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House BILL No. 587
INTRODUCED BY *[Signature]*
BY REQUEST OF THE DEPARTMENT OF REVENUE
[Signature]

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CIGARETTE AND TOBACCO LAWS IN TITLE 16, CHAPTERS 10 AND 11, MCA; CLARIFYING PROVISIONS RELATING TO THE MONTANA CIGARETTE SALES ACT, THE CIGARETTE SALES TAX, THE TAX ON TOBACCO PRODUCTS, AND THE YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AMENDING SECTIONS 3-10-301, 16-10-102, 16-10-103, 16-10-104, 16-10-201, 16-10-204, 16-10-301, 16-10-303, 16-10-402, 16-10-403, 16-11-102, 16-11-111, 16-11-113, 16-11-114, 16-11-115, 16-11-116, 16-11-117, 16-11-118, 16-11-121, 16-11-131, 16-11-132, 16-11-133, 16-11-143, 16-11-144, 16-11-145, 16-11-148, 16-11-149, 16-11-201, 16-11-202, 16-11-203, 16-11-204, AND 16-11-308, MCA; REPEALING SECTION 16-10-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Licensure as both wholesaler and retailer allowed. This chapter does not prevent a person from being licensed as both a wholesaler and a retailer.

Section 2. Section 3-10-301, MCA, is amended to read:

"3-10-301. Civil jurisdiction. (1) Except as provided in ~~subsection (2) and in 3-11-103~~ and in subsection (2) of this section, the justices' courts have jurisdiction:

(a) in actions arising on contract for the recovery of money only if the sum claimed does not exceed \$5,000, exclusive of court costs;

(b) in actions for damages not exceeding \$5,000, exclusive of court costs, for taking, detaining, or injuring personal property or for injury to real property when no issue is raised by the verified answer of the defendant involving the title to or possession of the real property;

(c) in actions for damages not exceeding \$5,000, exclusive of court costs, for injury to the person, except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

1 (d) in actions to recover the possession of personal property if the value of the property does not
2 exceed \$5,000;

3 (e) in actions for a fine, penalty, or forfeiture not exceeding \$5,000, imposed by a statute or an
4 ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of
5 any tax, impost, assessment, toll, or municipal fine;

6 (f) in actions upon bonds or undertakings conditioned for the payment of money when the sum
7 claimed does not exceed \$5,000, though the penalty may exceed that sum;

8 (g) to take and enter judgment for the recovery of money on the confession of a defendant when
9 the amount confessed does not exceed \$5,000, exclusive of court costs;

10 (h) to issue temporary restraining orders as provided in 40-4-121(3);

11 (i) in actions initiated by civil complaints for violations of 16-11-305(1).

12 (2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against
13 the state for the payment of money."

14
15 **Section 3.** Section 16-10-102, MCA, is amended to read:

16 "**16-10-102. Declaration of policy.** The advertising, offering for sale, or sale of cigarettes below
17 cost in the retail and wholesale trades ~~with the intent of injuring competitors or lessening competition~~ is
18 an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and
19 it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes,
20 and maximize and protect the state revenues from this source."

21
22 **Section 4.** Section 16-10-103, MCA, is amended to read:

23 "**16-10-103. Definitions.** When used in this chapter, ~~the following words and phrases shall have~~
24 ~~the meaning ascribed to them in this section,~~ except ~~where~~ when the context clearly indicates a different
25 meaning, the following definitions apply:

26 (1) ~~"Administrative agency" or "department" shall mean~~ "Department" means the state department
27 of revenue of Montana provided for in 2-15-1301 and, ~~where~~ when the meaning of the context ~~so~~ requires,
28 ~~all deputies and includes its employees duly authorized by such department.~~

29 ~~(2) "Basic cost of cigarettes" shall mean~~ means the invoice list cost of cigarettes ~~to the retailer or~~
30 ~~wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the~~

1 ~~ease may be, in the quantity last purchased, whichever is lower~~ as reported to the department by the
 2 manufacturer without any deductions for discounts or taxes of any kind.

3 ~~(3)~~ (2) "Business day" ~~shall mean~~ means any day other than a Sunday or a legal holiday.

4 ~~(4)~~ (3) "Cigarettes" ~~shall mean~~ means any roll for smoking made wholly or in part of tobacco,
 5 irrespective of size or shape and whether or not ~~such~~ the tobacco is flavored, adulterated, or mixed with
 6 any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance
 7 or material except tobacco.

8 ~~(5)(a)~~ (4)(a) The term "cost to the retailer" ~~shall mean~~ means the ~~"basic cost of cigarettes" to the~~
 9 ~~retailer~~ cost to the wholesaler from whom the cigarettes were purchased by the retailer plus the "cost of
 10 doing business by the retailer" as evidenced by the standards and methods of accounting regularly
 11 employed by the retailer in ~~his~~ the retailer's determination of costs for income tax reporting purposes for
 12 the total operation of ~~his~~ the retailer's establishment. Cost of doing business by the retailer includes and
 13 ~~shall include within said costs,~~ without limitation:

14 (i) labor costs (including salaries of executives and officers);

15 (ii) rent;

16 (iii) depreciation;

17 (iv) selling costs;

18 (v) maintenance of equipment;

19 (vi) delivery costs;

20 (vii) all types of licenses;

21 (viii) all types of business taxes;

22 (ix) all types of insurance, and;

23 (x) all types of advertising, including;

24 (xi) any rebates, patronage dividends, or concessions, no matter how defined, and;

25 (xii) expenses prior to opening for business, including all startup costs, land acquisition costs,
 26 construction costs, costs for marketing studies, and similar expenses;

27 (xiii) any district, central, regional, and national administrative and operation costs and expenses;

28 and

29 (xiv) any and all other indirect or overhead costs with respect to the operation of the establishment
 30 business of the retailer.

1 **(b) The cost of doing business by the retailer must be** expressed as a percentage and applied to
 2 the "~~basic costs of cigarettes~~"; ~~provided, however, that any~~ cost to the wholesaler from whom the
 3 cigarettes were purchased.

4 **(c) A retailer who purchases directly from the a** manufacturer or from any other person at or at less
 5 than or about the price normally and usually charged for purchases in wholesale quantities shall, in
 6 determining "the cost to the retailer" ~~pursuant to this subsection~~, add the "cost of doing business by the
 7 wholesaler", as determined in subsection ~~(6)(b)~~ **(5)(b)**, to the "~~basic cost of cigarettes~~" to ~~said~~ the retailer,
 8 as well as the "cost of doing business by the retailer".

9 ~~(b)(d)~~ **(d)** In the absence of the filing with the department of satisfactory proof of a lesser or higher
 10 cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" ~~shall be~~
 11 is presumed to be 10% of the "basic cost of cigarettes" to the retailer cost to the wholesaler.

12 ~~(e) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost~~
 13 ~~of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's~~
 14 ~~purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole~~
 15 ~~or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of~~
 16 ~~the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".~~

17 ~~(6) (a) (5)(a)~~ **(5)(a)** The term "cost to the wholesaler" ~~shall mean~~ means the "basic cost of cigarettes"
 18 ~~to purchased by the wholesaler~~ from a manufacturer plus the "cost of doing business by the wholesaler"
 19 as evidenced by the standards and methods of accounting regularly employed by the wholesaler in ~~his~~ the
 20 wholesaler's determination of costs for income tax reporting purposes for the total operation of ~~his~~
 21 establishment and shall include within said costs, the wholesaler's business. The cost of doing business
 22 by the wholesaler includes, without limitation_{7i}:

23 **(i) labor costs (including salaries of executives and officers)**_{7i}

24 **(ii) rent**_{7i}

25 **(iii) depreciation**_{7i}

26 **(iv) selling costs**_{7i}

27 **(v) maintenance of equipment**_{7i}

28 **(vi) delivery costs**_{7i}

29 **(vii) all types of licenses**_{7i}

30 **(viii) all types of business taxes**_{7i}

1 (ix) all types of insurance, and;
 2 (x) all types of advertising;
 3 (xi) any rebates, patronage dividends, or concessions, no matter how defined;
 4 (xii) expenses prior to opening for business, including all startup costs, land acquisition costs,
 5 construction costs, costs for marketing studies, and similar expenses;

6 (xiii) any district, central, regional, and national administrative and operation costs and expenses;

7 and

8 (xiv) all other indirect or overhead costs with respect to the operation of the wholesaler.

9 (b) The cost of doing business by a wholesaler shall also include any rebates, patronage dividends,
 10 or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to
 11 the operation of the establishment of the wholesaler, must be expressed as a percentage and applied to
 12 the "basic cost of cigarettes".

13 ~~(b)(c)~~ (c) In the absence of the filing with the department of proof which that the department declares
 14 to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost
 15 of doing business by the wholesaler" shall be is presumed to be 5% of the "basic cost of cigarettes" to the
 16 wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler, which. The cartage
 17 cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, shall
 18 be is considered to be 3/4 of 1% of the "basic cost of cigarettes" to the wholesaler.

19 (6) "Department" means the department of revenue provided for in 2-15-1301 and, when the
 20 meaning of the context requires, includes its employees.

21 (7) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose
 22 of resale.

23 ~~(7)(8)~~ (8) "Person" shall mean means and include any an individual, firm, association, company,
 24 partnership, corporation, for profit or nonprofit corporation, joint stock company, club, agency, syndicate,
 25 cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee,
 26 fiduciary, and conservator or other business entity, however formed.

27 ~~(8)(9)~~ (9) "Retailer" shall mean means and include any a person who operates a store, stand, booth,
 28 or concession, or other outlet for the purpose of making sales of selling cigarettes at retail.

29 ~~(9)(10)~~ (10) "Sale" shall mean or "sell" means any transfer of cigarettes for a consideration, exchange,
 30 barter, gift, offer for sale, and or distribution, in any manner or by any means whatever.

1 ~~(10)(11)~~ "Sell at retail", "sale at retail", ~~and or~~ "retail sales" ~~shall mean and include~~ means any
 2 transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual
 3 conduct of the ~~seller's~~ retailer's business, to the purchaser for consumption or use.

4 ~~(11)(12)~~ "Sell at wholesale", "sale at wholesale", ~~and or~~ "wholesale sales" ~~shall mean~~ means and
 5 ~~include~~ includes any bona fide transfer of title to cigarettes for a valuable consideration, made in the
 6 ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose
 7 of resale.

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

11 ~~(12)(14)~~ "Wholesaler" ~~shall include any~~ means a person who services retail outlets by maintaining
 12 an established place of business for the purchase of cigarettes and who:

13 ~~(i)(a)~~ purchases cigarettes ~~directly from the a~~ manufacturer for the purpose of selling cigarettes to
 14 retailers; or

15 ~~(i)(b)~~ purchases cigarettes from ~~any other person who purchases from the manufacturer and who~~
 16 ~~acquires such cigarettes solely a~~ sole distributor, another wholesaler, or any other person for the purpose
 17 of ~~bona fide resale to retail dealers~~ selling cigarettes to retailers; or

18 ~~(iii)~~ ~~services retail outlets by the maintenance of an established place of business for the purchase~~
 19 ~~of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and~~
 20 ~~distribution of cigarettes.~~

21 ~~(b) Nothing contained herein shall prevent a person from qualifying in different capacities as both~~
 22 ~~"wholesaler" and "retailer" under the applicable provisions of this chapter."~~

23
 24 **Section 5.** Section 16-10-104, MCA, is amended to read:

25 **"16-10-104. Powers of department. (1)** In addition to the penalties and rights imposed and set
 26 forth in ~~16-10-401 and~~ 16-10-402, the department shall enforce the provisions of this chapter.

27 (2) The department ~~shall have~~ has the power to adopt, amend, and repeal rules necessary to
 28 enforce and administer the provisions of this chapter."

29
 30 **Section 6.** Section 16-10-201, MCA, is amended to read:

1 **"16-10-201. Wholesaler-to-wholesaler sales.** When one wholesaler sells cigarettes to any other
 2 wholesaler, the former ~~shall~~ may not be required to include in ~~his~~ the selling price to the latter ~~the~~ "cost to
 3 the wholesaler", as provided by 16-10-103, except that no such sale ~~shall~~ may be made at a price less than
 4 the "basic cost of cigarettes", as defined in 16-10-103, but the latter wholesaler, upon resale to a retailer,
 5 ~~shall be~~ is considered to be the wholesaler governed by the provisions of 16-10-103~~(4)~~(5)."

6
 7 **Section 7.** Section 16-10-204, MCA, is amended to read:

8 **"16-10-204. Determining cost -- ~~fictitious~~ prices below cost -- free merchandise.** (1) In determining
 9 the "cost to the retailer" and the "cost to the wholesaler", the department or a court shall receive and
 10 consider ~~as bearing on the bona fides of such cost~~ evidence tending to show that any person ~~complained~~
 11 ~~against under any of the~~ accused of violating the provisions of this chapter purchased cigarettes, with
 12 respect to the sale of which complaint is made, ~~at a fictitious price~~ below either the cost to the retailer or
 13 the cost to the wholesaler, depending upon the status of the person accused, or upon terms or in ~~such~~ a
 14 manner or under ~~such~~ invoices ~~as to~~ that conceal the true cost, discounts, or terms of purchase, ~~and~~
 15 Further, the department or a court shall also receive and consider ~~as bearing on the bona fides of such~~ the
 16 cost evidence of the normal, customary, and prevailing terms and discounts in connection with other sales
 17 of a similar nature in ~~the trade area of~~ this state.

18 (2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer
 19 ~~thereof~~ of the merchandise for display, advertising, promotion purposes, any type of discount, or otherwise
 20 ~~shall~~ may not be considered in determining the cost of cigarettes to the retailer or wholesaler."

21
 22 **Section 8.** Section 16-10-301, MCA, is amended to read:

23 **"16-10-301. Sales below cost -- ~~evidence of unlawful intent.~~** (1) It ~~shall be~~ is unlawful and a
 24 violation of this chapter:

25 ~~(a)(1)~~ (1) for any retailer or wholesaler ~~with intent to injure a competitor or substantially lessen~~
 26 ~~competition~~ to:

27 ~~(i)(a)~~ (a) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to ~~such~~ a
 28 retailer or wholesaler, ~~as the case may be;~~

29 ~~(ii)(b)~~ (b) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a
 30 concession of any kind ~~or nature whatever~~ in connection with the sale of cigarettes ~~which~~ that are sold by

1 ~~said~~ the wholesaler or retailer in the ordinary course of ~~his~~ trade or business if ~~such~~ the rebate or
 2 concession offered or given in connection with the sale of cigarettes is not offered or given by the
 3 wholesaler or retailer in the same ratio with respect to all other merchandise to which ~~such~~ the rebate or
 4 concession may lawfully be given;

5 ~~(b)~~(2) for any retailer to:

6 ~~((a))~~(a) induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at
 7 a price less than the "cost to the wholesaler", as defined in this chapter;

8 ~~((b))~~(b) induce or attempt to induce or procure or attempt to procure any rebate or concession of any
 9 kind or nature whatever in connection with the purchase of cigarettes.

10 ~~(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at~~
 11 ~~less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an~~
 12 ~~offer of a concession or the giving of a concession of any kind or nature whatever in connection with the~~
 13 ~~sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or~~
 14 ~~business, if such rebate or concession offered or given in connection with the sale of cigarettes is not~~
 15 ~~offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to~~
 16 ~~which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the~~
 17 ~~procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler~~
 18 ~~or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen~~
 19 ~~competition."~~

20

21 **Section 9.** Section 16-10-303, MCA, is amended to read:

22 **"16-10-303. Cost survey as evidence.** ~~Where~~ When a cost survey pursuant to cost accounting
 23 practices, ~~including those defined in 16-10-103(6)(a),~~ used for income tax reporting purposes has been
 24 made by the department, ~~or by~~ a trade association, ~~or other~~ an industry group, a wholesaler, or a retailer
 25 ~~for the trading area in which the offense is committed to establish either the lowest "cost to the retailer"~~
 26 ~~and or the lowest "cost to the wholesaler", said~~ or both, for the state, the cost survey shall be considered
 27 ~~to be~~ is competent evidence for use in proving the cost to the person complained against within the
 28 provisions of this chapter."

29

30 **Section 10.** Section 16-10-402, MCA, is amended to read:

1 **"16-10-402. Injunctive and other civil relief.** (1) In addition to ~~penalties~~ the penalty provided by
 2 ~~16-10-401 16-10-403~~, any person injured or any trade association that represents a person injured by any
 3 violation of this chapter ~~or any trade association which is representative of such a person~~ may maintain an
 4 action in any court of equitable jurisdiction to prevent, restrain, or enjoin ~~such~~ the violation. If in ~~such~~ the
 5 action a violation of this chapter ~~shall be~~ is established, the court shall enjoin and restrain or otherwise
 6 prohibit ~~such~~ the violation and, in addition ~~thereto~~, shall assess in favor of the plaintiff and against the
 7 defendant the costs of the suit and reasonable ~~attorney's fee~~ attorney fees. In ~~such~~ the action, it ~~shall~~ is
 8 not be necessary that actual damages to the plaintiff be alleged or proved, but ~~where~~ when alleged and
 9 proved, the plaintiff in ~~said~~ the action, in addition to ~~such~~ injunctive relief and fees and costs of suit, ~~shall~~
 10 be is entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

11 (2) ~~In the event no~~ If injunctive relief is not sought or required, any person injured by a violation
 12 of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The
 13 measure of damages in ~~such~~ the action ~~shall be~~ is the same as prescribed in subsection (1) of this section."
 14

15 **Section 11.** Section 16-10-403, MCA, is amended to read:

16 **"16-10-403. Revocation or suspension of license ~~or permit~~ -- civil penalty.** (1) The department is
 17 ~~given full power and authority to~~ may revoke ~~or~~ suspend the license ~~of, or permit of~~ impose a civil penalty
 18 not to exceed \$500 on, or order any combination of revocation, suspension, and penalty to be imposed on
 19 any ~~wholesale or retail cigarette dealer in the state of Montana~~ licensed wholesaler or retailer upon
 20 sufficient cause appearing of the violation of this chapter or upon the failure of ~~such~~ the licensee ~~or~~
 21 ~~permittee~~ to comply with any of the provisions of this chapter.

