

House *Senate* *Bishop* *Wilson* *Wells* *Truss*
Clark *Hay* *Wells* *Truss* *Billen*
Christensen *Clark* *Hay*

BILL NO. 331

1
 2 INTRODUCED BY *Saft* *Wells* *Truss* *Billen*
 3 *Christensen* *Clark* *Hay* *Wells* *Truss* *Billen*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS
 5 CONTROL ACT; RESTRICTING THE PLACEMENT FOR SALE OF INDIVIDUALLY PACKAGED TOBACCO
 6 PRODUCTS; PROHIBITING SALE OF TOBACCO PRODUCTS THROUGH VENDING MACHINES; PROVIDING
 7 FOR HEARINGS PURSUANT TO CERTAIN RULES; AND AMENDING SECTIONS 16-11-305, 16-11-306,
 8 AND 16-11-308, MCA."

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

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

"16-11-305. **Sale or distribution of tobacco products to persons under 18 years of age prohibited**
~~-- placement for sale of individually packaged tobacco products.~~ (1) A person may not sell or distribute a
 tobacco product to an individual under 18 years of age, ~~whether over the counter, by vending machine,~~
~~or otherwise.~~

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

(3) Individual packages of cigarettes and other individually packaged tobacco products must be
 placed behind a sales counter and may not be sold or distributed other than in a direct, face-to-face
 exchange between a retail sales clerk and an adult consumer."

Section 2. Section 16-11-306, MCA, is amended to read:

"16-11-306. **Sales from of tobacco through vending machines prohibited.** Tobacco products may
 not be sold through a vending machine ~~only in:~~

- (1) ~~factories, businesses, offices, and other places not open to the general public;~~
- (2) ~~places to which individuals under 18 years of age are not permitted access;~~
- (3) ~~places where alcoholic beverages are sold and consumed on the premises; and~~
- (4) ~~places where the vending machine is under the direct supervision of the owner or an employee~~

~~of the establishment. The sale of tobacco products from a vending machine under direct supervision of the~~



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1 ~~owner or an employee of the establishment is considered a sale of tobacco products by that person for~~
2 ~~purposes of 16-11-305."~~

3

4 **Section 3.** Section 16-11-308, MCA, is amended to read:

5 **"16-11-308. Tobacco education fee.** (1) Failure to obtain a license_z as required by 16-11-303_z or
6 to post signs_z as provided in 16-11-304_z is punishable by a civil penalty of \$100. The department may
7 collect the penalty in the manner provided for the collection of other debts.

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

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

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

13 (c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco
14 education fee of \$500. The employee or other person who sold the tobacco product, the establishment
15 manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the
16 tobacco education material.

17 (d) A sixth offense is punishable by suspension of the licenses required by 16-11-120 and
18 16-11-303 for 3 months.

19 (e) A seventh and subsequent offense is punishable by suspension of the licenses required by
20 16-11-120 and 16-11-303 for 1 year.

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

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

25 (5) Tobacco education fees must be assessed and collected by the department of public health and
26 human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made
27 by the department of public health and human services within 30 days of the alleged violation by certified
28 letter addressed to the establishment owner or manager. The notice of assessment against the owner of
29 the establishment must provide an opportunity for a hearing at the offices of the department of public
30 health and human services in Helena or by electronic equipment, to be held pursuant to the provisions of

1 ~~the Montana Administrative Procedure Act~~ fair hearing rules of the department of public health and human
2 services. Within 30 days from the date on which the notice of assessment was mailed, the owner or
3 manager shall notify the department of public health and human services that the owner or manager objects
4 to the assessment and request a hearing pursuant to this subsection.

5 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of
6 16-11-305(1) or 16-11-307 is punishable by an assessment of a tobacco education fee of \$25 against the
7 employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco
8 education fee must be assessed and collected by the department of public health and human services.
9 Within 30 days of the alleged violation, notice of assessment pursuant to this subsection must be made
10 by the department of public health and human services by certified letter addressed to the employee. The
11 notice of assessment must provide an opportunity for a hearing at the offices of the department of public
12 health and human services in Helena or by electronic equipment, to be held pursuant to the provisions of
13 ~~the Montana Administrative Procedure Act~~ fair hearing rules of the department of public health and human
14 services. Within 30 days from the date on which the notice of assessment was mailed, the employee shall
15 notify the department of public health and human services that the employee objects to the assessment
16 and requests a hearing pursuant to this subsection.

