 (2) ~~Any~~ A person aggrieved by ~~such a~~ a revocation or suspension may apply to the department for
 22 a hearing, ~~which shall~~ must be open to the public, and may further appeal to the court.

23 (3) When a license has been ~~duly~~ revoked, ~~no a license shall~~ may not again ~~issue~~ be issued to ~~such~~
 24 the licensee for a period of 1 year ~~thereafter~~ after revocation. When a license has been ~~duly~~ suspended,
 25 the suspension may be for any period not to exceed 1 year.

26 (4) ~~Any~~ A person who ~~shall sell~~ sells cigarettes after his ~~the person's~~ license has been revoked or
 27 suspended is guilty of a misdemeanor and ~~shall~~ must be punished as ~~hereinafter~~ provided in this part, and
 28 all cigarettes in ~~his~~ the person's possession ~~shall~~ must be seized and forfeited to the state."

29
30 **Section 2.** Section 16-11-304, MCA, is amended to read:

1 **"16-11-304. Signs.** A retail seller of tobacco products shall conspicuously display, at each place
 2 on the premises at which tobacco products are displayed and sold, a sign that is to be provided without
 3 charge by the department of revenue that states: "Montana law prohibits the sale of tobacco products to
 4 persons under 18 years of age."

5
 6 **Section 3.** Section 16-11-307, MCA, is amended to read:

7 **"16-11-307. Distribution of tobacco products in other than sealed packages prohibited.** A person
 8 may not distribute a tobacco product for commercial purposes in other than a sealed package that is
 9 provided by the manufacturer and that contains the health warning required by federal law. ~~The sealed~~
 10 ~~package must contain the usual and customary number of cigarettes sold in one package.~~ SINGLE
 11 CIGARETTES MAY NOT BE SOLD."

12
 13 **Section 4.** Section 16-11-308, MCA, is amended to read:

14 **"16-11-308. Penalties Tobacco education fee.** (1) Failure to obtain a license as required by
 15 16-11-303 or to post signs as provided in 16-11-304 is punishable by a civil penalty of \$100. THE
 16 DEPARTMENT MAY COLLECT THE PENALTY IN THE MANNER PROVIDED FOR THE COLLECTION OF
 17 OTHER DEBTS.

18 (2) A person who violates 16-11-305(1) ~~OR 16-11-307~~ may be punished by a civil penalty of
 19 ~~\$100.~~ A subsequent violation within 1 year is punishable by a civil penalty of \$200. A third violation is
 20 punishable by a civil penalty of \$300 if two violations occurred within the 2-year period prior to that
 21 violation. A fourth violation is punishable by a civil penalty of \$500 if three or more violations occurred
 22 within the 2-year period prior to that violation. AT ANY ONE LOCATION within a 3-year period shall be
 23 punished as follows:

24 (A) A FIRST THROUGH THIRD OFFENSE IS PUNISHABLE BY A VERBAL NOTIFICATION OF
 25 VIOLATION.

26 ~~(a)~~(B) A first FOURTH offense is punishable by a written notice of violation to be sent by the
 27 department of corrections and human services to the owner of the establishment.

28 ~~(b)~~(C) A second FIFTH offense is punishable by assessment against the owner of the establishment
 29 of a tobacco education fee of \$500, and the. THE employee or other person who sold the tobacco product,
 30 the establishment manager, and the establishment owner, if the owner is a sole proprietor or partner, shall

1 read and view the tobacco education material.

2 ~~(e)(D) A third SIXTH offense is punishable by suspension of the licenses required by 16-11-120~~
3 ~~and 16-11-303 for 3 months.~~

4 ~~(d)(E) A fourth SEVENTH and subsequent offense is punishable by suspension of the licenses~~
5 ~~required by 16-11-120 and 16-11-303 for 1 year.~~

6 ~~(3) A person who violates 16-11-307 within a 3-year period may be punished under either~~
7 ~~subsection (1) or (2).~~

8 ~~(4)(3) After 2 years from the first violation, if a person has not received notice of any further~~
9 ~~violations, a second violation is considered a first violation for the purposes of this section SUBSECTION~~
10 ~~(2).~~

11 ~~(5)(4) A license may not be reissued after suspension under subsection (1)(e) (2)(D) or (1)(d) (2)(E)~~
12 ~~unless tobacco education fees are paid in full.~~

13 ~~(3) A person who violates 16-11-307 is guilty of a misdemeanor and upon conviction is liable for~~
14 ~~a civil penalty of not more than \$100 for the first violation. A subsequent violation is punishable by a civil~~
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16 ~~than \$500.~~

17 ~~(4) A license holder is not subject to a civil penalty under subsection (2) for a violation by his~~
18 ~~employee or agent if the sale was without the knowledge of the license holder and the license holder shows~~
19 ~~that the license holder had in place a system to prevent violations of 16-11-305(1).~~