22 (2) ~~No~~ A license ~~or licenses shall~~ may not be suspended or revoked except upon notice to the
 23 licensee and after a hearing prescribed by ~~said~~ the department at its principal office. The department, upon
 24 a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule
 25 promulgated ~~thereunder~~ under this chapter, shall, in the case of ~~the~~ a first offender, suspend the license
 26 ~~or licenses~~ of the ~~said~~ the licensee for a period of not less than 5 or more than 20 consecutive business
 27 days ~~and, in~~ impose a civil penalty in an amount not to exceed \$500, or order both the suspension and the
 28 penalty. In the case of a second or plural offender, the department shall suspend ~~said~~ the license ~~or~~
 29 licenses for a period of not less than 20 consecutive business days or more than 12 months, ~~and in~~ impose
 30 a civil penalty in an amount not to exceed \$500, or order both the suspension and the penalty. In the event

1 the department finds the offender has been guilty of willful and persistent violations, it may revoke ~~such~~
 2 the licensee's license or licenses and, in its discretion, may impose a civil penalty in an amount not to
 3 exceed \$500.

4 (3) Any person whose license ~~or licenses have~~ has been ~~se~~ revoked may apply to the department
 5 at the expiration of 1 year for a reinstatement of ~~his~~ the license ~~or licenses~~. ~~Such~~ The license ~~or licensee~~
 6 may be reinstated by the department if it ~~shall appear~~ appears to the satisfaction of ~~said~~ the department
 7 that the licensee will comply with the provisions of this chapter and the rules promulgated ~~thereunder~~ under
 8 this chapter.

9 (4) ~~No~~ A person whose license has been suspended or revoked ~~shall~~ may not sell cigarettes or
 10 permit cigarettes to be sold during the period of ~~such~~ the suspension or revocation on the premises
 11 occupied by ~~him~~ the person or upon other premises controlled by ~~him~~ the person or others or in any other
 12 manner or form whatever. ~~Nor shall any~~ A disciplinary proceedings or action ~~be~~ is not barred or abated by
 13 the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the
 14 provisions of the "cigarette tax law", as provided in [articles of chapter 11 of the Revised Codes of
 15 Montana, 1947].

16 (5) Any determination by the department and any order of suspension or revocation of a license
 17 ~~or licenses thereunder~~ or refusal to reinstate a license ~~or licensee~~ after revocation ~~shall be~~ is reviewable by
 18 the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction."
 19

20 **Section 12.** Section 16-11-102, MCA, is amended to read:

21 **"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the
 22 context requires otherwise:

23 (a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size
 24 or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the
 25 wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

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

27 (c) "Person" means an individual, firm, ~~fiduciary,~~ partnership, corporation, ~~trust, organization, or~~
 28 association, company, or other business entity, however formed.

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

30 (a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes

1 through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that ~~he~~ the person
 2 operates for a profit in premises or locations other than ~~his~~ the person's own. That person must be treated
 3 as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a
 4 retailer.

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

6 (c) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under
 7 the provisions of this part.

8 (d) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette vendor,
 9 who is licensed under the provisions of this part.

10 (e) "Licensed subjobber" means a subjobber licensed under the provisions of this part; The person
 11 ~~he~~ must be treated as a wholesaler.

12 (f) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

13 (g) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose
 14 of resale.

15 ~~(g)(h)~~ (h) "Public warehouses" means agents or representatives of manufacturers who receive
 16 cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

17 ~~(h)(i)~~ (i) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

18 ~~(i)(j)~~ (j) "Retailer" means a person, ~~other than a wholesaler, subjobber, or cigarette vendor, who is~~
 19 engaged in the business who operates a store, stand, booth, concession, or other outlet for the purpose
 20 of selling cigarettes at retail.

21 ~~(j)(k)~~ (k) "Sale" ~~and or~~ "sell" ~~mean~~ means any transfer of cigarettes ~~by sale, as defined by 30-2-106,~~
 22 or by gift, barter, or exchange for consideration, exchange, barter, gift, offer for sale, or distribution in any
 23 manner or by any means.

24 (l) "Sole distributor" means a person who either causes a unique brand of cigarettes to be
 25 manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes
 26 or is the exclusive distributor of a brand of cigarettes within the continental United States.

27 ~~(k)(m)~~ (m) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the
 28 Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or
 29 cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute
 30 those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public.

1 If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client
 2 whose business is controlled directly or indirectly through consanguinity or affinity with the owner or
 3 employer for that retail business, the license is considered to have been used or to be intended to be used
 4 in violation of this part.

5 ~~{(n)}~~ "Wholesaler" means any a person who services retail outlets by maintaining an established
 6 place of business for the purchase of cigarettes and who: ~~resident in this state who brings or causes to be~~
 7 ~~brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells,~~
 8 ~~or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within~~
 9 ~~this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes~~
 10 ~~within this state.~~

11 (i) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or

12 (ii) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the
 13 purpose of selling cigarettes to retailers."

14
 15 **Section 13.** Section 16-11-111, MCA, is amended to read:

16 **"16-11-111. Cigarette sales tax -- exemption for sale to tribal member.** (1) A tax on the purchase
 17 of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is
 18 imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents
 19 on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a
 20 tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

21 (2) The tax imposed in subsection (1) does not apply to ~~a cigarette sale if the sale is made:~~

22 ~~(a) by a retailer whose establishment is located within the boundaries of an Indian reservation~~
 23 ~~located in Montana; and~~

24 ~~(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation~~
 25 ~~where the retail establishment is located~~ quota cigarettes.

26 (3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all
 27 cigarettes entering a Montana Indian reservation.

28 (4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes
 29 to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund
 30 or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized

1 Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within
2 1 year of the shipment date forfeits the refund or credit.

3 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system
4 of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for
5 approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on
6 whether the quota, as established in a cooperative agreement between the department and an Indian tribe
7 or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon
8 providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation
9 selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a
10 credit or refund. Once the quota has been filled, the department shall immediately notify all affected
11 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will
12 not be honored for the remainder of the quota period. Quota allocations are not transferable between quota
13 periods or between reservations.

14 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming
15 the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax
16 due on the quota allocation. The department shall determine the amount of refunds or credits for each
17 Indian reservation at the beginning of each fiscal year, using the most recent census data available from
18 the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian
19 reservation."

20

21 **Section 14.** Section 16-11-113, MCA, is amended to read:

22 **"16-11-113. Tax insignia.** (1) Except as provided in this section, the ~~distributor or dealer~~ wholesaler
23 of any cigarettes shall cause to be securely affixed to the cigarettes the required insignia denoting the
24 applicable tax. ~~A person specifically exempted under the provisions of 16-11-132(2) is not considered to~~
25 ~~be acting unlawfully under this section.~~

26 (2) The insignia must be properly applied prior to sale, under regulations that the department may
27 prescribe.

28 (3) ~~Wholesalers and retailers~~ Retailers licensed under this part may buy, sell, or have in their
29 possession only cigarettes that have on each package the insignia provided for in this part. The insignia
30 provided for in this part may be sold only to and must be affixed only by licensed wholesalers ~~and licensed~~

1 ~~retailers.~~

2 (4) If any cigarettes without the insignia affixed are found in the place of business of any
3 unlicensed wholesaler, retailer, or other person, the presumption is that the cigarettes are kept in that place
4 of business in violation of the provisions of this part.

5 (5) ~~Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before~~
6 ~~the sale of the cigarettes by a wholesaler~~ This section does not apply to a wholesaler who has cigarettes
7 in possession that are either to be shipped or consigned to an Indian tribe that has entered into a
8 cooperative agreement with the state or to a military reservation."

9

10 **Section 15.** Section 16-11-114, MCA, is amended to read:

11 "**16-11-114. Insignia discount.** ~~Every~~ Each licensed wholesaler ~~and licensed retailer shall be is~~
12 entitled to purchase said an insignia at full face value less the following percentage of the face value upon
13 payment ~~therefor~~ for the insignia as defrayment of the costs of affixing insignia and precollecting ~~such the~~
14 tax on behalf of the state of Montana:

15 (1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;

16 (2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and

17 (3) 3% for purchases in excess of 5,160 cartons in any calendar month."

18

19 **Section 16.** Section 16-11-115, MCA, is amended to read:

20 "**16-11-115. Tax meter machine -- tax stamp-applying machine -- purchase of stamps.** (1) The
21 department may authorize any wholesaler ~~or retailer~~ of cigarettes licensed under this part to use a tax meter
22 machine to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state.
23 The insignia must be one approved by the department. Each package of cigarettes imported into or
24 delivered or sold in this state must be marked with the proper insignia of the tax-stamping meter, and
25 ~~thereafter~~ any original package of cigarettes so marked may be lawfully possessed and sold within the state
26 by any wholesaler ~~or retailer~~ licensed under this part. The department shall supervise and check the
27 operation of the tax meter machines. Before using the machine, the operator of the machine shall take the
28 machine's meter to the county treasurer of the county in which the machine is operated. The county
29 treasurer shall set the meter for the number of packages specified and required by the operator. Prior to
30 setting the meter, the county treasurer shall charge the operator the amount of money proper for the

1 setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this
 2 amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The
 3 county treasurer shall report to the department on forms prescribed by it the name of the licensed
 4 wholesaler ~~or licensed retailer~~ and the number of packages for which the meter was set and shall forward
 5 to the department any amounts collected from the licensee.

6 (2) (a) The department may authorize a licensed wholesaler ~~or licensed retailer~~ to affix tax stamps
 7 to packages of cigarettes with a heat-applied machine approved by the department. The department shall
 8 supervise and check the operation of the stamp-applying machine.

9 (b) Tax stamps applied as provided in this subsection must be purchased from the department, and
 10 payment for the stamps must accompany the order unless the department has allowed the purchaser to
 11 delay payment as provided in 16-11-117."

12
 13 **Section 17.** Section 16-11-116, MCA, is amended to read:

14 **"16-11-116. Resale of insignia prohibited -- rebate.** A wholesaler ~~or retailer~~ may not resell to any
 15 other wholesaler ~~or retailer~~ any insignia purchased ~~by him~~ from the department. A wholesaler ~~or retailer~~
 16 who has on hand any meter settings or tax insignia at the time of discontinuing ~~his~~ the business of selling
 17 cigarettes may apply to the department and be paid the face value of the meter settings or tax insignia less
 18 the amount of the expense defrayment allowed by 16-11-114."

19
 20 **Section 18.** Section 16-11-117, MCA, is amended to read:

21 **"16-11-117. When payment for insignia due.** The department ~~shall~~ may permit a licensed
 22 wholesaler ~~or licensed retailer~~ to pay for the insignia purchased, or affixation of insignia, within 30 days,
 23 ~~after the date of purchase and shall require such licensee to~~ To be eligible to defer payment, a wholesaler
 24 shall file with the department either a surety bond issued by a surety company approved by the state
 25 department of insurance as to solvency and responsibility and authority to transact business in the state
 26 or other cash security, as approved by the department, for such the amount as that the department may
 27 fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period
 28 in the previous calendar year; ~~provided, however, that any.~~ Any newly licensed wholesaler ~~or licensed~~
 29 ~~retailer~~ shall pay on a cash basis for 1 complete calendar year, after which the department may permit ~~him~~
 30 the wholesaler 30 days to pay for the purchase or affixation of insignia and shall require a bond or security

1 as ~~hereinabove~~ provided in this section."

2

3 **Section 19.** Section 16-11-118, MCA, is amended to read:

4 **"16-11-118. Records of ~~tax meter users and stampers~~ wholesalers.** All ~~tax meter users and~~
5 ~~stampers~~ wholesalers shall keep for 5 years all invoices of cigarettes purchased and imported ~~by them~~, all
6 receipts issued ~~by them~~ and insignia purchased, and an accurate record of all sales of cigarettes ~~by the tax~~
7 ~~meter users or stampers~~, showing the name and address of each purchaser, the date of sale, the quantity
8 of each kind sold, the name of any carrier, the shipping point, and the destination. ~~The tax meter users or~~
9 ~~stampers~~ A wholesaler shall permit the department and the department of justice and their assistants,
10 authorized agents, or representatives to examine all ~~taxable items of~~ cigarettes, invoices, receipts, books,
11 paper, memoranda, and records as may be necessary to determine compliance with this chapter. ~~whether~~
12 ~~the tax meter machine or tax stamp applying machine has been used as required or the insignia required~~
13 ~~by this part had been purchased and used or to determine the amount of the tax as may be due or unpaid."~~

14

15 **Section 20.** Section 16-11-121, MCA, is amended to read:

16 **"16-11-121. Vending machines not places of business.** Cigarette vending machines ~~shall~~ may not
17 be considered as places of business per se, but a report of each ~~and all machines~~ machine ~~shall~~ must
18 be made on forms prescribed by the department, ~~which shall state~~ The form must include the name and
19 address of the cigarette vendor, the assigned location of each machine, with best machine identification
20 available, type of business, and ~~such~~ other information as that the department may require for proper
21 administration of this part."

22

23 **Section 21.** Section 16-11-131, MCA, is amended to read:

24 **"16-11-131. Transporting cigarettes without insignia a misdemeanor -- invoices and delivery tickets**
25 **required -- stop and inspection authorized.** (1) It is unlawful for a person to transport into, receive, carry,
26 or move from place to place within this state, except in the course of interstate commerce, any cigarettes
27 that do not bear the insignia (stamps) required by this part, ~~except for a person specifically exempted in~~
28 ~~16-11-132(2).~~

29

30 (2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets
for the cigarettes that show the name and address of the consignor or seller, the name of the consignee

1 or purchaser, and the quantity and brands of the cigarettes being transported. ~~If the cigarettes are~~
 2 ~~consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by~~
 3 ~~16-11-132 to possess unstamped cigarettes in this state.~~

4 (b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141,
 5 16-11-147, 16-11-158, and this section if:

6 (i) there are no invoices or delivery tickets;

7 (ii) the name or address of the consignee or purchaser is falsified; or

8 (iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

9 (3) Transportation of cigarettes from a point outside the state to a point in another state is not a
 10 violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices
 11 or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state
 12 consignee or purchaser.

13 (4) If the department, its authorized agent, the department of justice, or a peace officer of the state
 14 has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this
 15 section, the department, its agent, the department of justice, or a peace officer may stop and inspect the
 16 vehicle.

17 (5) A person violating the provisions of this section is guilty of a misdemeanor."

18
 19 **Section 22.** Section 16-11-132, MCA, is amended to read:

20 "**16-11-132. Unlawful to sell cigarettes without valid license -- exceptions.** (1) ~~No~~ A person shall
 21 may not sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless ~~his~~ the
 22 person's license is current and valid under the provisions of this part.

23 (2) ~~No~~ A person shall may not sell, offer to sell, or possess with intent to sell any cigarettes, at
 24 wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under
 25 this part or who is not licensed by the state in which ~~he~~ the person sells, offers to sell, or intends to sell
 26 cigarettes, ~~except that.~~ However, a ~~resident~~ wholesaler, ~~resident~~ subjobber, or retailer licensed under the
 27 provisions of this chapter may sell cigarettes to a ~~resident or nonresident~~ any person, wholesaler,
 28 subjobber, or retailer not licensed under this chapter if:

29 (a) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer is exempt from state
 30 cigarette taxation provisions;

1 (b) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer furnishes
2 documentary evidence ~~that he is exempt~~ of exemption from state cigarette taxation provisions; and

3 (c) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer signs a receipt of
4 purchase for any cigarettes evidencing ~~that he is exempt~~ an exemption from state cigarette taxation
5 provisions.

6 (3) ~~Any~~ A person violating the provisions of this section is guilty of a misdemeanor and shall be
7 punished as ~~hereinafter~~ provided in this part, and all cigarettes in ~~his~~ the person's possession ~~shall~~ must
8 be seized and forfeited to the state."
9

10 **Section 23.** Section 16-11-133, MCA, is amended to read:

11 "**16-11-133. Sale and use of cigarettes without insignia unlawful.** ~~Every~~ A person who sells any
12 package of cigarettes ~~which~~ that does not bear the insignia required by this part and ~~every~~ a person who
13 uses or consumes a cigarette within this state, taken from a package ~~which~~ that does not bear the required
14 insignia, is guilty of a misdemeanor ~~and shall be punished as hereinafter provided, except that a person~~
15 ~~specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully~~
16 ~~under this section.~~"
17

18 **Section 24.** Section 16-11-143, MCA, is amended to read:

19 "**16-11-143. Penalty for unpaid cigarette tax.** (1) If ~~any~~ a person fails or refuses to pay the tax
20 required by this part when due, the department shall proceed to determine the tax due from ~~such~~ the
21 information ~~as~~ that the department can obtain and shall assess the tax ~~so determined~~ plus a penalty that
22 is the greater of 5% of the tax or \$50 against ~~such~~ the person and notify ~~him~~ the person of the amount.
23 ~~After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or \$5~~
24 ~~per day for each day after the date of such notice, whichever is greater.~~

25 (2) In the case of any violation of this chapter, the department ~~shall be entitled to~~ may sue, in the
26 district where the department maintains its principal office, for the amount of the unpaid tax, penalty, and
27 costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty.
28 ~~Where~~ When the court finds that the failure to pay the tax has been willful, the court ~~must~~ shall, in
29 addition, assess damages in treble the amount of the tax found to be due."
30

1 **Section 25.** Section 16-11-144, MCA, is amended to read:

2 "**16-11-144. Revocation or suspension of license.** (1) The department may revoke or suspend the
3 license of any wholesaler, subjobber, retailer, or cigarette vendor for failure to comply with any provision
4 of this part, ~~or of The Montana Cigarette Sales Act (Title 16, chapter 10) and with any lawful, or any rule~~
5 of the department made pursuant to ~~said~~ those laws.