17 (7) The tobacco education material referred to in this section must be provided by the department
18 of public health and human services in the form of written and video self-teaching materials. The education
19 materials may be used only for the purposes provided in this section. Upon completion of the self-teaching
20 materials, the establishment owner or manager shall execute a written statement on a form provided by
21 the department of public health and human services verifying that the employee, owner, or manager, as
22 appropriate, has read and viewed the self-teaching material and shall return the statement and the
23 self-teaching video to the department of public health and human services.

24 (8) Upon the sixth and subsequent violation of this section, the department of public health and
25 human services shall notify the department of revenue in writing to initiate suspension of the licenses
26 required by 16-11-120 and 16-11-303 and shall notify the licensee in writing of the alleged violation and
27 of the referral of the licensee's record of violations to the department of revenue for suspension of the
28 licenses pursuant to 16-11-144 and this section. The department of revenue shall review the record of
29 violations and may initiate license suspension proceedings in accordance with 16-11-144. If, upon a review
30 of the record of violations, the department of revenue declines to initiate suspension proceedings, the

1 violation may not be charged against the licensee for the purposes of this section.

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

8 -END-

STATE OF MONTANA - FISCAL NOTE

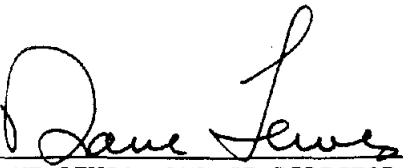
Fiscal Note for HB0331, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

A bill amending the youth access to tobacco products control act.

FISCAL IMPACT:

Passage of HB0331 will have no fiscal impact on the state.

 1-29-97

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

LOREN SOFT, PRIMARY SPONSOR DATE
Fiscal Note for HB0331, as introduced
HB 331

HOUSE BILL NO. 331

INTRODUCED BY SOFT, GROSFIELD, MCGEE, KITZENBERG, GRIMES, BOHLINGER, GILLAN, BAER,
THOMAS, BISHOP, WILSON, BURNETT, HALLIGAN, MILLS, WELLS, TUSS, R. JOHNSON, RYAN, ECK,
CAREY, DOWELL, GALVIN, PEASE, KOTTEL, AHNER, EWER, OHS, CLARK, CHRISTIAENS, HARPER

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FOR HEARINGS PURSUANT TO CERTAIN RULES; AND AMENDING SECTIONS ~~16-11-305~~, 16-11-306,
AND 16-11-308, MCA."

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

~~Section 1. Section 16-11-305, MCA, is amended to read:~~

~~"16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited
placement for sale of individually packaged tobacco products. (1) A person may not sell or distribute a
tobacco product to an individual under 18 years of age, whether over the counter, by vending machine,
or otherwise.~~

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

~~(3) Individual packages of cigarettes and other individually packaged tobacco products must be
placed behind a sales counter and may not be sold or distributed other than in a direct, face to face
exchange between a retail sales clerk and an adult consumer."~~

Section 1. Section 16-11-306, MCA, is amended to read:

"16-11-306. Sales ~~from~~ of tobacco through vending machines ~~prohibited~~ **RESTRICTED**. Tobacco
products may ~~not~~ be sold through a vending machine ~~only in:~~ ONLY IN:

(1) VENDING MACHINES THAT DO NOT CONTAIN NONTOBACCO PRODUCTS OF ANY KIND;

