

1 HOUSE BILL NO. 38

2 INTRODUCED BY ROSE

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT MAKING THE PENALTY FOR PROVIDING A TOBACCO PRODUCT
5 TO AN UNDERAGE PERSON THE SAME AS THE PENALTY FOR PROVIDING AN ALCOHOLIC BEVERAGE
6 TO AN UNDERAGE PERSON; AND AMENDING SECTIONS 16-11-305 AND 16-11-308, MCA."

7
8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9
10 **Section 1.** Section 16-11-305, MCA, is amended to read:

11 **"16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited**
12 **-- penalty.** (1) A person may not purposely sell or distribute a tobacco product to an individual under 18
13 years of age, whether over the counter, by vending machine, or otherwise. Violation of this subsection
14 is a misdemeanor. Upon conviction, the person shall be fined an amount not to exceed \$500 or
15 incarcerated for a term not to exceed 6 months, or both. Upon a second or subsequent conviction, the
16 person shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to exceed 6 months,
17 or both.

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

20
21 **Section 2.** Section 16-11-308, MCA, is amended to read:

22 **"16-11-308. Tobacco education fee.** (1) Failure to obtain a license as required by 16-11-303 or
23 to post signs as provided in 16-11-304 is punishable by a civil penalty of \$100. The department may collect
24 the penalty in the manner provided for the collection of other debts.

25 (2) A person who violates ~~16-11-305(1)~~ or 16-11-307 at any one location within a 3-year period
26 shall be punished as follows:

27 (a) A first through third offense is punishable by a verbal notification of violation.

28 (b) A fourth offense is punishable by a written notice of violation to be sent by the department of
29 public health and human services to the owner of the establishment.

30 (c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco

1 education fee of \$500. The employee or other person who sold the tobacco product, the establishment
2 manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the
3 tobacco education material.

4 (d) A sixth offense is punishable by suspension of the licenses required by 16-11-120 and
5 16-11-303 for 3 months.

6 (e) A seventh and subsequent offense is punishable by suspension of the licenses required by
7 16-11-120 and 16-11-303 for 1 year.

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

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

12 (5) Tobacco education fees must be assessed and collected by the department of public health and
13 human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made
14 by the department of public health and human services within 30 days of the alleged violation by certified
15 letter addressed to the establishment owner or manager. The notice of assessment against the owner of
16 the establishment must provide an opportunity for a hearing pursuant to the provisions of the Montana
17 Administrative Procedure Act. Within 30 days from the date the notice of assessment was mailed, the
18 owner or manager shall notify the department of public health and human services that the owner or
19 manager objects to the assessment and request a hearing pursuant to this subsection.

20 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of
21 ~~16-11-306(1)~~ or 16-11-307 is punishable by an assessment of a tobacco education fee of \$25 against the
22 employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco
23 education fee must be assessed and collected by the department of public health and human services.
24 Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made
25 by the department of public health and human services by certified letter addressed to the employee. The
26 notice of assessment must provide an opportunity for a hearing pursuant to the provisions of the Montana
27 Administrative Procedure Act. Within 30 days from the date on which the notice of assessment was
28 mailed, the employee shall notify the department of public health and human services that the employee
29 objects to the assessment and requests a hearing pursuant to this subsection.

30 (7) The tobacco education material referred to in this section must be provided by the department

1 of public health and human services in the form of written and video self-teaching materials. The education
2 materials may be used only for the purposes provided in this section. Upon completion of the self-teaching
3 materials, the establishment owner or manager shall execute a written statement on a form provided by
4 the department of public health and human services verifying that the employee, owner, or manager, as
5 appropriate, has read and viewed the self-teaching material and shall return the statement and the
6 self-teaching video to the department of public health and human services.

7 (8) Upon the sixth and subsequent violation of ~~this section~~ 16-11-307, the department of public
8 health and human services shall notify the department ~~of revenue~~ in writing to initiate suspension of the
9 licenses required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged
10 violation and of the referral of the licensee's record of violations to the department ~~of revenue~~ for
11 suspension of the licenses pursuant to 16-11-144 and this section. The department ~~of revenue~~ shall review
12 the record of violations and may initiate license suspension proceedings in accordance with 16-11-144. If,
13 upon a review of the record of violations, the department ~~of revenue~~ declines to initiate suspension
14 proceedings, the violation may not be charged against the licensee for the purposes of this section.

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

21

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0038, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act making the penalty for providing a tobacco product to an underage person the same as the penalty for providing an alcoholic beverage to an underage person.