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

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

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

15

16 **Section 26.** Section 16-11-145, MCA, is amended to read:

17 "**16-11-145. Place where violations committed a public nuisance.** ~~Every~~ Each person having
18 possession or control of or who maintains a building or place where cigarettes are sold in violation of this
19 part or who permits the ~~same to be done~~ cigarettes to be sold in violation of this part in any place or
20 building possessed, controlled, or maintained by ~~him~~ that person is guilty of maintaining and keeping a
21 nuisance, ~~and the~~. The building or place so used, together with the personal property and fixtures used
22 in connection therewith, ~~shall be deemed~~ is considered a nuisance. ~~Such~~ The person shall must be enjoined
23 and ~~such~~ the building or place, personal property, and fixtures abated as a nuisance at the instance of the
24 state."

25

26 **Section 27.** Section 16-11-148, MCA, is amended to read:

27 "**16-11-148. Violation a misdemeanor unless otherwise provided -- penalties.** Unless ~~hereinbefore~~
28 ~~expressly~~ otherwise provided, the violation of any provision of this part ~~shall constitute~~ constitutes a
29 misdemeanor ~~and any~~. A person violating any ~~such~~ provision of this part shall be punished by a fine of not
30 less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more

1 than 6 months, or by both, such fine and imprisonment and, if such the person is the holder of a license
 2 issued under this part, ~~such~~ the license shall must be revoked by the department for a period of 1 year."

3
 4 **Section 28.** Section 16-11-149, MCA, is amended to read:

5 **"16-11-149. Hearings before state tax appeal board.** ~~Any~~ A person aggrieved by any action of the
 6 department or its authorized agents under the provisions of this part, except for a revocation of a license
 7 pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing
 8 within 30 days after the action of the department or its authorized agents. The board shall promptly
 9 consider the application, set the application for hearing, and notify the applicant of the time and place fixed
 10 for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing
 11 or rehearing, the board may make any further or other order in the premises as it may consider proper and
 12 lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a
 13 contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with
 14 the administration of this part upon at least 10 days' notice in writing to the person or persons to be
 15 investigated."

16
 17 **Section 29.** Section 16-11-201, MCA, is amended to read:

18 **"16-11-201. Definitions.** As used in this part, the following definitions ~~shall~~ apply, unless the
 19 context requires otherwise:

20 (1) ~~The word "retailer"~~ "Retailer" shall mean means any person other than a wholesaler who is
 21 engaged in the business of selling tobacco products to the ultimate consumer.

22 (2) ~~The words "sale"~~ "Sale" or "sell" shall mean ~~and include~~ means any transfer of tobacco
 23 products for a consideration, exchange, barter, gift, offer for sale, ~~and~~ or distribution, in any manner or by
 24 any means ~~whatever, of tobacco products other than cigarettes.~~

25 (3) "Tobacco product" means a substance other than cigarettes that is intended for human
 26 consumption and that contains tobacco.

27 ~~(3)(4)~~ (4) ~~The words "wholesale price" shall mean~~ "Wholesale price" means the established price for
 28 which a manufacturer sells a tobacco product ~~other than cigarettes~~ to a wholesaler or ~~unclassified acquirer~~
 29 any other person before any discount or other reduction.

30 ~~(4)~~ (5) ~~The word "wholesaler" shall mean~~ "Wholesaler" means any person who purchases tobacco

1 products ~~other than cigarettes~~ directly from the manufacturer or ~~who purchases tobacco products other~~
 2 ~~than cigarettes~~ from any other person who purchases from the manufacturer and who acquires such the
 3 products for the ~~purpose of bona fide sales~~ sale to retail dealers ~~or who services retail outlets by the~~
 4 ~~maintenance of an established place of business for the purchase of tobacco products other than cigarettes,~~
 5 ~~including but not limited to the maintenance of warehousing facilities for the storage and distribution of~~
 6 ~~tobacco products."~~

7

8 **Section 30.** Section 16-11-202, MCA, is amended to read:

9 **"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate of**
 10 **tax.** (1) All taxes paid pursuant to the provisions of this section ~~shall be exclusively presumed~~ are
 11 considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and
 12 facility only. When the tax is paid by any other person, ~~such the~~ payment ~~shall be~~ is considered as an
 13 advance payment and ~~shall~~ must be added to the price of tobacco products ~~other than cigarettes~~ and
 14 recovered from the ultimate consumer or user. Any person selling tobacco products ~~other than cigarettes~~
 15 at retail shall state or separately display in the premises where ~~such the~~ products are sold a notice of the
 16 tax included in the selling price and charged or payable pursuant to this section. The provisions of this
 17 section ~~shall in no way do not~~ do not affect the method of collection of ~~such the~~ tax as ~~hereinafter~~ provided in this
 18 part.

19 (2) ~~There is hereby levied, imposed, and assessed upon tobacco products other than cigarettes sold~~
 20 ~~or possessed in this state and there shall~~ must be collected and paid to the state of Montana a tax of 12
 21 1/2% of the wholesale price of ~~such all tobacco~~ products to the wholesaler, ~~excepting therefrom such~~
 22 ~~products as may be.~~ Tobacco products shipped from Montana and destined for retail sale and consumption
 23 outside the state of Montana are not subject to this tax."

24

25 **Section 31.** Section 16-11-203, MCA, is amended to read:

26 **"16-11-203. Wholesaler to precollect tax.** The tax imposed ~~shall~~ must be precollected and paid by
 27 the wholesaler to the department prior to the sale of tobacco products ~~other than cigarettes to the~~
 28 ~~purchaser from the wholesaler."~~

29

30 **Section 32.** Section 16-11-204, MCA, is amended to read:

1 **"16-11-204. Wholesaler's sale without tax prepayment a misdemeanor -- penalty. Any A**
 2 wholesaler who ~~shall sell~~ sells any tobacco products ~~other than cigarettes~~ without first making payment
 3 of the tax provided for by this part ~~in the manner and~~ or at the time specified shall be guilty of a
 4 misdemeanor and ~~further shall~~ must be enjoined by an action pursued in the district court of ~~the county of~~
 5 Lewis and Clark County, Montana, from making further sale of tobacco products ~~other than cigarettes~~ for
 6 a period not less than 1 month or more than 1 year."

7
 8 **Section 33.** Section 16-11-308, MCA, is amended to read:

9 **"16-11-308. Penalties.** (1) Failure to obtain a license as required by 16-11-303 or to post signs as
 10 provided in 16-11-304 is punishable by a civil penalty of \$100.

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

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

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

23 (5) A justice's court has civil jurisdiction over a civil complaint regarding a violation of 16-11-303,
 24 16-11-304, or 16-11-305(1) and may impose the penalty prescribed in subsection (2) upon a finding by
 25 a preponderance of the evidence that the violation occurred. The county attorney of the county in which
 26 a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of
 27 the penalty."

28
 29 **NEW SECTION. Section 34. Codification instruction.** [Section 1] is intended to be codified as an
 30 integral part of Title 16, chapters 10 and 11, part 1, and the provisions of Title 16, chapters 10 and 11,

1 part 1, apply to [section 1].

2

3 NEW SECTION. **Section 35. Repealer.** Section 16-10-401, MCA, is repealed.

4

5 NEW SECTION. **Section 36. Effective date.** [This act] is effective July 1, 1995.

6

-END-

STATE OF MONTANA - FISCAL NOTE

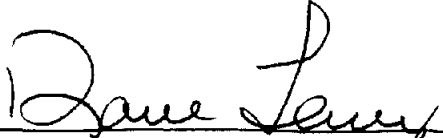
Fiscal Note for HB0587, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

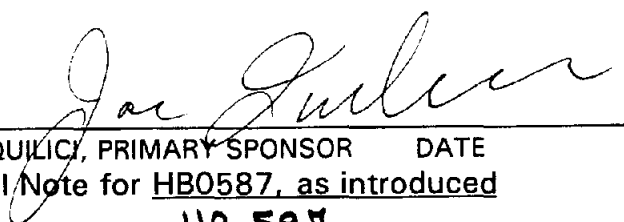
An act generally revising cigarette and tobacco laws in Title 16, chapters 10 and 11, MCA; clarifying provisions relating to the Montana Cigarette Sales Act, the cigarette sales tax, the tax on tobacco products, and the Youth Access to Tobacco Products Control Act; and providing an effective date.

FISCAL IMPACT:

This bill has no impact on Department of Revenue expenditures or revenues.

 3-10-95

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning



JOE QUILICI, PRIMARY SPONSOR DATE
Fiscal Note for HB0587, as introduced
HB 587

1 HOUSE BILL NO. 587

2 INTRODUCED BY QUILICI, STANG, GRADY, ELLIOTT, GAGE, MENAHAN, MCCANN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CIGARETTE AND TOBACCO LAWS IN
6 TITLE 16, CHAPTERS 10 AND 11, MCA; CLARIFYING PROVISIONS RELATING TO THE MONTANA
7 CIGARETTE SALES ACT, THE CIGARETTE SALES TAX, THE TAX ON TOBACCO PRODUCTS, AND THE
8 YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AMENDING SECTIONS 3-10-301, 16-10-102,
9 16-10-103, 16-10-104, 16-10-201, 16-10-204, 16-10-301, 16-10-303, 16-10-402, 16-10-403,
10 16-11-102, 16-11-111, 16-11-113, 16-11-114, 16-11-115, 16-11-116, 16-11-117, 16-11-118,
11 16-11-121, 16-11-131, 16-11-132, 16-11-133, 16-11-143, 16-11-144, 16-11-145, 16-11-148,
12 16-11-149, 16-11-201, 16-11-202, 16-11-203, 16-11-204, AND 16-11-308, MCA; REPEALING SECTION
13 16-10-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

14
15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

16
17 NEW SECTION. **Section 1. Licensure as both wholesaler and retailer allowed.** This chapter does
18 not prevent a person from being licensed as both a wholesaler and a retailer.

19
20 **Section 2.** Section 3-10-301, MCA, is amended to read:

21 "**3-10-301. Civil jurisdiction.** (1) Except as provided in ~~subsection (2) and in 3-11-103~~ and in
22 subsection (2) of this section, the justices' courts have jurisdiction:

23 (a) in actions arising on contract for the recovery of money only if the sum claimed does not
24 exceed \$5,000, exclusive of court costs;

25 (b) in actions for damages not exceeding \$5,000, exclusive of court costs, for taking, detaining,
26 or injuring personal property or for injury to real property when no issue is raised by the verified answer of
27 the defendant involving the title to or possession of the real property;

28 (c) in actions for damages not exceeding \$5,000, exclusive of court costs, for injury to the person,
29 except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious
30 prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

1 (d) in actions to recover the possession of personal property if the value of the property does not
2 exceed \$5,000;

3 (e) in actions for a fine, penalty, or forfeiture not exceeding \$5,000, imposed by a statute or an
4 ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of
5 any tax, impost, assessment, toll, or municipal fine;

6 (f) in actions upon bonds or undertakings conditioned for the payment of money when the sum
7 claimed does not exceed \$5,000, though the penalty may exceed that sum;

8 (g) to take and enter judgment for the recovery of money on the confession of a defendant when
9 the amount confessed does not exceed \$5,000, exclusive of court costs;

10 (h) to issue temporary restraining orders as provided in 40-4-121(3);

11 (i) in actions initiated by civil complaints for violations of 16-11-305(1).

12 (2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against
13 the state for the payment of money."

14
15 **Section 3.** Section 16-10-102, MCA, is amended to read:

16 **"16-10-102. Declaration of policy.** The advertising, offering for sale, or sale of cigarettes below
17 cost in the retail and wholesale trades ~~with the intent of injuring competitors or lessening competition~~ is
18 an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and
19 it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes,
20 and maximize and protect the state revenues from this source."

21
22 **Section 4.** Section 16-10-103, MCA, is amended to read:

23 **"16-10-103. Definitions.** When used in this chapter, ~~the following words and phrases shall have~~
24 ~~the meaning ascribed to them in this section, except where~~ when the context clearly indicates a different
25 meaning, the following definitions apply:

26 (1) ~~"Administrative agency" or "department" shall mean~~ "Department" means the state department
27 ~~of revenue of Montana provided for in 2-15-1301 and, where~~ when the meaning of the context so requires,
28 ~~all deputies and includes its employees duly authorized by such department.~~

29 ~~{2} "Basic cost of cigarettes" shall mean~~ means the invoice list cost of cigarettes ~~to the retailer or~~
30 ~~wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the~~

1 ~~ease may be, in the quantity last purchased, whichever is lower as reported to the department by the~~
 2 ~~manufacturer without any deductions for discounts or taxes of any kind.~~

3 ~~(3)~~ (2) "Business day" ~~shall mean~~ means any day other than a Sunday or a legal holiday.

4 ~~(4)~~ (3) "Cigarettes" ~~shall mean~~ means any roll for smoking made wholly or in part of tobacco,
 5 irrespective of size or shape and whether or not ~~such~~ the tobacco is flavored, adulterated, or mixed with
 6 any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance
 7 or material except tobacco.

8 ~~(5)(a)~~ (4)(a) The term "cost to the retailer" ~~shall mean~~ means the ~~"basic cost of cigarettes" to the~~
 9 ~~retailer~~ cost to the wholesaler from whom the cigarettes were purchased by the retailer plus the "cost of
 10 doing business by the retailer" as evidenced by the standards and methods of accounting regularly
 11 employed by the retailer in ~~his~~ the retailer's determination of costs for income tax reporting purposes for
 12 the total operation of ~~his~~ the retailer's establishment. Cost of doing business by the retailer includes and
 13 ~~shall include within said costs, without limitation;~~

14 (i) labor costs (including salaries of executives and officers);

15 (ii) rent;

16 (iii) depreciation;

17 (iv) selling costs;

18 (v) maintenance of equipment;

19 (vi) delivery costs;

20 (vii) all types of licenses;

21 (viii) all types of business taxes;

22 (ix) all types of insurance, and;

23 (x) all types of advertising, including;

24 (xi) any rebates, patronage dividends, or concessions, no matter how defined, and;

25 (xii) expenses prior to opening for business, including all startup costs, land acquisition costs,
 26 construction costs, costs for marketing studies, and similar expenses;

27 (xiii) any district, central, regional, and national administrative and operation costs and expenses;

28 and

29 (xiv) ~~any and~~ all other indirect or overhead costs with respect to the operation of the establishment
 30 business of the retailer.

1 **(b) The cost of doing business by the retailer must be** expressed as a percentage and applied to
 2 the "~~basic costs of cigarettes~~"; ~~provided, however, that any~~ cost to the wholesaler from whom the
 3 cigarettes were purchased.

4 **(c) A retailer who purchases directly from the a** manufacturer or from any other person at or at less
 5 than or about the price normally and usually charged for purchases in wholesale quantities shall, in
 6 determining "the cost to the retailer" ~~pursuant to this subsection~~, add the "cost of doing business by the
 7 wholesaler", as determined in subsection ~~(6)(b)~~ **(5)(b)**, to the "basic cost of cigarettes" to ~~said~~ the retailer,
 8 as well as the "cost of doing business by the retailer".

9 ~~(b)(d)~~ **(d)** In the absence of the filing with the department of satisfactory proof of a lesser or higher
 10 cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" ~~shall be~~
 11 is presumed to be 10% of the "~~basic cost of cigarettes~~" to the retailer cost to the wholesaler.

12 ~~(e) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost~~
 13 ~~of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's~~
 14 ~~purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole~~
 15 ~~or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of~~
 16 ~~the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".~~

17 ~~(6) (a) (5)(a)~~ **(5)(a)** The term "cost to the wholesaler" ~~shall mean~~ means the "basic cost of cigarettes"
 18 ~~to purchased by the wholesaler from a manufacturer~~ plus the "cost of doing business by the wholesaler"
 19 as evidenced by the standards and methods of accounting regularly employed by the wholesaler in ~~his~~ the
 20 wholesaler's determination of costs for income tax reporting purposes for the total operation of ~~his~~
 21 establishment and shall include within said costs, the wholesaler's business. The cost of doing business
 22 by the wholesaler includes, without limitation_{7;}

23 **(i) labor costs (including salaries of executives and officers)**_{7;}

24 **(ii) rent**_{7;}

25 **(iii) depreciation**_{7;}

26 **(iv) selling costs**_{7;}

27 **(v) maintenance of equipment**_{7;}

28 **(vi) delivery costs**_{7;}

29 **(vii) all types of licenses**_{7;}

30 **(viii) all types of business taxes**_{7;}

1 ~~(ix) all types of insurance, and;~~
 2 ~~(x) all types of advertising;~~
 3 ~~(xi) any rebates, patronage dividends, or concessions, no matter how defined;~~
 4 ~~(xii) expenses prior to opening for business, including all startup costs, land acquisition costs,~~
 5 ~~construction costs, costs for marketing studies, and similar expenses;~~

6 ~~(xiii) any district, central, regional, and national administrative and operation costs and expenses;~~
 7 and

8 ~~(xiv) all other indirect or overhead costs with respect to the operation of the wholesaler.~~

9 ~~(b) The cost of doing business by a wholesaler shall also include any rebates, patronage dividends,~~
 10 ~~or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to~~
 11 ~~the operation of the establishment of the wholesaler, must be expressed as a percentage and applied to~~
 12 the "basic cost of cigarettes".