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

22 ~~(6)(5) Tobacco education fees must be assessed and collected by the department of corrections~~
23 ~~and human services. Notice of an assessment pursuant to this section SUBSECTION (2) AND THIS~~
24 ~~SUBSECTION must be made by the department of corrections and human services within 30 days of the~~
25 ~~alleged violation by certified letter addressed to the establishment owner or manager. The notice must~~
26 ~~include the opportunity for an assessment conference on the matter within 15 days after notice is given~~
27 ~~at the request of the owner or manager. An assessment conference is not a contested case as defined in~~
28 ~~the Montana Administrative Procedure Act. The department of corrections and human services shall keep~~
29 ~~minutes by audio recording or in writing of each assessment conference, and the minutes are public records~~
30 ~~OF ASSESSMENT AGAINST THE OWNER OF THE ESTABLISHMENT MUST PROVIDE AN OPPORTUNITY~~

1 FOR A HEARING PURSUANT TO THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE
2 ACT. WITHIN 30 DAYS FROM THE DATE THE NOTICE OF ASSESSMENT WAS MAILED, THE OWNER OR
3 MANAGER SHALL NOTIFY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES THAT THE
4 OWNER OR MANAGER OBJECTS TO THE ASSESSMENT AND REQUEST A HEARING PURSUANT TO THIS
5 SECTION SUBSECTION.

6 ~~(7)(6) In a license suspension proceeding under subsection (8) SUBSECTIONS (2)(D) AND (2)(E),~~
7 ~~a final determination by the department of corrections and human services that a person has violated the~~
8 ~~requirements of 16-11-304, 16-11-305(1), or 16-11-307 is conclusive and binding upon the person~~
9 ~~committing the violation and the department of revenue. The determination by the department of~~
10 ~~corrections and human services is not subject to administrative or judicial appeal pursuant to the Montana~~
11 ~~Administrative Procedure Act ISSUED UNDER SUBSECTION (6) (8) THAT A PERSON HAS VIOLATED~~
12 ~~16-11-305(1) OR 16-11-307, MAY NOT BE REHEARD BY THE DEPARTMENT.~~

13 (6) IN ADDITION TO THE PENALTY PROVIDED FOR IN SUBSECTION (2), A FIRST AND
14 SUBSEQUENT VIOLATION OF 16-11-305(1) OR 16-11-307 IS PUNISHABLE BY AN ASSESSMENT OF A
15 TOBACCO EDUCATION FEE OF \$25 AGAINST THE EMPLOYEE WHO SOLD THE TOBACCO PRODUCT IF
16 THE EMPLOYEE IS NOT THE OWNER OF THE ESTABLISHMENT. THE TOBACCO EDUCATION FEE MUST
17 BE ASSESSED AND COLLECTED BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES.
18 WITHIN 30 DAYS OF THE ALLEGED VIOLATION, NOTICE OF ASSESSMENT PURSUANT TO THIS
19 SUBSECTION MUST BE MADE BY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES BY
20 CERTIFIED LETTER ADDRESSED TO THE EMPLOYEE. THE NOTICE OF ASSESSMENT MUST PROVIDE AN
21 OPPORTUNITY FOR A HEARING PURSUANT TO THE PROVISIONS OF THE MONTANA ADMINISTRATIVE
22 PROCEDURE ACT. WITHIN 30 DAYS FROM THE DATE ON WHICH THE NOTICE OF ASSESSMENT WAS
23 MAILED, THE EMPLOYEE SHALL NOTIFY THE DEPARTMENT OF CORRECTIONS AND HUMAN SERVICES
24 THAT THE EMPLOYEE OBJECTS TO THE ASSESSMENT AND REQUESTS A HEARING PURSUANT TO THIS
25 SUBSECTION.

26 ~~(8)(7) The tobacco education material referred to in this section must be provided by the~~
27 ~~department of corrections and human services in the form of written and video self-teaching materials. THE~~
28 ~~EDUCATION MATERIALS MAY BE USED ONLY FOR THE PURPOSES PROVIDED IN THIS SECTION. Upon~~
29 ~~completion of the self-teaching materials, the establishment owner or manager shall execute a written~~
30 ~~statement on a form provided by the department of corrections and human services verifying that the~~

1 employee, owner, or manager, as appropriate, has read and viewed the self-teaching material and shall
 2 return the statement and the self-teaching video to the department of corrections and human services.

3 (9)(8) Upon the fourth SIXTH and subsequent violation of this section, the department of
 4 corrections and human services shall notify the department of revenue in writing to initiate suspension of
 5 the licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged
 6 fourth violation and of the referral of the licensee's record of violations to the department of revenue for
 7 suspension of the licenses pursuant to 16-11-144 and this section. The department of revenue shall review
 8 the record of violations and may initiate license suspension proceedings in accordance with 16-11-144.
 9 If, upon a review of the record of violations, the department of revenue declines to initiate suspension
 10 proceedings, the fourth violation may not be charged against the licensee for the purposes of this section.

11 (10)(9) Fees assessed pursuant to this section must be deposited in an account in the state special
 12 revenue fund. One-half of the money in the account is statutorily appropriated, as provided in 17-7-502,
 13 to the department of corrections and human services to defray the costs of the tobacco education program.
 14 One-half of the money in the account is statutorily appropriated, as provided in 17-7-502, to the
 15 department of revenue to defray the department's costs of implementing its duties pursuant to 16-11-144
 16 and this section."