ASSUMPTIONS:

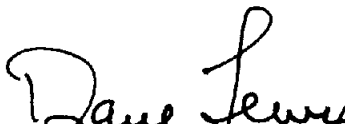
1. Under current law, persons making sales of tobacco products to underage persons are subject to progressive penalties including verbal notification, written notice, assessment of tobacco education fees, and suspension of the license to sell tobacco.
2. Under the proposed legislation, persons selling tobacco products to underage persons would be guilty of a misdemeanor punishable by a fine of \$500 or incarceration for a term not to exceed 6 months, or both.
3. The fines for selling tobacco to persons under age 18 were previously statutorily appropriated 50% to the Department of Revenue and 50% to the Department of Public Health and Human Services, through the tobacco education fee state special revenue account.
4. The proposed legislation would remove the fine for distribution of tobacco products to underage persons in Sec.16-11-305, MCA from the tobacco education fee state special revenue account.
5. None of the fine, referenced in assumption 4 above, would accrue to the Department of Revenue (DOR) or the Department of Public Health and Human Services (DPHHS), which would continue to have authority to levy education fees for the distribution of tobacco products in other than sealed packages (Sec. 16-11-307, MCA).
6. Tobacco education fees collected by DPHHS in fiscal 1996 totaled \$162.50. Fees collected through December of 1996 totaled \$592.50. It is unclear how these amounts might change under the proposed legislation.

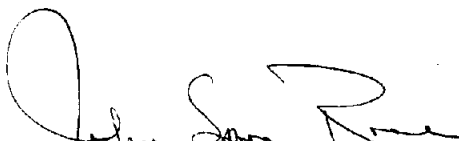
FISCAL IMPACT:

None.

TECHNICAL NOTES:

1. The amendments in Section 2 to 16-11-308 technically removes the Department of Public Health and Human Service's ability to impose the tobacco education fee against the employee that provided for the sale or distribution of packaged tobacco products to individuals under the age of 18.
2. There is no reference to where the fines in Section 1 under 16-11-305 of the proposed legislation are to be deposited.

 1-11-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning


JOHN "SAM" ROSE, PRIMARY SPONSOR DATE
Fiscal Note for HB0038, as introduced

HB 38

APPROVED BY COM
ON JUDICIARY

HOUSE BILL NO. 38

INTRODUCED BY ROSE

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4 A BILL FOR AN ACT ENTITLED: "AN ACT ~~MAKING THE~~ PROVIDING A CRIMINAL PENALTY FOR
5 PROVIDING THE SALE OR DISTRIBUTION BY A PERSON WHO IS NOT A LICENSEE OR AN EMPLOYEE OF
6 A LICENSEE OF A TOBACCO PRODUCT TO AN UNDERAGE A PERSON UNDER 18 YEARS OF AGE THE
7 SAME AS THE PENALTY FOR PROVIDING AN ALCOHOLIC BEVERAGE TO AN UNDERAGE PERSON; AND
8 AMENDING SECTIONS 16-11-305 AND 16-11-308, MCA."

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14 **-- penalty.** (1) A person may not ~~purposefully~~ sell or distribute a tobacco product to an individual under 18
15 years of age, whether over the counter, by vending machine, or otherwise. ~~Violation of this~~

16 (2) PURPOSEFUL VIOLATION OF subsection (1) BY A PERSON WHO IS NOT A LICENSEE OR AN
17 EMPLOYEE OF A LICENSEE is a misdemeanor. Upon conviction, the person shall be fined an amount not
18 to exceed \$500 or incarcerated for a term not to exceed 6 months, or both. Upon a second or subsequent
19 conviction, the person shall be fined an amount not to exceed \$1,000 or incarcerated for a term not to
20 exceed 6 months, or both.

21 ~~(2)(3)~~ If there is a reasonable doubt as to the individual's age, the seller shall require presentation
22 of a driver's license or other generally accepted identification that includes a picture of the individual."
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29 location within a 3-year period shall be punished as follows:

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16 human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made
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18 letter addressed to the establishment owner or manager. The notice of assessment against the owner of
19 the establishment must provide an opportunity for a hearing pursuant to the provisions of the Montana
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21 owner or manager shall notify the department of public health and human services that the owner or
22 manager objects to the assessment and request a hearing pursuant to this subsection.

23 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of
24 ~~16-11-305(1) or 16-11-305(1) OR 16-11-307 IN AN ESTABLISHMENT~~ is punishable by an assessment of
25 a tobacco education fee of \$25 against the employee who sold the tobacco product if the employee is not
26 the owner of the establishment. The tobacco education fee must be assessed and collected by the
27 department of public health and human services. Within 30 days of the alleged violation, notice of
28 assessment pursuant to this subsection must be made by the department of public health and human
29 services by certified letter addressed to the employee. The notice of assessment must provide an
30 opportunity for a hearing pursuant to the provisions of the Montana Administrative Procedure Act. Within

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 10 self-teaching video to the department of public health and human services.

11 (8) Upon the sixth and subsequent violation of ~~this section~~ 16-11-305(1) OR 16-11-307 IN AN
 12 ESTABLISHMENT, the department of public health and human services shall notify the department of
 13 ~~revenue~~ in writing to initiate suspension of the licenses required by 16-11-120 and 16-11-303 and shall
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 25 and this section."

26 -END-