13 ~~(b)(c)~~ In the absence of the filing with the department of proof ~~which~~ that the department declares
 14 to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost
 15 of doing business by the wholesaler" ~~shall be~~ is presumed to be 5% of the "basic cost of cigarettes" to the
 16 wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler, ~~which~~. The cartage
 17 cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, ~~shall~~
 18 be is considered to be 3/4 of 1% of the "basic cost of cigarettes" to the wholesaler.

19 (6) "Department" means the department of revenue provided for in 2-15-1301 and, when the
 20 meaning of the context requires, includes its employees.

21 (7) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose
 22 of resale.

23 ~~(7)(8)~~ "Person" ~~shall mean means and include any~~ an individual, firm, association, company,
 24 partnership, corporation, ~~for profit or nonprofit corporation, joint stock company, club, agency, syndicate,~~
 25 ~~cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee,~~
 26 ~~fiduciary, and conservator~~ or other business entity, however formed.

27 ~~(8)(9)~~ "Retailer" ~~shall mean means and include any~~ a person who operates a store, stand, booth,
 28 or concession, or other outlet for the purpose of ~~making sales of~~ selling cigarettes at retail.

29 ~~(9)(10)~~ "Sale" ~~shall mean~~ or "sell" means any transfer of cigarettes for a consideration, exchange,
 30 barter, gift, offer for sale, ~~and~~ or distribution, in any manner or by any means ~~whatever.~~

1 ~~(10)(11)~~ "Sell at retail", "sale at retail", ~~and or~~ "retail sales" ~~shall mean and include~~ means any
2 transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual
3 conduct of the ~~seller's~~ retailer's business, to the purchaser for consumption or use.

4 ~~(11)(12)~~ "Sell at wholesale", "sale at wholesale", ~~and or~~ "wholesale sales" ~~shall mean~~ means and
5 include includes any bona fide transfer of title to cigarettes for a valuable consideration, made in the
6 ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose
7 of resale.

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

11 ~~(12)(14)~~ "Wholesaler" ~~shall include any~~ means a person who services retail outlets by maintaining
12 an established place of business for the purchase of cigarettes and who:

13 (i)(a) purchases cigarettes ~~directly~~ from the a manufacturer for the purpose of selling cigarettes to
14 retailers; or

15 ~~(ii)(b)~~ purchases cigarettes from ~~any other person who purchases from the manufacturer and who~~
16 ~~acquires such cigarettes solely~~ a sole distributor, another wholesaler, or any other person for the purpose
17 of ~~bona fide resale to retail dealers~~ selling cigarettes to retailers; or

18 ~~(iii)~~ ~~services retail outlets by the maintenance of an established place of business for the purchase~~
19 ~~of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and~~
20 ~~distribution of cigarettes.~~

21 ~~(b) Nothing contained herein shall prevent a person from qualifying in different capacities as both~~
22 ~~"wholesaler" and "retailer" under the applicable provisions of this chapter."~~

23
24 **Section 5.** Section 16-10-104, MCA, is amended to read:

25 "**16-10-104. Powers of department.** (1) In addition to the penalties and rights imposed and set
26 forth in ~~16-10-401 and~~ 16-10-402, the department shall enforce the provisions of this chapter.

27 (2) The department ~~shall have~~ has the power to adopt, amend, and repeal rules necessary to
28 enforce and administer the provisions of this chapter."

29

30 **Section 6.** Section 16-10-201, MCA, is amended to read:

1 **"16-10-201. Wholesaler-to-wholesaler sales.** When one wholesaler sells cigarettes to any other
 2 wholesaler, the former ~~shall~~ may not be required to include in ~~his~~ the selling price to the latter the "cost to
 3 the wholesaler", as provided by 16-10-103, except that no such sale ~~shall~~ may be made at a price less than
 4 the "basic cost of cigarettes", as defined in 16-10-103, but the latter wholesaler, upon resale to a retailer,
 5 ~~shall be~~ is considered to be the wholesaler governed by the provisions of 16-10-103~~(6)~~(5)."

6
 7 **Section 7.** Section 16-10-204, MCA, is amended to read:

8 **"16-10-204. Determining cost -- fictitious prices below cost -- free merchandise.** (1) In determining
 9 the "cost to the retailer" and the "cost to the wholesaler", the department or a court shall receive and
 10 consider ~~as bearing on the bona fides of such cost~~ evidence tending to show that any person ~~complained~~
 11 ~~against under any of the~~ accused of violating the provisions of this chapter purchased cigarettes, with
 12 respect to the sale of which complaint is made, at a fictitious price below either the cost to the retailer or
 13 the cost to the wholesaler, depending upon the status of the person accused, or upon terms or in ~~such a~~
 14 manner or under ~~such~~ invoices ~~as to~~ that conceal the true cost, discounts, or terms of purchase, ~~and~~
 15 Further, the department or a court shall also receive and consider as bearing on the bona fides of such the
 16 cost evidence of the normal, customary, and prevailing terms and discounts in connection with other sales
 17 of a similar nature in ~~the trade area of~~ this state.

18 (2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer
 19 ~~thereof of the merchandise~~ for display, advertising, promotion purposes, any type of discount, or otherwise
 20 ~~shall~~ may not be considered in determining the cost of cigarettes to the retailer or wholesaler."

21
 22 **Section 8.** Section 16-10-301, MCA, is amended to read:

23 **"16-10-301. Sales below cost — evidence of unlawful intent.** (1) ~~It shall be~~ is unlawful and a
 24 violation of this chapter:

25 ~~(a)(1)~~ for any retailer or wholesaler ~~with intent to injure a competitor or substantially lessen~~
 26 ~~competition to:~~

27 ~~(i)(a)~~ advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to ~~such a~~
 28 retailer or wholesaler, ~~as the case may be;~~

29 ~~(ii)(b)~~ offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a
 30 concession of any kind ~~or nature whatever~~ in connection with the sale of cigarettes ~~which~~ that are sold by

1 ~~said~~ the wholesaler or retailer in the ordinary course of ~~his~~ trade or business if ~~such~~ the rebate or
 2 concession offered or given in connection with the sale of cigarettes is not offered or given by the
 3 wholesaler or retailer in the same ratio with respect to all other merchandise to which ~~such~~ the rebate or
 4 concession may lawfully be given;

5 ~~(b)(2)~~ for any retailer to:

6 ~~(i)(a)~~ induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at
 7 a price less than the "cost to the wholesaler", as defined in this chapter;

8 ~~(ii)(b)~~ induce or attempt to induce or procure or attempt to procure any rebate or concession of any
 9 kind or nature whatever in connection with the purchase of cigarettes.

10 ~~(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at~~
 11 ~~less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an~~
 12 ~~offer of a concession or the giving of a concession of any kind or nature whatever in connection with the~~
 13 ~~sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or~~
 14 ~~business, if such rebate or concession offered or given in connection with the sale of cigarettes is not~~
 15 ~~offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to~~
 16 ~~which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the~~
 17 ~~procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler~~
 18 ~~or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen~~
 19 ~~competition."~~

20

21 **Section 9.** Section 16-10-303, MCA, is amended to read:

22 **"16-10-303. Cost survey as evidence.** ~~Where~~ When a cost survey pursuant to cost accounting
 23 practices, ~~including those defined in 16-10-103(6)(a),~~ used for income tax reporting purposes has been
 24 made by the department, ~~or by a trade association, or other~~ an industry group, a wholesaler, or a retailer
 25 ~~for the trading area in which the offense is committed~~ to establish either the lowest "cost to the retailer"
 26 ~~and~~ or the lowest "cost to the wholesaler", ~~said~~ or both, for the state, the cost survey ~~shall be considered~~
 27 ~~to be~~ is competent evidence for use in proving the cost to the person complained against within the
 28 provisions of this chapter."

29

30 **Section 10.** Section 16-10-402, MCA, is amended to read:

1 **"16-10-402. Injunctive and other civil relief.** (1) In addition to ~~penalties~~ the penalty provided by
 2 ~~16-10-401~~ 16-10-403, any person injured or any trade association that represents a person injured by any
 3 violation of this chapter ~~or any trade association which is representative of such a person~~ may maintain an
 4 action in any court of equitable jurisdiction to prevent, restrain, or enjoin ~~such~~ the violation. If in ~~such~~ the
 5 action a violation of this chapter ~~shall be~~ is established, the court shall enjoin and restrain or otherwise
 6 prohibit ~~such~~ the violation and, in addition ~~thereto~~, shall assess in favor of the plaintiff and against the
 7 defendant the costs of the suit and reasonable ~~attorney's fee~~ attorney fees. In ~~such~~ the action, it ~~shall~~ is
 8 not ~~be~~ necessary that actual damages to the plaintiff be alleged or proved, but ~~where~~ when alleged and
 9 proved, the plaintiff in ~~said~~ the action, in addition to ~~such~~ injunctive relief and fees and costs of suit, ~~shall~~
 10 be is entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

11 (2) ~~In the event no~~ If injunctive relief is not sought or required, any person injured by a violation
 12 of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The
 13 measure of damages in ~~such~~ the action ~~shall be~~ is the same as prescribed in subsection (1) of this section."
 14

15 **Section 11.** Section 16-10-403, MCA, is amended to read:

16 **"16-10-403. Revocation or suspension of license ~~or permit~~ -- civil penalty.** (1) The department ~~is~~
 17 ~~given full power and authority to~~ may revoke ~~or~~ suspend the license ~~of, or permit of~~ impose a civil penalty
 18 not to exceed \$500 on, or order any combination of revocation, suspension, and penalty to be imposed on
 19 ~~any wholesale or retail cigarette dealer in the state of Montana~~ licensed wholesaler or retailer upon
 20 sufficient cause appearing of the violation of this chapter or upon the failure of ~~such~~ the licensee ~~or~~
 21 ~~permittee~~ to comply with any of the provisions of this chapter.

22 (2) ~~No~~ A license ~~or licenses shall~~ may not be suspended or revoked except upon notice to the
 23 licensee and after a hearing prescribed by ~~said~~ the department at its principal office. The department, upon
 24 a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule
 25 promulgated ~~thereunder~~ under this chapter, shall, in the case of ~~the~~ a first offender, suspend the license
 26 ~~or licenses~~ of the ~~said~~ the licensee for a period of not less than 5 or more than 20 consecutive business
 27 days ~~and, in~~ impose a civil penalty in an amount not to exceed \$500, or order both the suspension and the
 28 penalty. In the case of a second or plural offender, the department shall suspend said the license or
 29 ~~licenses~~ for a period of not less than 20 consecutive business days or more than 12 months, ~~and in~~ impose
 30 a civil penalty in an amount not to exceed \$500, or order both the suspension and the penalty. In the event

1 the department finds the offender has been guilty of willful and persistent violations, it may revoke ~~such~~
 2 the licensee's license or licenses and, in its discretion, may impose a civil penalty in an amount not to
 3 exceed \$500.

4 (3) Any person whose license ~~or licenses have~~ has been ~~so~~ revoked may apply to the department
 5 at the expiration of 1 year for a reinstatement of ~~his~~ the license ~~or licenses~~. ~~Such~~ The license ~~or licenses~~
 6 may be reinstated by the department if it ~~shall appear~~ appears to the satisfaction of ~~said~~ the department
 7 that the licensee will comply with the provisions of this chapter and the rules promulgated ~~thereunder~~ under
 8 this chapter.

9 (4) ~~No~~ A person whose license has been suspended or revoked ~~shall~~ may not sell cigarettes or
 10 permit cigarettes to be sold during the period of ~~such~~ the suspension or revocation on the premises
 11 occupied by ~~him~~ the person or upon other premises controlled by ~~him~~ the person or others or in any other
 12 manner or form whatever. ~~Not shall any~~ A disciplinary proceedings or action ~~be~~ is not barred or abated by
 13 the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the
 14 provisions of the "cigarette tax law", as provided in [articles of chapter 11 of the Revised Codes of
 15 Montana, 1947].

16 (5) Any determination by the department and any order of suspension or revocation of a license
 17 ~~or licenses thereunder~~ or refusal to reinstate a license ~~or licensee~~ after revocation ~~shall be~~ is reviewable by
 18 the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction."
 19

20 **Section 12.** Section 16-11-102, MCA, is amended to read:

21 **"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the
 22 context requires otherwise:

23 (a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size
 24 or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the
 25 wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

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

27 (c) "Person" means an individual, firm, ~~fiduciary,~~ partnership, corporation, ~~trust, organization, or~~
 28 association, company, or other business entity, however formed.

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

30 (a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes

1 through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that ~~he~~ the person
 2 operates for a profit in premises or locations other than ~~his~~ the person's own. That person must be treated
 3 as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a
 4 retailer.

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

6 (c) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under
 7 the provisions of this part.

8 (d) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette vendor,
 9 who is licensed under the provisions of this part.

10 (e) "Licensed subjobber" means a subjobber licensed under the provisions of this part; The person
 11 ~~he~~ must be treated as a wholesaler.

12 (f) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

13 (g) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose
 14 of resale.

15 ~~(g)~~(h) "Public warehouses" means agents or representatives of manufacturers who receive
 16 cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

17 ~~(h)~~(i) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

18 ~~(i)~~(j) "Retailer" means a person, ~~other than a wholesaler, subjobber, or cigarette vendor, who is~~
 19 ~~engaged in the business~~ who operates a store, stand, booth, concession, or other outlet for the purpose
 20 of selling cigarettes at retail.

21 ~~(j)~~(k) "Sale" ~~and or "sell" mean~~ means any transfer of cigarettes ~~by sale, as defined by 30-2-106,~~
 22 ~~or by gift, barter, or exchange for consideration, exchange, barter, gift, offer for sale, or distribution in any~~
 23 manner or by any means.

24 (l) "Sole distributor" means a person who either causes a unique brand of cigarettes to be
 25 manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes
 26 or is the exclusive distributor of a brand of cigarettes within the continental United States.

27 ~~(k)~~(m) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the
 28 Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or
 29 cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute
 30 those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public.

1 If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client
 2 whose business is controlled directly or indirectly through consanguinity or affinity with the owner or
 3 employer for that retail business, the license is considered to have been used or to be intended to be used
 4 in violation of this part.

5 ~~(n)~~ "Wholesaler" means ~~any a person who services retail outlets by maintaining an established~~
 6 ~~place of business for the purchase of cigarettes and who: resident in this state who brings or causes to be~~
 7 ~~brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells,~~
 8 ~~or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within~~
 9 ~~this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes~~
 10 ~~within this state.~~

11 (i) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or
 12 (ii) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the
 13 purpose of selling cigarettes to retailers."

14
 15 **Section 13.** Section 16-11-111, MCA, is amended to read:

16 **"16-11-111. Cigarette sales tax -- exemption for sale to tribal member.** (1) A tax on the purchase
 17 of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is
 18 imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents
 19 on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a
 20 tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

21 (2) The tax imposed in subsection (1) does not apply to ~~a cigarette sale if the sale is made:~~

22 ~~(a) by a retailer whose establishment is located within the boundaries of an Indian reservation~~
 23 ~~located in Montana; and~~

24 ~~(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation~~
 25 ~~where the retail establishment is located quota cigarettes.~~

26 (3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all
 27 cigarettes entering a Montana Indian reservation.

28 (4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes
 29 to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund
 30 or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized

1 Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within
2 1 year of the shipment date forfeits the refund or credit.

3 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system
4 of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for
5 approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on
6 whether the quota, as established in a cooperative agreement between the department and an Indian tribe
7 or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon
8 providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation
9 selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a
10 credit or refund. Once the quota has been filled, the department shall immediately notify all affected
11 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will
12 not be honored for the remainder of the quota period. Quota allocations are not transferable between quota
13 periods or between reservations.

14 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming
15 the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax
16 due on the quota allocation. The department shall determine the amount of refunds or credits for each
17 Indian reservation at the beginning of each fiscal year, using the most recent census data available from
18 the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian
19 reservation."

20

21 **Section 14.** Section 16-11-113, MCA, is amended to read:

22 "**16-11-113. Tax insignia.** (1) Except as provided in this section, the ~~distributor or dealer~~ wholesaler
23 of any cigarettes shall cause to be securely affixed to the cigarettes the required insignia denoting the
24 applicable tax. ~~A person specifically exempted under the provisions of 16-11-132(2) is not considered to~~
25 ~~be acting unlawfully under this section.~~

26 (2) The insignia must be properly applied prior to sale, under regulations that the department may
27 prescribe.

28 (3) ~~Wholesalers and retailers~~ Retailers licensed under this part may buy, sell, or have in their
29 possession only cigarettes that have on each package the insignia provided for in this part. The insignia
30 provided for in this part may be sold only to and must be affixed only by licensed wholesalers ~~and licensed~~

1 ~~retailers.~~

2 (4) If any cigarettes without the insignia affixed are found in the place of business of any
3 unlicensed wholesaler, retailer, or other person, the presumption is that the cigarettes are kept in that place
4 of business in violation of the provisions of this part.

5 (5) ~~Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before~~
6 ~~the sale of the cigarettes by a wholesaler~~ This section does not apply to a wholesaler who has cigarettes
7 in possession that are either to be shipped or consigned to an Indian tribe that has entered into a
8 cooperative agreement with the state or to a military reservation."