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

(3) A LOCATION WHERE THE VENDING MACHINE IS UNDER THE DIRECT LINE-OF-SIGHT

1 SUPERVISION OF THE OWNER OR AN EMPLOYEE OF THE ESTABLISHMENT; AND

2 (4) A RESTAURANT IF THE RESTAURANT HAS A BAR AND THE RESTAURANT AREA SHARES
 3 SEATING WITH THE BAR AREA

4 ~~(1) factories, businesses, offices, and other places not open to the general public;~~
 5 ~~(2) places to which individuals under 18 years of age are not permitted access;~~
 6 ~~(3) places where alcoholic beverages are sold and consumed on the premises; and~~
 7 ~~(4) places where the vending machine is under the direct supervision of the owner or an employee~~
 8 ~~of the establishment. The sale of tobacco products from a vending machine under direct supervision of the~~
 9 ~~owner or an employee of the establishment is considered a sale of tobacco products by that person for~~
 10 ~~purposes of 16-11-305."~~

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

13 **"16-11-308. Tobacco education fee.** (1) Failure to obtain a license₂ as required by 16-11-303₂ or
 14 to post signs₂ as provided in 16-11-304₂ is punishable by a civil penalty of \$100. The department may
 15 collect the penalty in the manner provided for the collection of other debts.

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

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

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

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

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

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

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

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

3 (5) Tobacco education fees must be assessed and collected by the department of public health and
4 human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made
5 by the department of public health and human services within 30 days of the alleged violation by certified
6 letter addressed to the establishment owner or manager. The notice of assessment against the owner of
7 the establishment must provide an opportunity for a hearing ~~at the offices of the department of public~~
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9 ~~the Montana Administrative Procedure Act fair hearing rules of the department of public health and human~~
10 ~~services. THE HEARING MAY BE CONDUCTED USING ELECTRONIC EQUIPMENT AND MUST COMPLY~~
11 ~~WITH THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT.~~ Within 30 days from
12 the date on which the notice of assessment was mailed, the owner or manager shall notify the department
13 of public health and human services that the owner or manager objects to the assessment and request a
14 hearing pursuant to this subsection.

15 (6) In addition to the penalty provided for in subsection (2), a first and subsequent violation of
16 16-11-305(1) or 16-11-307 is punishable by an assessment of a tobacco education fee of \$25 against the
17 employee who sold the tobacco product if the employee is not the owner of the establishment. The tobacco
18 education fee must be assessed and collected by the department of public health and human services.
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27 health and human services that the employee objects to the assessment and requests a hearing pursuant
28 to this subsection.

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

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

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

20

-END-

HOUSE BILL NO. 331

INTRODUCED BY SOFT, GROSFIELD, MCGEE, KITZENBERG, GRIMES, BOHLINGER, GILLAN, BAER,
THOMAS, BISHOP, WILSON, BURNETT, HALLIGAN, MILLS, WELLS, TUSS, R. JOHNSON, RYAN, ECK,
CAREY, DOWELL, GALVIN, PEASE, KOTTEL, AHNER, EWER, OHS, CLARK, CHRISTIAENS, HARPER

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

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~~"16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited
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tobacco product to an individual under 18 years of age, whether over the counter, by vending machine,
or otherwise.~~

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

~~(3) Individual packages of cigarettes and other individually packaged tobacco products must be
placed behind a sales counter and may not be sold or distributed other than in a direct, face to face
exchange between a retail sales clerk and an adult consumer."~~

Section 1. Section 16-11-306, MCA, is amended to read:

"16-11-306. Sales ~~from~~ of tobacco through vending machines ~~prohibited~~ RESTRICTED. (1)
Tobacco products may not be sold through a vending machine ~~only in:~~ ONLY IN:

~~(1) VENDING MACHINES THAT DO NOT CONTAIN NONTOBACCO PRODUCTS OF ANY KIND;~~

~~(2) PLACES WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED ON THE PREMISES;~~

~~(3) A LOCATION WHERE THE VENDING MACHINE IS UNDER THE DIRECT LINE OF SIGHT~~

1 ~~SUPERVISION OF THE OWNER OR AN EMPLOYEE OF THE ESTABLISHMENT; AND~~

2 ~~(1) A RESTAURANT IF THE RESTAURANT HAS A BAR AND THE RESTAURANT AREA SHARES~~
 3 ~~SEATING WITH THE BAR AREA PLACES WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED~~
 4 ~~ON THE PREMISES AND WHERE THE VENDING MACHINE IS UNDER THE DIRECT LINE-OF-SIGHT~~
 5 ~~SUPERVISION OF THE OWNER OR AN EMPLOYEE OF THE ESTABLISHMENT. THE TOBACCO PRODUCTS~~
 6 ~~MUST BE IN A VENDING MACHINE THAT CONTAINS ONLY TOBACCO PRODUCTS.~~