17
 18 **NEW SECTION. Section 5. Inspection and notification of violation required.** (1) The department
 19 of corrections and human services shall conduct inspections of persons selling or distributing tobacco
 20 products to determine compliance with 16-11-303, 16-11-304, 16-11-305(1), 16-11-306, and 16-11-307.
 21 Inspections may be conducted directly by the department of corrections and human services or may be
 22 provided for by contract ~~or by other means~~ **LET BY THE DEPARTMENT OF CORRECTIONS AND HUMAN**
 23 **SERVICES.** Persons found to be in violation of the requirements of this part or the rules of the department
 24 of corrections and human services **A FOURTH AND SUBSEQUENT TIME** must be notified in writing by the
 25 department of corrections and human services of the facts of the violation and the penalties provided by
 26 this part.

27 (2) The department of corrections and human services shall provide documentation of alleged
 28 violations of 16-11-303, 16-11-305, ~~16-11-306~~, and 16-11-307 to the department of revenue.

29
 30 ~~Section 6. Section 16-11-311, MCA, is amended to read:~~

1 ~~"16-11-311. Local regulations. A local government may by ordinance adopt regulations on the~~
 2 ~~subjects of 16-11-301 through 16-11-308 that are no more stringent than 16-11-301 through 16-11-308."~~

3
 4 NEW SECTION. SECTION 6. MINORS NOT LIABLE FOR POSSESSION. AN INDIVIDUAL UNDER
 5 18 YEARS OF AGE ASSISTING IN THE ENFORCEMENT OF THIS PART IS NOT LIABLE UNDER A CIVIL OR
 6 CRIMINAL LAW FOR THE POSSESSION OF A TOBACCO PRODUCT POSSESSED FOR THE PURPOSES OF
 7 ENFORCING THIS PART.

8
 9 **Section 7.** Section 17-7-502, MCA, is amended to read:

10 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 11 appropriation is an appropriation made by permanent law that authorizes spending by a state agency
 12 without the need for a biennial legislative appropriation or budget amendment.

13 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply
 14 with both of the following provisions:

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

16 (b) The law or portion of the law making a statutory appropriation must specifically state that a
 17 statutory appropriation is made as provided in this section.

18 (3) The following laws are the only laws containing statutory appropriations: 2-9-202; 2-17-105;
 19 2-18-812; 3-5-901; 5-13-403; 10-3-203; 10-3-312; 10-3-314; 10-4-301; 15-1-111; 15-23-706;
 20 15-25-123; 15-31-702; 15-36-112; 15-37-117; 15-38-202; 15-65-121; 15-70-101; 16-1-404; 16-1-410;
 21 16-1-411; 16-11-308; 17-3-106; 17-3-212; 17-5-404; 17-5-424; 17-5-704; 17-5-804; 17-6-101;
 22 17-6-201; 17-6-409; 17-7-304; 18-11-112; 19-2-502; 19-6-709; 19-9-1007; 19-15-101; 19-17-301;
 23 19-18-512; 19-18-513; 19-18-606; 19-19-205; 19-19-305; 19-19-506; 20-4-109; 20-8-111; 20-9-361;
 24 20-26-1403; 20-26-1503; 23-2-823; 23-5-136; 23-5-306; 23-5-409; 23-5-610; 23-5-612; 23-5-631;
 25 23-7-301; 23-7-402; 27-12-206; 32-1-537; 37-43-204; 37-51-501; 39-71-503; 39-71-907; 39-71-2321;
 26 39-71-2504; 44-12-206; 44-13-102; 50-5-232; 50-40-206; 53-6-150; 53-24-206; 60-2-220; 61-2-107;
 27 67-3-205; 75-1-1101; 75-5-507; 75-5-1108; 75-11-313; 76-12-123; 77-1-808; 80-2-103; 80-2-222;
 28 80-4-416; 80-11-310; 81-5-111; 82-11-136; 82-11-161; 85-1-220; 85-20-402; 90-3-301; 90-4-215;
 29 90-6-331; 90-7-220; 90-9-306; and 90-14-107.

30 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,

1 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
2 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of
3 Montana to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as
4 determined by the state treasurer, an amount sufficient to pay the principal and interest as due on the
5 bonds or notes have statutory appropriation authority for the payments. (In subsection (3): pursuant to
6 sec. 7, Ch. 567, L. 1991, the inclusion of 19-6-709 terminates upon death of last recipient eligible for
7 supplemental benefit; and pursuant to sec. 15, Ch. 534, L. 1993, the inclusion of 90-14-107 terminates
8 July 1, 1995.)"

9

10 NEW SECTION. Section 8. Codification instruction. ~~{Section 5}~~ is [SECTIONS 5 AND 6] ARE
11 intended to be codified as an integral part of Title 16, chapter 11, part 3, and the provisions of Title 16,
12 chapter 11, part 3, apply to ~~{section 5}~~ [SECTIONS 5 AND 6].

13

-END-