9

10 **Section 15.** Section 16-11-114, MCA, is amended to read:

11 **"16-11-114. Insignia discount.** ~~Every~~ Each licensed wholesaler ~~and licensed retailer shall be is~~
12 entitled to purchase ~~said an~~ insignia at full face value less the following percentage of the face value upon
13 payment ~~therefor~~ for the insignia as defrayment of the costs of affixing insignia and precollecting ~~such the~~
14 tax on behalf of the state of Montana:

- 15 (1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;
16 (2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and
17 (3) 3% for purchases in excess of 5,160 cartons in any calendar month."

18

19 **Section 16.** Section 16-11-115, MCA, is amended to read:

20 **"16-11-115. Tax meter machine -- tax stamp-applying machine -- purchase of stamps.** (1) The
21 department may authorize any wholesaler ~~or retailer~~ of cigarettes licensed under this part to use a tax meter
22 machine to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state.
23 The insignia must be one approved by the department. Each package of cigarettes imported into or
24 delivered or sold in this state must be marked with the proper insignia of the tax-stamping meter, and
25 ~~thereafter~~ any original package of cigarettes so marked may be lawfully possessed and sold within the state
26 by any wholesaler ~~or retailer~~ licensed under this part. The department shall supervise and check the
27 operation of the tax meter machines. Before using the machine, the operator of the machine shall take the
28 machine's meter to the county treasurer of the county in which the machine is operated. The county
29 treasurer shall set the meter for the number of packages specified and required by the operator. Prior to
30 setting the meter, the county treasurer shall charge the operator the amount of money proper for the

1 setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this
 2 amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The
 3 county treasurer shall report to the department on forms prescribed by it the name of the licensed
 4 wholesaler ~~or licensed retailer~~ and the number of packages for which the meter was set and shall forward
 5 to the department any amounts collected from the licensee.

6 (2) (a) The department may authorize a licensed wholesaler ~~or licensed retailer~~ to affix tax stamps
 7 to packages of cigarettes with a heat-applied machine approved by the department. The department shall
 8 supervise and check the operation of the stamp-applying machine.

9 (b) Tax stamps applied as provided in this subsection must be purchased from the department, and
 10 payment for the stamps must accompany the order unless the department has allowed the purchaser to
 11 delay payment as provided in 16-11-117."

12
 13 **Section 17.** Section 16-11-116, MCA, is amended to read:

14 **"16-11-116. Resale of insignia prohibited -- rebate.** A wholesaler ~~or retailer~~ may not resell to any
 15 other wholesaler ~~or retailer~~ any insignia purchased ~~by him~~ from the department. A wholesaler ~~or retailer~~
 16 who has on hand any meter settings or tax insignia at the time of discontinuing ~~his~~ the business of selling
 17 cigarettes may apply to the department and be paid the face value of the meter settings or tax insignia less
 18 the amount of the expense defrayment allowed by 16-11-114."

19
 20 **Section 18.** Section 16-11-117, MCA, is amended to read:

21 **"16-11-117. When payment for insignia due.** The department ~~shall~~ may permit a licensed
 22 wholesaler ~~or licensed retailer~~ to pay for the insignia purchased, or affixation of insignia, within 30 days,
 23 ~~after the date of purchase and shall require such licensee to~~ To be eligible to defer payment, a wholesaler
 24 shall file with the department either a surety bond issued by a surety company approved by the state
 25 department of insurance as to solvency and responsibility and authority to transact business in the state
 26 or other cash security, as approved by the department, for such the amount as that the department may
 27 fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period
 28 in the previous calendar year; ~~provided, however, that any.~~ Any newly licensed wholesaler ~~or licensed~~
 29 ~~retailer~~ shall pay on a cash basis for 1 complete calendar year, after which the department may permit ~~him~~
 30 the wholesaler 30 days to pay for the purchase or affixation of insignia and shall require a bond or security

1 as ~~hereinabove~~ provided in this section."

2

3 **Section 19.** Section 16-11-118, MCA, is amended to read:

4 **"16-11-118. Records of ~~tax meter users and stampers~~ wholesalers.** All ~~tax meter users and~~
 5 ~~stampers~~ wholesalers shall keep for 5 years all invoices of cigarettes purchased and imported ~~by them~~, all
 6 receipts issued ~~by them~~ and insignia purchased, and an accurate record of all sales of cigarettes ~~by the tax~~
 7 ~~meter users or stampers~~, showing the name and address of each purchaser, the date of sale, the quantity
 8 of each kind sold, the name of any carrier, the shipping point, and the destination. ~~The tax meter users or~~
 9 ~~stampers~~ A wholesaler shall permit the department and the department of justice and their assistants,
 10 authorized agents, or representatives to examine all ~~taxable items of~~ cigarettes, invoices, receipts, books,
 11 paper, memoranda, and records as may be necessary to determine compliance with this chapter. ~~whether~~
 12 ~~the tax meter machine or tax stamp applying machine has been used as required or the insignia required~~
 13 ~~by this part had been purchased and used or to determine the amount of the tax as may be due or unpaid."~~

14

15 **Section 20.** Section 16-11-121, MCA, is amended to read:

16 **"16-11-121. Vending machines not places of business.** Cigarette vending machines ~~shall~~ may not
 17 be considered as places of business per se, but a report of each ~~and all machines~~ machine shall must be
 18 made on forms prescribed by the department, ~~which shall state~~ The form must include the name and
 19 address of the cigarette vendor, the assigned location of each machine, with best machine identification
 20 available, type of business, and ~~such~~ other information ~~as~~ that the department may require for proper
 21 administration of this part."

22

23 **Section 21.** Section 16-11-131, MCA, is amended to read:

24 **"16-11-131. Transporting cigarettes without insignia a misdemeanor -- invoices and delivery tickets**
 25 **required -- stop and inspection authorized.** (1) It is unlawful for a person to transport into, receive, carry,
 26 or move from place to place within this state, except in the course of interstate commerce, any cigarettes
 27 that do not bear the insignia (stamps) required by this part, ~~except for a person specifically exempted in~~
 28 ~~16-11-132(2).~~

29 (2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets
 30 for the cigarettes that show the name and address of the consignor or seller, the name of the consignee

1 or purchaser, and the quantity and brands of the cigarettes being transported. ~~If the cigarettes are~~
 2 ~~consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by~~
 3 ~~16-11-132 to possess unstamped cigarettes in this state.~~

4 (b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141,
 5 16-11-147, 16-11-158, and this section if:

6 (i) there are no invoices or delivery tickets;

7 (ii) the name or address of the consignee or purchaser is falsified; or

8 (iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

9 (3) Transportation of cigarettes from a point outside the state to a point in another state is not a
 10 violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices
 11 or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state
 12 consignee or purchaser.

13 (4) If the department, its authorized agent, the department of justice, or a peace officer of the state
 14 has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this
 15 section, the department, its agent, the department of justice, or a peace officer may stop and inspect the
 16 vehicle.

17 (5) A person violating the provisions of this section is guilty of a misdemeanor."
 18

19 **Section 22.** Section 16-11-132, MCA, is amended to read:

20 "**16-11-132. Unlawful to sell cigarettes without valid license -- exceptions.** (1) ~~No~~ A person ~~shall~~
 21 may not sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless ~~his~~ the
 22 person's license is current and valid under the provisions of this part.

23 (2) ~~No~~ A person ~~shall~~ may not sell, offer to sell, or possess with intent to sell any cigarettes, at
 24 wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under
 25 this part or who is not licensed by the state in which ~~he~~ the person sells, offers to sell, or intends to sell
 26 cigarettes, ~~except that. However, a resident wholesaler, resident subjobber, or retailer licensed under the~~
 27 provisions of this chapter may sell cigarettes to ~~a resident or nonresident~~ any person, wholesaler,
 28 subjobber, or retailer not licensed under this chapter if:

29 (a) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer is exempt from state
 30 cigarette taxation provisions;

1 (b) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer furnishes
2 documentary evidence ~~that he is exempt~~ of exemption from state cigarette taxation provisions; and

3 (c) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer signs a receipt of
4 purchase for any cigarettes evidencing ~~that he is exempt~~ an exemption from state cigarette taxation
5 provisions.

6 (3) ~~Any~~ A person violating the provisions of this section is guilty of a misdemeanor and shall be
7 punished as ~~hereinafter~~ provided in this part, and all cigarettes in ~~his~~ the person's possession ~~shall~~ must
8 be seized and forfeited to the state."
9

10 **Section 23.** Section 16-11-133, MCA, is amended to read:

11 "**16-11-133. Sale and use of cigarettes without insignia unlawful.** ~~Every~~ A person who sells any
12 package of cigarettes ~~which~~ that does not bear the insignia required by this part and ~~every~~ a person who
13 uses or consumes a cigarette within this state, taken from a package ~~which~~ that does not bear the required
14 insignia, is guilty of a misdemeanor ~~and shall be punished as hereinafter provided, except that a person~~
15 ~~specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully~~
16 ~~under this section.~~"
17

18 **Section 24.** Section 16-11-143, MCA, is amended to read:

19 "**16-11-143. Penalty for unpaid cigarette tax.** (1) If ~~any~~ a person fails or refuses to pay the tax
20 required by this part when due, the department shall proceed to determine the tax due from ~~such~~ the
21 information ~~as~~ that the department can obtain and shall assess the tax ~~so determined~~ plus a penalty that
22 is the greater of 5% of the tax or \$50 against ~~such~~ the person and notify ~~him~~ the person of the amount.
23 ~~After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or \$5~~
24 ~~per day for each day after the date of such notice, whichever is greater.~~

25 (2) In the case of any violation of this chapter, the department ~~shall be entitled to~~ may sue, in the
26 district where the department maintains its principal office, for the amount of the unpaid tax, penalty, and
27 costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty.
28 ~~Where~~ When the court finds that the failure to pay the tax has been willful, the court ~~must~~ shall, in
29 addition, assess damages in treble the amount of the tax found to be due."
30

1 **Section 25.** Section 16-11-144, MCA, is amended to read:

2 **"16-11-144. Revocation or suspension of license.** (1) The department may revoke or suspend the
3 license of any wholesaler, subjobber, retailer, or cigarette vendor for failure to comply with any provision
4 of this part, ~~or of The Montana Cigarette Sales Act (Title 16, chapter 10) and with any lawful, or any rule~~
5 of the department made pursuant to ~~said those~~ laws.

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

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

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

15

16 **Section 26.** Section 16-11-145, MCA, is amended to read:

17 **"16-11-145. Place where violations committed a public nuisance.** ~~Every~~ Each person having
18 possession or control of or who maintains a building or place where cigarettes are sold in violation of this
19 part or who permits the ~~same to be done~~ cigarettes to be sold in violation of this part in any place or
20 building possessed, controlled, or maintained by ~~him~~ that person is guilty of maintaining and keeping a
21 nuisance, ~~and the~~. The building or place so used, together with the personal property and fixtures used
22 in connection therewith, ~~shall be deemed~~ is considered a nuisance. ~~Such~~ The person ~~shall~~ must be enjoined
23 and ~~such~~ the building or place, personal property, and fixtures abated as a nuisance at the instance of the
24 state."

25

26 **Section 27.** Section 16-11-148, MCA, is amended to read:

27 **"16-11-148. Violation a misdemeanor unless otherwise provided -- penalties.** Unless ~~hereinbefore~~
28 ~~expressly~~ otherwise provided, the violation of any provision of this part ~~shall constitute~~ constitutes a
29 misdemeanor ~~and any~~. A person violating any ~~such~~ provision of this part shall be punished by a fine of not
30 less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more

1 than 6 months, ~~or by both, such fine and imprisonment and, if such~~ If the person is the holder of a license
 2 issued under this part, ~~such the license shall~~ must be revoked by the department for ~~a period of 1 year."~~

3
 4 **Section 28.** Section 16-11-149, MCA, is amended to read:

5 **"16-11-149. Hearings before state tax appeal board.** ~~Any A~~ person aggrieved by any action of the
 6 department or its authorized agents under the provisions of this part, except for a revocation of a license
 7 pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing
 8 within 30 days after the action of the department or its authorized agents. The board shall promptly
 9 consider the application, set the application for hearing, and notify the applicant of the time and place fixed
 10 for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing
 11 or rehearing, the board may make any further or other order in the premises as it may consider proper and
 12 lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a
 13 contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with
 14 the administration of this part upon at least 10 days' notice in writing to the person or persons to be
 15 investigated."

16
 17 **Section 29.** Section 16-11-201, MCA, is amended to read:

18 **"16-11-201. Definitions.** As used in this part, the following definitions ~~shall~~ apply, unless the
 19 context requires otherwise:

20 (1) ~~The word "retailer"~~ "Retailer" ~~shall mean~~ means any person other than a wholesaler who is
 21 engaged in the business of selling tobacco products to the ultimate consumer.

22 (2) ~~The words "sale"~~ "Sale" or "sell" ~~shall mean and include~~ means any transfer of tobacco
 23 products for a consideration, exchange, barter, gift, offer for sale, ~~and~~ or distribution, in any manner or by
 24 any means ~~whatever, of tobacco products other than cigarettes.~~

25 (3) "Tobacco product" means a substance other than cigarettes that is intended for human
 26 consumption and that contains tobacco.

27 ~~(3)(4)~~ (4) ~~The words "wholesale price"~~ "Wholesale price" means the established price for
 28 which a manufacturer sells a tobacco product ~~other than cigarettes~~ to a wholesaler or ~~unclassified acquirer~~
 29 any other person before any discount or other reduction.

30 ~~(4) (5)~~ (5) ~~The word "wholesaler"~~ "Wholesaler" means any person who purchases tobacco

1 products ~~other than cigarettes~~ directly from the manufacturer or ~~who purchases tobacco products other~~
 2 ~~than cigarettes~~ from any other person who purchases from the manufacturer and who acquires ~~such the~~
 3 products for the ~~purpose of bona fide sales~~ sale to retail dealers or ~~who services retail outlets by the~~
 4 ~~maintenance of an established place of business for the purchase of tobacco products other than cigarettes,~~
 5 ~~including but not limited to the maintenance of warehousing facilities for the storage and distribution of~~
 6 ~~tobacco products."~~

7
 8 **Section 30.** Section 16-11-202, MCA, is amended to read:

9 **"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate of**
 10 **tax.** (1) All taxes paid pursuant to the provisions of this section ~~shall be exclusively presumed~~ are
 11 considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and
 12 facility only. When the tax is paid by any other person, ~~such the~~ payment ~~shall be~~ is considered as an
 13 advance payment and ~~shall~~ must be added to the price of tobacco products ~~other than cigarettes~~ and
 14 recovered from the ultimate consumer or user. Any person selling tobacco products ~~other than cigarettes~~
 15 at retail shall state or separately display in the premises where ~~such the~~ products are sold a notice of the
 16 tax included in the selling price and charged or payable pursuant to this section. The provisions of this
 17 section ~~shall in no way~~ do not affect the method of collection of ~~such the~~ tax as ~~hereinafter~~ provided in this
 18 part.

19 (2) ~~There is hereby levied, imposed, and assessed upon tobacco products other than cigarettes sold~~
 20 ~~or possessed in this state and there shall~~ must be collected and paid to the state of Montana a tax of 12
 21 1/2% of the wholesale price of ~~such all tobacco~~ products to the wholesaler, ~~excepting therefrom such~~
 22 ~~products as may be.~~ Tobacco products shipped from Montana and destined for retail sale and consumption
 23 outside the state of Montana are not subject to this tax."

24
 25 **Section 31.** Section 16-11-203, MCA, is amended to read:

26 **"16-11-203. Wholesaler to precollect tax.** The tax imposed ~~shall~~ must be precollected and paid by
 27 the wholesaler to the department prior to the sale of tobacco products ~~other than cigarettes to the~~
 28 ~~purchaser from the wholesaler."~~

29
 30 **Section 32.** Section 16-11-204, MCA, is amended to read:

1 "16-11-204. **Wholesaler's sale without tax prepayment a misdemeanor -- penalty.** ~~Any A~~
 2 wholesaler who ~~shall sell~~ sells any tobacco products ~~other than cigarettes~~ without first making payment
 3 of the tax provided for by this part ~~in the manner and~~ or at the time specified shall be guilty of a
 4 misdemeanor and ~~further shall~~ must be enjoined by an action pursued in the district court of ~~the county of~~
 5 Lewis and Clark County, Montana, from making further sale of tobacco products ~~other than cigarettes~~ for
 6 a period not less than 1 month or more than 1 year."

7

8 **Section 33.** Section 16-11-308, MCA, is amended to read:

9 "16-11-308. **Penalties.** (1) Failure to obtain a license as required by 16-11-303 or to post signs as
 10 provided in 16-11-304 is punishable by a civil penalty of \$100.

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

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

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

23 (5) A justice's court has civil jurisdiction over a civil complaint regarding a violation of 16-11-303,
 24 16-11-304, or 16-11-305(1) and may impose the penalty prescribed in subsection (2) upon a finding by
 25 a preponderance of the evidence that the violation occurred. The county attorney of the county in which
 26 a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of
 27 the penalty."

28

29 NEW SECTION. **Section 34. Codification instruction.** [Section 1] is intended to be codified as an
 30 integral part of Title 16, chapters 10 and 11, part 1, and the provisions of Title 16, chapters 10 and 11,

1 part 1, apply to [section 1].

2

3 NEW SECTION. Section 35. Repealer. Section 16-10-401, MCA, is repealed.

4

5 NEW SECTION. Section 36. Effective date. [This act] is effective July 1, 1995.

6

-END-

1 HOUSE BILL NO. 587

2 INTRODUCED BY QUILICI, STANG, GRADY, ELLIOTT, GAGE, MENAHAN, MCCANN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CIGARETTE AND TOBACCO LAWS IN
6 TITLE 16, CHAPTERS 10 AND 11, MCA; CLARIFYING PROVISIONS RELATING TO THE MONTANA
7 CIGARETTE SALES ACT, THE CIGARETTE SALES TAX, THE TAX ON TOBACCO PRODUCTS, AND THE
8 YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AMENDING SECTIONS 3-10-301, 16-10-102,
9 16-10-103, 16-10-104, 16-10-201, 16-10-204, 16-10-301, 16-10-303, 16-10-402, 16-10-403,
10 16-11-102, 16-11-111, 16-11-113, 16-11-114, 16-11-115, 16-11-116, 16-11-117, 16-11-118,
11 16-11-121, 16-11-131, 16-11-132, 16-11-133, 16-11-143, 16-11-144, 16-11-145, 16-11-148,
12 16-11-149, 16-11-201, 16-11-202, 16-11-203, 16-11-204, AND 16-11-308, MCA; REPEALING SECTION
13 16-10-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

14

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

THERE ARE NO CHANGES IN THIS BILL AND IT WILL
NOT BE REPRINTED. PLEASE REFER TO SECOND
READING COPY (YELLOW) FOR COMPLETE TEXT.

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
April 7, 1995

MR. PRESIDENT:

We, your committee on Taxation having had under consideration HB 587 (third reading copy -- blue), respectfully report that HB 587 be amended as follows and as so amended be concurred in.

Signed: 
Senator Gerry Devlin, Chair

That such amendments read:

1. Page 23.


Following: line 3

Insert: "NEW SECTION. Section 36. Coordination instruction. If House Bill No. 539 is passed and approved and if it includes a section that amends 16-11-308 by imposing a tobacco education fee, then [sections 2 and 33 of this act], amending 3-10-301 and 16-11-308, respectively, are void."

Renumber: subsequent section

-END-

HB 587


Amd. Coord.
Sec. of Senate


Senator Carrying Bill

SENATE
801120SC.SRF

1 HOUSE BILL NO. 587

2 INTRODUCED BY QUILICI, STANG, GRADY, ELLIOTT, GAGE, MENAHAN, MCCANN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING CIGARETTE AND TOBACCO LAWS IN
6 TITLE 16, CHAPTERS 10 AND 11, MCA; CLARIFYING PROVISIONS RELATING TO THE MONTANA
7 CIGARETTE SALES ACT, THE CIGARETTE SALES TAX, THE TAX ON TOBACCO PRODUCTS, AND THE
8 YOUTH ACCESS TO TOBACCO PRODUCTS CONTROL ACT; AMENDING SECTIONS 3-10-301, 16-10-102,
9 16-10-103, 16-10-104, 16-10-201, 16-10-204, 16-10-301, 16-10-303, 16-10-402, 16-10-403,
10 16-11-102, 16-11-111, 16-11-113, 16-11-114, 16-11-115, 16-11-116, 16-11-117, 16-11-118,
11 16-11-121, 16-11-131, 16-11-132, 16-11-133, 16-11-143, 16-11-144, 16-11-145, 16-11-148,
12 16-11-149, 16-11-201, 16-11-202, 16-11-203, 16-11-204, AND 16-11-308, MCA; REPEALING SECTION
13 16-10-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

14

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

16

17 NEW SECTION. **Section 1. Licensure as both wholesaler and retailer allowed.** This chapter does
18 not prevent a person from being licensed as both a wholesaler and a retailer.

19

20 **Section 2.** Section 3-10-301, MCA, is amended to read:

21 **"3-10-301. Civil jurisdiction.** (1) Except as provided in ~~subsection (2) and in 3-11-103~~ and in
22 subsection (2) of this section, the justices' courts have jurisdiction:

23 (a) in actions arising on contract for the recovery of money only if the sum claimed does not
24 exceed \$5,000, exclusive of court costs;

25 (b) in actions for damages not exceeding \$5,000, exclusive of court costs, for taking, detaining,
26 or injuring personal property or for injury to real property when no issue is raised by the verified answer of
27 the defendant involving the title to or possession of the real property;

28 (c) in actions for damages not exceeding \$5,000, exclusive of court costs, for injury to the person,
29 except that, in actions for false imprisonment, libel, slander, criminal conversation, seduction, malicious
30 prosecution, determination of paternity, and abduction, the justice of the peace does not have jurisdiction;

1 (d) in actions to recover the possession of personal property if the value of the property does not
2 exceed \$5,000;

3 (e) in actions for a fine, penalty, or forfeiture not exceeding \$5,000, imposed by a statute or an
4 ordinance of an incorporated city or town when no issue is raised by the answer involving the legality of
5 any tax, impost, assessment, toll, or municipal fine;

6 (f) in actions upon bonds or undertakings conditioned for the payment of money when the sum
7 claimed does not exceed \$5,000, though the penalty may exceed that sum;

8 (g) to take and enter judgment for the recovery of money on the confession of a defendant when
9 the amount confessed does not exceed \$5,000, exclusive of court costs;

10 (h) to issue temporary restraining orders as provided in 40-4-121(3);

11 (i) in actions initiated by civil complaints for violations of 16-11-305(1).

12 (2) Justices' courts do not have jurisdiction in civil actions that might result in a judgment against
13 the state for the payment of money."
14

15 **Section 3.** Section 16-10-102, MCA, is amended to read:

16 "16-10-102. **Declaration of policy.** The advertising, offering for sale, or sale of cigarettes below
17 cost in the retail and wholesale trades ~~with the intent of injuring competitors or lessening competition~~ is
18 an unfair and deceptive business practice. It is the policy of the state to promote the public welfare, and
19 it is the purpose of this chapter to carry out that policy in the public interest, stabilize the sale of cigarettes,
20 and maximize and protect the state revenues from this source."
21

22 **Section 4.** Section 16-10-103, MCA, is amended to read:

23 "16-10-103. **Definitions.** When used in this chapter, ~~the following words and phrases shall have~~
24 ~~the meaning ascribed to them in this section,~~ except where when the context clearly indicates a different
25 meaning, the following definitions apply:

26 (1) ~~"Administrative agency" or "department" shall mean~~ "Department" means the state department
27 ~~of revenue of Montana provided for in 2-15-1301 and, where~~ when the meaning of the context so requires,
28 ~~all deputies and includes its employees duly authorized by such department.~~

29 ~~(2) "Basic cost of cigarettes" shall mean~~ means the invoice list cost of cigarettes to the retailer or
30 ~~wholesaler, as the case may be, or the replacement cost of cigarettes to the retailer or wholesaler, as the~~

1 ~~case may be, in the quantity last purchased, whichever is lower~~ as reported to the department by the
 2 manufacturer without any deductions for discounts or taxes of any kind.

3 ~~(3)~~ (2) "Business day" ~~shall mean~~ means any day other than a Sunday or a legal holiday.

4 ~~(4)~~ (3) "Cigarettes" ~~shall mean~~ means any roll for smoking made wholly or in part of tobacco,
 5 irrespective of size or shape and whether or not ~~such~~ the tobacco is flavored, adulterated, or mixed with
 6 any other ingredient, the wrapper or cover of which is made of nontobacco paper or any other substance
 7 or material except tobacco.

8 ~~(5)(a)~~ (4)(a) The term "cost to the retailer" ~~shall mean~~ means the "~~basic cost of cigarettes~~" to the
 9 retailer cost to the wholesaler from whom the cigarettes were purchased by the retailer plus the "cost of
 10 doing business by the retailer" as evidenced by the standards and methods of accounting regularly
 11 employed by the retailer in ~~his~~ the retailer's determination of costs for income tax reporting purposes for
 12 the total operation of ~~his~~ the retailer's establishment. Cost of doing business by the retailer includes and
 13 ~~shall include within said costs,~~ without limitation;

14 (i) labor costs (including salaries of executives and officers);

15 (ii) rent;

16 (iii) depreciation;

17 (iv) selling costs;

18 (v) maintenance of equipment;

19 (vi) delivery costs;

20 (vii) all types of licenses;

21 (viii) all types of business taxes;

22 (ix) all types of insurance, ~~and;~~

23 (x) all types of advertising, ~~including;~~

24 (xi) any rebates, patronage dividends, or concessions, no matter how defined, ~~and;~~

25 (xii) expenses prior to opening for business, including all startup costs, land acquisition costs,
 26 construction costs, costs for marketing studies, and similar expenses;

27 (xiii) any district, central, regional, and national administrative and operation costs and expenses;

28 and

29 (xiv) ~~any and~~ all other indirect or overhead costs with respect to the operation of the ~~establishment~~
 30 business of the retailer;

1 **(b) The cost of doing business by the retailer must be** expressed as a percentage and applied to
 2 the "~~basic costs of cigarettes~~"; ~~provided, however, that any~~ cost to the wholesaler from whom the
 3 cigarettes were purchased.

4 **(c) A retailer who purchases directly from the a** manufacturer or from any other person at or at less
 5 than or about the price normally and usually charged for purchases in wholesale quantities shall, in
 6 determining "the cost to the retailer" ~~pursuant to this subsection~~, add the "cost of doing business by the
 7 wholesaler", as determined in subsection ~~(6)(b) (5)(b)~~, to the "basic cost of cigarettes" to ~~said~~ the retailer,
 8 as well as the "cost of doing business by the retailer".

9 ~~(b)(d)~~ **(d)** In the absence of the filing with the department of satisfactory proof of a lesser or higher
 10 cost of doing business by the retailer making the sale, the "cost of doing business by the retailer" ~~shall be~~
 11 is presumed to be 10% of the "basic cost of cigarettes" to the retailer cost to the wholesaler.

12 ~~(e) In the absence of the filing with the department of satisfactory proof of a lesser or higher cost~~
 13 ~~of doing business, the "cost of doing business by the retailer" who, in connection with the retailer's~~
 14 ~~purchase, received not only the discounts ordinarily allowed upon purchases by a retailer but also, in whole~~
 15 ~~or part, the discounts ordinarily allowed upon purchases by a wholesaler shall be presumed to be 10% of~~
 16 ~~the sum of the "basic cost of cigarettes" and the "cost of doing business by the wholesaler".~~

17 ~~(6)(a) (5)(a)~~ **(5)(a)** The term "cost to the wholesaler" ~~shall mean~~ means the "basic cost of cigarettes"
 18 ~~to purchased by the wholesaler from a manufacturer plus the "cost of doing business by the wholesaler"~~
 19 as evidenced by the standards and methods of accounting regularly employed by the wholesaler in ~~his~~ the
 20 wholesaler's determination of costs for income tax reporting purposes for the total operation of ~~his~~
 21 establishment and shall include within said costs, the wholesaler's business. The cost of doing business
 22 by the wholesaler includes, without limitation_{7i}:

23 **(i)** labor costs (including salaries of executives and officers)_{7i};

24 **(ii)** rent_{7i};

25 **(iii)** depreciation_{7i};

26 **(iv)** selling costs_{7i};

27 **(v)** maintenance of equipment_{7i};

28 **(vi)** delivery costs_{7i};

29 **(vii)** all types of licenses_{7i};

30 **(viii)** all types of business taxes_{7i};

1 ~~(ix) all types of insurance, and;~~

2 ~~(x) all types of advertising;~~

3 ~~(xi) any rebates, patronage dividends, or concessions, no matter how defined;~~

4 ~~(xii) expenses prior to opening for business, including all startup costs, land acquisition costs,~~
5 ~~construction costs, costs for marketing studies, and similar expenses;~~

6 ~~(xiii) any district, central, regional, and national administrative and operation costs and expenses;~~

7 ~~and~~

8 ~~(xiv) all other indirect or overhead costs with respect to the operation of the wholesaler.~~

9 ~~(b) The cost of doing business by a wholesaler shall also include any rebates, patronage dividends,~~
10 ~~or concessions, no matter how defined, and any and all other indirect or overhead costs with respect to~~
11 ~~the operation of the establishment of the wholesaler, must be expressed as a percentage and applied to~~
12 ~~the "basic cost of cigarettes".~~

13 ~~(b)(c) In the absence of the filing with the department of proof which that the department declares~~
14 ~~to be satisfactory of a lesser or higher cost of doing business by the wholesaler making the sale, the "cost~~
15 ~~of doing business by the wholesaler" shall be is presumed to be 5% of the "basic cost of cigarettes" to the~~
16 ~~wholesaler plus cartage to the retail outlet if performed or paid for by the wholesaler, which. The cartage~~
17 ~~cost, in the absence of the filing with the department of satisfactory proof of a lesser or higher cost, shall~~
18 ~~be is considered to be 3/4 of 1% of the "basic cost of cigarettes" to the wholesaler.~~

19 ~~(6) "Department" means the department of revenue provided for in 2-15-1301 and, when the~~
20 ~~meaning of the context requires, includes its employees.~~

21 ~~(7) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose~~
22 ~~of resale.~~

23 ~~(7)(8) "Person" shall mean means and include any an individual, firm, association, company,~~
24 ~~partnership, corporation, for profit or nonprofit corporation, joint stock company, club, agency, syndicate,~~
25 ~~cooperative, municipal corporation or other political subdivision of this state, trust, receiver, trustee,~~
26 ~~fiduciary, and conservator or other business entity, however formed.~~

27 ~~(8)(9) "Retailer" shall mean means and include any a person who operates a store, stand, booth,~~
28 ~~or concession, or other outlet for the purpose of making sales of selling cigarettes at retail.~~

29 ~~(9)(10) "Sale" shall mean or "sell" means any transfer of cigarettes for a consideration, exchange,~~
30 ~~barter, gift, offer for sale, and or distribution, in any manner or by any means whatever.~~

1 ~~(10)(11)~~ "Sell at retail", "sale at retail", ~~and or~~ "retail sales" ~~shall mean and include~~ means any
2 transfer of title to cigarettes for a valuable consideration, made in the ordinary course of trade or usual
3 conduct of the ~~seller's~~ retailer's business, to the purchaser for consumption or use.

4 ~~(11)(12)~~ "Sell at wholesale", "sale at wholesale", ~~and or~~ "wholesale sales" ~~shall mean~~ means and
5 ~~include~~ includes any bona fide transfer of title to cigarettes for a valuable consideration, made in the
6 ordinary course of trade or in the usual conduct of the wholesaler's business, to a retailer for the purpose
7 of resale.

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

11 ~~(12)(a)(14)~~ "Wholesaler" ~~shall include any~~ means a person who services retail outlets by
12 maintaining an established place of business for the purchase of cigarettes and who:

13 ~~(i)(a)~~ purchases cigarettes directly from the a manufacturer for the purpose of selling cigarettes to
14 retailers; or

15 ~~(i)(b)~~ purchases cigarettes from any other person who purchases from the manufacturer and who
16 acquires such cigarettes solely a sole distributor, another wholesaler, or any other person for the purpose
17 of bona fide resale to retail dealers selling cigarettes to retailers; or

18 ~~(iii)~~ services retail outlets by the maintenance of an established place of business for the purchase
19 of cigarettes, including but not limited to the maintenance of warehousing facilities for the storage and
20 distribution of cigarettes.

21 ~~(b)~~ Nothing contained herein shall prevent a person from qualifying in different capacities as both
22 "wholesaler" and "retailer" under the applicable provisions of this chapter."

23
24 **Section 5.** Section 16-10-104, MCA, is amended to read:

25 **"16-10-104. Powers of department.** (1) In addition to the penalties and rights imposed and set
26 forth in ~~16-10-401 and~~ 16-10-402, the department shall enforce the provisions of this chapter.

27 (2) The department ~~shall have~~ has the power to adopt, amend, and repeal rules necessary to
28 enforce and administer the provisions of this chapter."

29
30 **Section 6.** Section 16-10-201, MCA, is amended to read:

1 **"16-10-201. Wholesaler-to-wholesaler sales.** When one wholesaler sells cigarettes to any other
 2 wholesaler, the former ~~shall~~ may not be required to include in ~~his~~ the selling price to the latter the "cost to
 3 the wholesaler", as provided by 16-10-103, except that no such sale ~~shall~~ may be made at a price less than
 4 the "basic cost of cigarettes", as defined in 16-10-103, but the latter wholesaler, upon resale to a retailer,
 5 ~~shall be~~ is considered to be the wholesaler governed by the provisions of 16-10-103~~(4)~~(5)."

6
 7 **Section 7.** Section 16-10-204, MCA, is amended to read:

8 **"16-10-204. Determining cost -- ~~fictitious prices below cost~~ -- free merchandise.** (1) In determining
 9 the "cost to the retailer" and the "cost to the wholesaler", the department or a court shall receive and
 10 consider ~~as bearing on the bona fides of such cost~~ evidence tending to show that any person ~~complained~~
 11 ~~against under any of the~~ accused of violating the provisions of this chapter purchased cigarettes, with
 12 respect to the sale of which complaint is made, at a fictitious price below either the cost to the retailer or
 13 the cost to the wholesaler, depending upon the status of the person accused, or upon terms or in ~~such~~ a
 14 manner or under ~~such~~ invoices ~~as to~~ that conceal the true cost, discounts, or terms of purchase, and
 15 Further, the department or a court shall also receive and consider ~~as bearing on the bona fides of such cost~~
 16 evidence of the normal, customary, and prevailing terms and discounts in connection with other sales of
 17 a similar nature in ~~the trade area of~~ this state.

18 (2) Merchandise given gratis or payment made to a retailer or wholesaler by the manufacturer
 19 ~~thereof of the merchandise~~ for display, advertising, promotion purposes, any type of discount, or otherwise
 20 ~~shall~~ may not be considered in determining the cost of cigarettes to the retailer or wholesaler."

21
 22 **Section 8.** Section 16-10-301, MCA, is amended to read:

23 **"16-10-301. Sales below cost -- ~~evidence of unlawful intent.~~** (1) It ~~shall be~~ is unlawful and a
 24 violation of this chapter:

25 ~~(a)~~(1) for any retailer or wholesaler ~~with intent to injure a competitor or substantially lessen~~
 26 ~~competition~~ to:

27 ~~(a)~~(a) advertise, offer to sell, or sell, at retail or wholesale, cigarettes at less than cost to ~~such~~ a
 28 retailer or wholesaler, ~~as the case may be;~~

29 ~~(b)~~(b) offer a rebate in price, give a rebate in price, offer a concession of any kind, or give a
 30 concession of any kind ~~or nature whatever~~ in connection with the sale of cigarettes ~~which~~ that are sold by

1 said the wholesaler or retailer in the ordinary course of his trade or business if ~~such~~ the rebate or
 2 concession offered or given in connection with the sale of cigarettes is not offered or given by the
 3 wholesaler or retailer in the same ratio with respect to all other merchandise to which ~~such~~ the rebate or
 4 concession may lawfully be given;

5 ~~(b)~~(2) for any retailer to:

6 ~~(i)~~(a) induce or attempt to induce or procure or attempt to procure the purchase of cigarettes at
 7 a price less than the "cost to the wholesaler", as defined in this chapter;

8 ~~(ii)~~(b) induce or attempt to induce or procure or attempt to procure any rebate or concession of any
 9 kind or nature whatever in connection with the purchase of cigarettes.

10 ~~(2) Evidence of advertisement, offer to sell, or sale of cigarettes by any retailer or wholesaler at~~
 11 ~~less than cost to him or evidence of any offer of a rebate in price or the giving of a rebate in price or an~~
 12 ~~offer of a concession or the giving of a concession of any kind or nature whatever in connection with the~~
 13 ~~sale of cigarettes which are sold by said wholesaler or retailer in the ordinary course of his trade or~~
 14 ~~business, if such rebate or concession offered or given in connection with the sale of cigarettes is not~~
 15 ~~offered or given by the wholesaler or retailer in the same ratio with respect to all other merchandise to~~
 16 ~~which such rebate or concession may lawfully be given, or the inducing or attempt to induce or the~~
 17 ~~procuring or the attempt to procure the purchase of cigarettes at a price less than cost to the wholesaler~~
 18 ~~or the retailer shall be prima facie evidence of intent to injure competitors or substantially lessen~~
 19 ~~competition."~~

20

21 **Section 9.** Section 16-10-303, MCA, is amended to read:

22 "**16-10-303. Cost survey as evidence.** ~~Where~~ When a cost survey pursuant to cost accounting
 23 practices, ~~including those defined in 16-10-103(6)(a), used for income tax reporting purposes~~ has been
 24 made by the department, ~~or by a trade association, or other~~ an industry group, a wholesaler, or a retailer
 25 ~~for the trading area in which the offense is committed~~ to establish either the lowest "cost to the retailer"
 26 ~~and~~ or the lowest "cost to the wholesaler", ~~said~~ or both, for the state, the cost survey ~~shall be considered~~
 27 ~~to be~~ is competent evidence for use in proving the cost to the person complained against within the
 28 provisions of this chapter."

29

30 **Section 10.** Section 16-10-402, MCA, is amended to read:

1 "16-10-402. **Injunctive and other civil relief.** (1) In addition to ~~penalties~~ the penalty provided by
 2 ~~16-10-401~~ 16-10-403, any person injured or any trade association that represents a person injured by any
 3 violation of this chapter ~~or any trade association which is representative of such a person~~ may maintain an
 4 action in any court of equitable jurisdiction to prevent, restrain, or enjoin ~~such~~ the violation. If in ~~such~~ the
 5 action a violation of this chapter ~~shall be~~ is established, the court shall enjoin and restrain or otherwise
 6 prohibit ~~such~~ the violation and, in addition ~~thereto~~, shall assess in favor of the plaintiff and against the
 7 defendant the costs of the suit and reasonable ~~attorney's fee~~ attorney fees. In ~~such~~ the action, it ~~shall~~ is
 8 not ~~be~~ necessary that actual damages to the plaintiff be alleged or proved, but ~~where~~ when alleged and
 9 proved, the plaintiff in ~~said~~ the action, in addition to ~~such~~ injunctive relief and fees and costs of suit, ~~shall~~
 10 be is entitled to recover from the defendant the amount of actual damages sustained by the plaintiff.

11 (2) ~~In the event no~~ If injunctive relief is not sought or required, any person injured by a violation
 12 of this chapter may maintain an action for damages alone in any court of competent jurisdiction. The
 13 measure of damages in ~~such~~ the action ~~shall be~~ is the same as prescribed in subsection (1) of this section."

14
 15 **Section 11.** Section 16-10-403, MCA, is amended to read:

16 "16-10-403. **Revocation or suspension of license ~~or permit~~ -- civil penalty.** (1) The department is
 17 ~~given full power and authority to~~ may revoke or suspend the license ~~of, or permit of~~ impose a civil penalty
 18 not to exceed \$500 on, or order any combination of revocation, suspension, and penalty to be imposed on
 19 ~~any wholesale or retail cigarette dealer in the state of Montana~~ licensed wholesaler or retailer upon
 20 sufficient cause appearing of the violation of this chapter or upon the failure of ~~such~~ the licensee ~~or~~
 21 ~~permittee~~ to comply with any of the provisions of this chapter.

22 (2) ~~No~~ A license ~~or licenses shall~~ may not be suspended or revoked except upon notice to the
 23 licensee and after a hearing prescribed by ~~said~~ the department at its principal office. The department, upon
 24 a finding by it that the licensee has failed to comply with any provisions of this chapter or any rule
 25 promulgated ~~thereunder~~ under this chapter, shall, in the case of ~~the~~ a first offender, suspend the license
 26 ~~or licenses~~ of the ~~said~~ licensee for a period of not less than 5 or more than 20 consecutive business days
 27 ~~and, in~~ impose a civil penalty in an amount not to exceed \$500, or order both the suspension and the
 28 penalty. In the case of a second or plural offender, the department shall suspend ~~said~~ the license ~~or~~
 29 ~~licenses~~ for a period of not less than 20 consecutive business days or more than 12 months, ~~and in~~ impose
 30 a civil penalty in an amount not to exceed \$500, or order both the suspension and the penalty. In the event

1 the department finds the offender has been guilty of willful and persistent violations, it may revoke ~~such~~
 2 the licensee's license or licenses and, in its discretion, may impose a civil penalty in an amount not to
 3 exceed \$500.

4 (3) Any person whose license ~~or licenses have~~ has been ~~so~~ revoked may apply to the department
 5 at the expiration of 1 year for a reinstatement of ~~his~~ the license or licenses. ~~Such~~ The license ~~or licenses~~
 6 may be reinstated by the department if it ~~shall appear~~ appears to the satisfaction of ~~said~~ the department
 7 that the licensee will comply with the provisions of this chapter and the rules promulgated ~~thereunder~~ under
 8 this chapter.

9 (4) ~~No~~ A person whose license has been suspended or revoked ~~shall~~ may not sell cigarettes or
 10 permit cigarettes to be sold during the period of ~~such~~ the suspension or revocation on the premises
 11 occupied by ~~him~~ the person or upon other premises controlled by ~~him~~ the person or others or in any other
 12 manner or form whatever. ~~Nor shall any~~ A disciplinary proceedings or action ~~be~~ is not barred or abated by
 13 the expiration, transfer, surrender, continuance, renewal, or extension of any license issued under the
 14 provisions of the "cigarette tax law", as provided in [articles of chapter 11 of the Revised Codes of
 15 Montana, 1947].

16 (5) Any determination by the department and any order of suspension or revocation of a license
 17 ~~or licenses thereunder~~ or refusal to reinstate a license ~~or licensee~~ after revocation ~~shall be~~ is reviewable by
 18 the court in a proper case and in proceedings as provided by the procedural law of this jurisdiction."
 19

20 **Section 12.** Section 16-11-102, MCA, is amended to read:

21 **"16-11-102. Definitions.** (1) As used in this chapter, the following definitions apply, unless the
 22 context requires otherwise:

23 (a) "Cigarettes" means any roll for smoking made wholly or in part of tobacco, irrespective of size
 24 or shape and whether or not the tobacco is flavored, adulterated, or mixed with any other ingredient, the
 25 wrapper or cover of which is made of nontobacco paper or any other substance or material except tobacco.

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

27 (c) "Person" means an individual, firm, ~~fiduciary,~~ partnership, corporation, ~~trust, organization, or~~
 28 association, company, or other business entity, however formed.

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

30 (a) "Cigarette vendor" means a person doing business in the state who purchases cigarettes

1 through a wholesaler, subjobber, or retailer for 10 or more cigarette vending machines that ~~he~~ the person
 2 operates for a profit in premises or locations other than ~~his~~ the person's own. That person must be treated
 3 as a wholesaler. A person who operates fewer than 10 cigarette vending machines must be treated as a
 4 retailer.

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

6 (c) "Insignia" or "indicia" means the impression, mark, or stamp approved by the department under
 7 the provisions of this part.

8 (d) "Licensed retailer" means any person, other than a wholesaler, subjobber, or cigarette vendor,
 9 who is licensed under the provisions of this part.

10 (e) "Licensed subjobber" means a subjobber licensed under the provisions of this part; The person
 11 ~~he~~ must be treated as a wholesaler.

12 (f) "Licensed wholesaler" means a wholesaler licensed under the provisions of this part.

13 (g) "Manufacturer" means any person who fabricates cigarettes from raw materials for the purpose
 14 of resale.

15 ~~(g)(h)~~ "Public warehouses" means agents or representatives of manufacturers who receive
 16 cigarettes in carload lots for distribution in original cases to wholesalers and retailers.

17 ~~(h)(i)~~ "Record" means an original document, a legible facsimile, or an electronically preserved copy.

18 ~~(h)(j)~~ "Retailer" means a person, ~~other than a wholesaler, subjobber, or cigarette vendor, who is~~
 19 ~~engaged in the business~~ who operates a store, stand, booth, concession, or other outlet for the purpose
 20 of selling cigarettes at retail.

21 ~~(j)(k)~~ "Sale" ~~and or "sell" mean~~ means any transfer of cigarettes ~~by sale, as defined by 30-2-106,~~
 22 ~~or by gift, barter, or exchange~~ for consideration, exchange, barter, gift, offer for sale, or distribution in any
 23 manner or by any means.

24 (l) "Sole distributor" means a person who either causes a unique brand of cigarettes to be
 25 manufactured according to distinctive specifications and acts as the exclusive distributor of the cigarettes
 26 or is the exclusive distributor of a brand of cigarettes within the continental United States.

27 ~~(k)(m)~~ "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the
 28 Montana cigarette tax insignia affixed and sells or offers to sell the cigarettes to a licensed retailer or
 29 cigarette vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute
 30 those retailers as subjobbers. A licensed subjobber shall use the license in the interest of the general public.

1 If during any month more than 35% of the volume of cigarette sales by a subjobber is with any retail client
 2 whose business is controlled directly or indirectly through consanguinity or affinity with the owner or
 3 employer for that retail business, the license is considered to have been used or to be intended to be used
 4 in violation of this part.

5 ~~(n)~~ "Wholesaler" means any a person who services retail outlets by maintaining an established
 6 place of business for the purchase of cigarettes and who: resident in this state who brings or causes to be
 7 brought into this state unstamped cigarettes purchased directly from their manufacturers and stores, sells,
 8 or otherwise disposes of the cigarettes after they reach this state. The term includes a person who, within
 9 this state, manufactures or produces cigarettes, directly or indirectly, and sells or distributes the cigarettes
 10 within this state.

11 (i) purchases cigarettes from a manufacturer for the purpose of selling cigarettes to retailers; or
 12 (ii) purchases cigarettes from a sole distributor, another wholesaler, or any other person for the
 13 purpose of selling cigarettes to retailers."

14

15 **Section 13.** Section 16-11-111, MCA, is amended to read:

16 **"16-11-111. Cigarette sales tax -- exemption for sale to tribal member.** (1) A tax on the purchase
 17 of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is
 18 imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is 18 cents
 19 on each package containing 20 cigarettes and, when packages contain more or less than 20 cigarettes, a
 20 tax on each cigarette equal to 1/20th the tax on a package containing 20 cigarettes.

21 (2) The tax imposed in subsection (1) does not apply to ~~a cigarette sale if the sale is made:~~

22 ~~(a) by a retailer whose establishment is located within the boundaries of an Indian reservation~~
 23 ~~located in Montana; and~~

24 ~~(b) to an enrolled member of the federally recognized Indian tribe residing on the Indian reservation~~
 25 ~~where the retail establishment is located~~ quota cigarettes.

26 (3) Subject to the refund or credit provided in subsection (4), the tax must be precollected on all
 27 cigarettes entering a Montana Indian reservation.

28 (4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes
 29 to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund
 30 or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized

1 Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within
2 1 year of the shipment date forfeits the refund or credit.

3 (5) The distribution of tax-free cigarettes to a tribal member must be implemented through a system
4 of preapproved wholesaler shipments. A licensed Montana wholesaler shall contact the department for
5 approval prior to the shipment of the untaxed cigarettes. The department may authorize sales based on
6 whether the quota, as established in a cooperative agreement between the department and an Indian tribe
7 or as set out in this chapter, has been met. If authorized as a tax-exempt sale, the wholesaler, upon
8 providing proof of order and delivery to a retailer within the boundaries of a Montana Indian reservation
9 selling cigarettes to members of a federally recognized tribe or tribes of that reservation, must be given a
10 credit or refund. Once the quota has been filled, the department shall immediately notify all affected
11 wholesalers that further sales on that reservation must be taxed and that a claim for a refund or credit will
12 not be honored for the remainder of the quota period. Quota allocations are not transferable between quota
13 periods or between reservations.

14 (6) The total amount of refunds or credits allowed by the department to all wholesalers claiming
15 the refund or credit under subsection (4) for any month may not exceed an amount that is equal to the tax
16 due on the quota allocation. The department shall determine the amount of refunds or credits for each
17 Indian reservation at the beginning of each fiscal year, using the most recent census data available from
18 the bureau of Indian affairs or as provided in a cooperative agreement with the tribe or tribes of the Indian
19 reservation."

20

21 **Section 14.** Section 16-11-113, MCA, is amended to read:

22 "**16-11-113. Tax insignia.** (1) Except as provided in this section, the ~~distributor or dealer~~ wholesaler
23 of any cigarettes shall cause to be securely affixed to the cigarettes the required insignia denoting the
24 applicable tax. ~~A person specifically exempted under the provisions of 16-11-132(2) is not considered to~~
25 ~~be acting unlawfully under this section.~~

26 (2) The insignia must be properly applied prior to sale, under regulations that the department may
27 prescribe.

28 (3) ~~Wholesalers and retailers~~ Retailers licensed under this part may buy, sell, or have in their
29 possession only cigarettes that have on each package the insignia provided for in this part. The insignia
30 provided for in this part may be sold only to and must be affixed only by licensed wholesalers ~~and licensed~~

1 ~~retailers.~~

2 (4) If any cigarettes without the insignia affixed are found in the place of business of any
3 unlicensed wholesaler, retailer, or other person, the presumption is that the cigarettes are kept in that place
4 of business in violation of the provisions of this part.

5 (5) ~~Except as provided in 16-11-132(2), the insignia provided for in this part must be affixed before~~
6 ~~the sale of the cigarettes by a wholesaler.~~ This section does not apply to a wholesaler who has cigarettes
7 in possession that are either to be shipped or consigned to an Indian tribe that has entered into a
8 cooperative agreement with the state or to a military reservation."

9

10 **Section 15.** Section 16-11-114, MCA, is amended to read:

11 "**16-11-114. Insignia discount.** ~~Every~~ Each licensed wholesaler ~~and licensed retailer shall be is~~
12 entitled to purchase ~~said~~ an insignia at full face value less the following percentage of the face value upon
13 payment ~~therefor~~ for the insignia as defrayment of the costs of affixing insignia and precollecting ~~such~~ the
14 tax on behalf of the state of Montana:

- 15 (1) 6% for the first 2,580 cartons or portion thereof purchased in any calendar month;
16 (2) 4% for the next 2,580 cartons or portion thereof purchased in any calendar month; and
17 (3) 3% for purchases in excess of 5,160 cartons in any calendar month."

18

19 **Section 16.** Section 16-11-115, MCA, is amended to read:

20 "**16-11-115. Tax meter machine -- tax stamp-applying machine -- purchase of stamps.** (1) The
21 department may authorize any wholesaler ~~or retailer~~ of cigarettes licensed under this part to use a tax meter
22 machine to imprint an insignia upon each package of cigarettes imported, sold, or delivered in this state.
23 The insignia must be one approved by the department. Each package of cigarettes imported into or
24 delivered or sold in this state must be marked with the proper insignia of the tax-stamping meter, and
25 ~~thereafter~~ any original package of cigarettes so marked may be lawfully possessed and sold within the state
26 by any wholesaler ~~or retailer~~ licensed under this part. The department shall supervise and check the
27 operation of the tax meter machines. Before using the machine, the operator of the machine shall take the
28 machine's meter to the county treasurer of the county in which the machine is operated. The county
29 treasurer shall set the meter for the number of packages specified and required by the operator. Prior to
30 setting the meter, the county treasurer shall charge the operator the amount of money proper for the

1 setting, less the expense defrayment provided for in 16-11-114. The county treasurer shall collect this
 2 amount in advance unless the department has allowed the purchaser credit as provided in 16-11-117. The
 3 county treasurer shall report to the department on forms prescribed by it the name of the licensed
 4 wholesaler ~~or licensed retailer~~ and the number of packages for which the meter was set and shall forward
 5 to the department any amounts collected from the licensee.

6 (2) (a) The department may authorize a licensed wholesaler ~~or licensed retailer~~ to affix tax stamps
 7 to packages of cigarettes with a heat-applied machine approved by the department. The department shall
 8 supervise and check the operation of the stamp-applying machine.

9 (b) Tax stamps applied as provided in this subsection must be purchased from the department, and
 10 payment for the stamps must accompany the order unless the department has allowed the purchaser to
 11 delay payment as provided in 16-11-117."

12

13 **Section 17.** Section 16-11-116, MCA, is amended to read:

14 "16-11-116. **Resale of insignia prohibited -- rebate.** A wholesaler ~~or retailer~~ may not resell to any
 15 other wholesaler ~~or retailer~~ any insignia purchased ~~by him~~ from the department. A wholesaler ~~or retailer~~
 16 who has on hand any meter settings or tax insignia at the time of discontinuing ~~his~~ the business of selling
 17 cigarettes may apply to the department and be paid the face value of the meter settings or tax insignia less
 18 the amount of the expense defrayment allowed by 16-11-114."

19

20 **Section 18.** Section 16-11-117, MCA, is amended to read:

21 "16-11-117. **When payment for insignia due.** The department ~~shall~~ may permit a licensed
 22 wholesaler ~~or licensed retailer~~ to pay for the insignia purchased, or affixation of insignia, within 30 days,
 23 ~~after the date of purchase and shall require such licensee to~~ To be eligible to defer payment, a wholesaler
 24 shall file with the department either a surety bond issued by a surety company approved by the state
 25 department of insurance as to solvency and responsibility and authority to transact business in the state
 26 or other cash security, as approved by the department, for such the amount as that the department may
 27 fix, but not in excess of an amount equal to the maximum insignia purchases incurred for any 30-day period
 28 in the previous calendar year; ~~provided, however, that any.~~ Any newly licensed wholesaler ~~or licensed~~
 29 ~~retailer~~ shall pay on a cash basis for 1 complete calendar year, after which the department may permit ~~him~~
 30 the wholesaler 30 days to pay for the purchase or affixation of insignia and shall require a bond or security

1 as ~~hereinabove~~ provided in this section."

2

3 **Section 19.** Section 16-11-118, MCA, is amended to read:

4 **"16-11-118. Records of ~~tax meter users and stampers~~ wholesalers.** All ~~tax meter users and~~
 5 ~~stampers~~ wholesalers shall keep for 5 years all invoices of cigarettes purchased and imported ~~by them~~, all
 6 receipts issued ~~by them~~ and insignia purchased, and an accurate record of all sales of cigarettes ~~by the tax~~
 7 ~~meter users or stampers~~, showing the name and address of each purchaser, the date of sale, the quantity
 8 of each kind sold, the name of any carrier, the shipping point, and the destination. ~~The tax meter users or~~
 9 ~~stampers~~ A wholesaler shall permit the department and the department of justice and their assistants,
 10 authorized agents, or representatives to examine all ~~taxable items of~~ cigarettes, invoices, receipts, books,
 11 paper, memoranda, and records as may be necessary to determine compliance with this chapter. ~~whether~~
 12 ~~the tax meter machine or tax stamp applying machine has been used as required or the insignia required~~
 13 ~~by this part had been purchased and used or to determine the amount of the tax as may be due or unpaid."~~

14

15 **Section 20.** Section 16-11-121, MCA, is amended to read:

16 **"16-11-121. Vending machines not places of business.** Cigarette vending machines ~~shall~~ may not
 17 be considered as places of business per se, but a report of each ~~and all machines~~ machine ~~shall~~ must be
 18 made on forms prescribed by the department, ~~which shall state~~ The form must include the name and
 19 address of the cigarette vendor, the assigned location of each machine, with best machine identification
 20 available, type of business, and ~~such~~ other information ~~as~~ that the department may require for proper
 21 administration of this part."

22

23 **Section 21.** Section 16-11-131, MCA, is amended to read:

24 **"16-11-131. Transporting cigarettes without insignia a misdemeanor -- invoices and delivery tickets**
 25 **required -- stop and inspection authorized.** (1) It is unlawful for a person to transport into, receive, carry,
 26 or move from place to place within this state, except in the course of interstate commerce, any cigarettes
 27 that do not bear the insignia (stamps) required by this part, ~~except for a person specifically exempted in~~
 28 ~~16-11-132(2).~~

29

30 (2) (a) When transporting unstamped cigarettes, a person shall possess invoices or delivery tickets
 for the cigarettes that show the name and address of the consignor or seller, the name of the consignee

1 or purchaser, and the quantity and brands of the cigarettes being transported. ~~If the cigarettes are~~
 2 ~~consigned to or purchased by a person in this state, the consignee or purchaser must be authorized by~~
 3 ~~16-11-132 to possess unstamped cigarettes in this state.~~

4 (b) The cigarettes transported are subject to seizure, forfeiture, and sale as provided in 16-11-141,
 5 16-11-147, 16-11-158, and this section if:

6 (i) there are no invoices or delivery tickets;

7 (ii) the name or address of the consignee or purchaser is falsified; or

8 (iii) the consignee or purchaser is not authorized to possess unstamped cigarettes.

9 (3) Transportation of cigarettes from a point outside the state to a point in another state is not a
 10 violation of this section if the person transporting the unstamped cigarettes possesses adequate invoices
 11 or delivery tickets that give the name and address of the out-of-state consignor or seller and the out-of-state
 12 consignee or purchaser.

13 (4) If the department, its authorized agent, the department of justice, or a peace officer of the state
 14 has knowledge or reasonable grounds to believe that a vehicle is transporting cigarettes in violation of this
 15 section, the department, its agent, the department of justice, or a peace officer may stop and inspect the
 16 vehicle.

17 (5) A person violating the provisions of this section is guilty of a misdemeanor."

18
 19 **Section 22.** Section 16-11-132, MCA, is amended to read:

20 "**16-11-132. Unlawful to sell cigarettes without valid license -- exceptions.** (1) ~~No~~ A person shall
 21 may not sell, offer to sell, or possess with intent to sell any cigarettes, at wholesale or retail, unless ~~his~~ the
 22 person's license is current and valid under the provisions of this part.

23 (2) ~~No~~ A person shall may not sell, offer to sell, or possess with intent to sell any cigarettes, at
 24 wholesale or retail, to a resident or nonresident wholesaler, subjobber, or retailer who is not licensed under
 25 this part or who is not licensed by the state in which ~~he~~ the person sells, offers to sell, or intends to sell
 26 cigarettes, ~~except that. However, a resident wholesaler, resident subjobber, or retailer licensed under the~~
 27 provisions of this chapter may sell cigarettes to ~~a resident or nonresident~~ any person, wholesaler,
 28 subjobber, or retailer not licensed under this chapter if:

29 (a) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer is exempt from state
 30 cigarette taxation provisions;

1 (b) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer furnishes
2 documentary evidence ~~that he is exempt~~ of exemption from state cigarette taxation provisions; and

3 (c) ~~such resident or nonresident~~ the person, wholesaler, subjobber, or retailer signs a receipt of
4 purchase for any cigarettes evidencing ~~that he is exempt~~ an exemption from state cigarette taxation
5 provisions.

6 (3) ~~Any~~ A person violating the provisions of this section is guilty of a misdemeanor and shall be
7 punished as ~~hereinafter~~ provided in this part, and all cigarettes in ~~his~~ the person's possession ~~shall~~ must
8 be seized and forfeited to the state."

9
10 **Section 23.** Section 16-11-133, MCA, is amended to read:

11 "**16-11-133. Sale and use of cigarettes without insignia unlawful.** ~~Every~~ A person who sells any
12 package of cigarettes ~~which~~ that does not bear the insignia required by this part and ~~every~~ a person who
13 uses or consumes a cigarette within this state, taken from a package ~~which~~ that does not bear the required
14 insignia, is guilty of a misdemeanor ~~and shall be punished as hereinafter provided, except that a person~~
15 ~~specifically exempted under the provisions of 16-11-132(2) may not be considered to be acting unlawfully~~
16 ~~under this section."~~

17
18 **Section 24.** Section 16-11-143, MCA, is amended to read:

19 "**16-11-143. Penalty for unpaid cigarette tax.** (1) If ~~any~~ a person fails or refuses to pay the tax
20 required by this part when due, the department shall proceed to determine the tax due from ~~such~~ the
21 information ~~as~~ that the department can obtain and shall assess the tax ~~so determined~~ plus a penalty that
22 is the greater of 5% of the tax or \$50 against ~~such~~ the person and notify ~~him~~ the person of the amount.
23 ~~After such notice such tax shall become due and payable, together with a penalty of 5% of such tax or \$5~~
24 ~~per day for each day after the date of such notice, whichever is greater.~~

25 (2) In the case of any violation of this chapter, the department ~~shall be entitled to~~ may sue, in the
26 district where the department maintains its principal office, for the amount of the unpaid tax, penalty, and
27 costs, including reasonable expense of the department in effecting collection of the unpaid tax and penalty.
28 ~~Where~~ When the court finds that the failure to pay the tax has been willful, the court ~~must~~ shall, in
29 addition, assess damages in treble the amount of the tax found to be due."

1 **Section 25.** Section 16-11-144, MCA, is amended to read:

2 "**16-11-144. Revocation or suspension of license.** (1) The department may revoke or suspend the
3 license of any wholesaler, subjobber, retailer, or cigarette vendor for failure to comply with any provision
4 of this part, ~~or of The Montana Cigarette Sales Act (Title 16, chapter 10) and with any lawful, or any~~ rule
5 of the department made pursuant to ~~said~~ those laws.

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

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

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

15

16 **Section 26.** Section 16-11-145, MCA, is amended to read:

17 "**16-11-145. Place where violations committed a public nuisance.** ~~Every~~ Each person having
18 possession or control of or who maintains a building or place where cigarettes are sold in violation of this
19 part or who permits the ~~same to be done~~ cigarettes to be sold in violation of this part in any place or
20 building possessed, controlled, or maintained by ~~him~~ that person is guilty of maintaining and keeping a
21 nuisance, ~~and the~~. The building or place so used, together with the personal property and fixtures used
22 in connection therewith, ~~shall be deemed~~ is considered a nuisance. ~~Such~~ The person ~~shall~~ must be enjoined
23 and ~~such~~ the building or place, personal property, and fixtures abated as a nuisance at the instance of the
24 state."

25

26 **Section 27.** Section 16-11-148, MCA, is amended to read:

27 "**16-11-148. Violation a misdemeanor unless otherwise provided -- penalties.** Unless ~~hereinbefore~~
28 ~~expressly~~ otherwise provided, the violation of any provision of this part ~~shall constitute~~ constitutes a
29 misdemeanor ~~and any~~. A person violating any ~~such~~ provision of this part shall be punished by a fine of not
30 less than \$100 or more than \$500 or by imprisonment in the county jail for not less than 30 days or more

1 than 6 months, ~~or by both, such fine and imprisonment and, if such~~ If the person is the holder of a license
 2 issued under this part, ~~such the license shall~~ must be revoked by the department for a ~~period of 1 year.~~"

3
 4 **Section 28.** Section 16-11-149, MCA, is amended to read:

5 **"16-11-149. Hearings before state tax appeal board.** ~~Any A~~ person aggrieved by any action of the
 6 department or its authorized agents under the provisions of this part, except for a revocation of a license
 7 pursuant to 16-11-144, may apply to the state tax appeal board, in writing, for a hearing or rehearing
 8 within 30 days after the action of the department or its authorized agents. The board shall promptly
 9 consider the application, set the application for hearing, and notify the applicant of the time and place fixed
 10 for the hearing or rehearing, which may be at its office or in the county of the applicant. After the hearing
 11 or rehearing, the board may make any further or other order in the premises as it may consider proper and
 12 lawful and shall furnish a copy to the applicant. The department, on its own initiative, may order a
 13 contested case hearing on any matter concerned with licensing, as defined in 2-4-102, in connection with
 14 the administration of this part upon at least 10 days' notice in writing to the person or persons to be
 15 investigated."

16
 17 **Section 29.** Section 16-11-201, MCA, is amended to read:

18 **"16-11-201. Definitions.** As used in this part, the following definitions ~~shall~~ apply, unless the
 19 context requires otherwise:

20 (1) ~~The word "retailer"~~ "Retailer" ~~shall mean~~ means any person other than a wholesaler who is
 21 engaged in the business of selling tobacco products to the ultimate consumer.

22 (2) ~~The words "sale"~~ "Sale" or "sell" ~~shall mean and include~~ means any transfer of tobacco
 23 products for a consideration, exchange, barter, gift, offer for sale, ~~and~~ or distribution, in any manner or by
 24 any means ~~whatever, of tobacco products other than cigarettes.~~

25 (3) "Tobacco product" means a substance other than cigarettes that is intended for human
 26 consumption and that contains tobacco.

27 ~~(3)(4) The words "wholesale price" shall mean~~ "Wholesale price" means the established price for
 28 which a manufacturer sells a tobacco product ~~other than cigarettes~~ to a wholesaler or ~~unclassified acquirer~~
 29 any other person before any discount or other reduction.

30 ~~(4) (5) The word "wholesaler" shall mean~~ "Wholesaler" means any person who purchases tobacco

1 products ~~other than cigarettes~~ directly from the manufacturer or ~~who purchases tobacco products other~~
 2 ~~than cigarettes~~ from any other person who purchases from the manufacturer and who acquires such the
 3 products for the purpose of ~~bona fide sales~~ sale to retail dealers or ~~who services retail outlets by the~~
 4 ~~maintenance of an established place of business for the purchase of tobacco products other than cigarettes,~~
 5 ~~including but not limited to the maintenance of warehousing facilities for the storage and distribution of~~
 6 ~~tobacco products."~~

7

8 **Section 30.** Section 16-11-202, MCA, is amended to read:

9 **"16-11-202. Tax on sale of tobacco other than cigarettes -- imposed on retail consumer -- rate of**
 10 **tax.** (1) All taxes paid pursuant to the provisions of this section ~~shall be exclusively presumed~~ are
 11 considered to be direct taxes on the retail consumer, precollected for the purpose of convenience and
 12 facility only. When the tax is paid by any other person, such the payment ~~shall be~~ is considered as an
 13 advance payment and ~~shall~~ must be added to the price of tobacco products ~~other than cigarettes~~ and
 14 recovered from the ultimate consumer or user. Any person selling tobacco products ~~other than cigarettes~~
 15 at retail shall state or separately display in the premises where such the products are sold a notice of the
 16 tax included in the selling price and charged or payable pursuant to this section. The provisions of this
 17 section ~~shall in no way do not~~ do not affect the method of collection of such the tax as ~~hereinafter~~ provided in this
 18 part.

19 (2) There is hereby ~~levied, imposed, and assessed upon tobacco products other than cigarettes sold~~
 20 ~~or possessed in this state and there shall~~ must be collected and paid to the state of Montana a tax of 12
 21 1/2% of the wholesale price of such all tobacco products to the wholesaler, ~~excepting therefrom such~~
 22 ~~products as may be.~~ Tobacco products shipped from Montana and destined for retail sale and consumption
 23 outside the state ~~of Montana~~ are not subject to this tax."

24

25 **Section 31.** Section 16-11-203, MCA, is amended to read:

26 **"16-11-203. Wholesaler to precollect tax.** The tax imposed ~~shall~~ must be precollected and paid by
 27 the wholesaler to the department prior to the sale of tobacco products ~~other than cigarettes to the~~
 28 ~~purchaser from the wholesaler."~~

29

30 **Section 32.** Section 16-11-204, MCA, is amended to read:

1 "16-11-204. Wholesaler's sale without tax prepayment a misdemeanor -- penalty. ~~Any~~ A
 2 wholesaler who ~~shall sell~~ sells any tobacco products ~~other than cigarettes~~ without first making payment
 3 of the tax provided for by this part ~~in the manner and~~ or at the time specified shall be guilty of a
 4 misdemeanor and ~~further shall~~ must be enjoined by an action pursued in the district court of ~~the county of~~
 5 Lewis and Clark County, Montana, from making further sale of tobacco products ~~other than cigarettes~~ for
 6 a period not less than 1 month or more than 1 year."

7
 8 **Section 33.** Section 16-11-308, MCA, is amended to read:

9 "16-11-308. **Penalties.** (1) Failure to obtain a license as required by 16-11-303 or to post signs as
 10 provided in 16-11-304 is punishable by a civil penalty of \$100.

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

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

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

23 (5) A justice's court has civil jurisdiction over a civil complaint regarding a violation of 16-11-303,
 24 16-11-304, or 16-11-305(1) and may impose the penalty prescribed in subsection (2) upon a finding by
 25 a preponderance of the evidence that the violation occurred. The county attorney of the county in which
 26 a civil penalty is imposed under subsection (2) shall inform the department of revenue of the imposition of
 27 the penalty."

28
 29 **NEW SECTION.** **Section 34. Codification instruction.** [Section 1] is intended to be codified as an
 30 integral part of Title 16, chapters 10 and 11, part 1, and the provisions of Title 16, chapters 10 and 11,

1 part 1, apply to [section 1].

2

3 NEW SECTION. Section 35. Repealer. Section 16-10-401, MCA, is repealed.

4

5 NEW SECTION. SECTION 36. COORDINATION INSTRUCTION. IF HOUSE BILL NO. 539 IS
6 PASSED AND APPROVED AND IF IT INCLUDES A SECTION THAT AMENDS 16-11-308 BY IMPOSING A
7 TOBACCO EDUCATION FEE, THEN [SECTIONS 2 AND 33 OF THIS ACT], AMENDING 3-10-301 AND
8 16-11-308, RESPECTIVELY, ARE VOID.

9

10 NEW SECTION. Section 37. Effective date. [This act] is effective July 1, 1995.

11

-END-