7 ~~(2) TOBACCO PRODUCTS MAY NOT BE SOLD THROUGH A VENDING MACHINE THAT IS~~
 8 ~~LOCATED IN A RESTAURANT UNLESS THE RESTAURANT HAS A BAR, THE RESTAURANT AREA SHARES~~
 9 ~~SEATING WITH THE BAR AREA, AND THE VENDING MACHINE MEETS THE REQUIREMENTS OF~~
 10 ~~SUBSECTION (1)~~

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

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

13 ~~(3) places where alcoholic beverages are sold and consumed on the premises; and~~

14 ~~(4) places where the vending machine is under the direct supervision of the owner or an employee~~
 15 ~~of the establishment. The sale of tobacco products from a vending machine under direct supervision of the~~
 16 ~~owner or an employee of the establishment is considered a sale of tobacco products by that person for~~
 17 ~~purposes of 16-11-306."~~

18
 19 **Section 2.** Section 16-11-308, MCA, is amended to read:

20 "16-11-308. **Tobacco education fee.** (1) Failure to obtain a license₂ as required by 16-11-303₂ or
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 22 collect the penalty in the manner provided for the collection of other debts.

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 30 manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the

1 tobacco education material.

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3 16-11-303 for 3 months.

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5 16-11-120 and 16-11-303 for 1 year.

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

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1 ~~SUPERVISION OF THE OWNER OR AN EMPLOYEE OF THE ESTABLISHMENT; AND~~

2 ~~(4) A RESTAURANT IF THE RESTAURANT HAS A BAR AND THE RESTAURANT AREA SHARES~~
 3 ~~SEATING WITH THE BAR AREA PLACES WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED~~
 4 ~~ON THE PREMISES AND WHERE THE VENDING MACHINE IS UNDER THE DIRECT LINE-OF-SIGHT~~
 5 ~~SUPERVISION OF THE OWNER OR AN EMPLOYEE OF THE ESTABLISHMENT. THE TOBACCO PRODUCTS~~
 6 ~~MUST BE IN A VENDING MACHINE THAT CONTAINS ONLY TOBACCO PRODUCTS.~~

7 ~~(2) TOBACCO PRODUCTS MAY NOT BE SOLD THROUGH A VENDING MACHINE THAT IS~~
 8 ~~LOCATED IN A RESTAURANT UNLESS THE RESTAURANT HAS A BAR, THE RESTAURANT AREA SHARES~~
 9 ~~SEATING WITH THE BAR AREA, AND THE VENDING MACHINE MEETS THE REQUIREMENTS OF~~
 10 ~~SUBSECTION (1).~~

11 ~~(3) THE SALE OF TOBACCO PRODUCTS FROM A VENDING MACHINE UNDER THE DIRECT~~
 12 ~~LINE-OF-SIGHT SUPERVISION OF AN OWNER OR EMPLOYEE IS CONSIDERED A SALE OF TOBACCO~~
 13 ~~PRODUCTS BY THE OWNER OR EMPLOYEE FOR THE PURPOSES OF 16-11-305.~~

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

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

16 ~~(3) places where alcoholic beverages are sold and consumed on the premises; and~~

17 ~~(4) places where the vending machine is under the direct supervision of the owner or an employee~~
 18 ~~of the establishment. The sale of tobacco products from a vending machine under direct supervision of the~~
 19 ~~owner or an employee of the establishment is considered a sale of tobacco products by that person for~~
 20 ~~purposes of 16-11-305."~~

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

23 **"16-11-308. Tobacco education fee.** (1) Failure to obtain a license₂ as required by 16-11-303₁ or
 24 to post signs₂ as provided in 16-11-304₁ is punishable by a civil penalty of \$100. The department may
 25 collect the penalty in the manner provided for the collection of other debts.

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

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

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

1 (c) A fifth offense is punishable by assessment against the owner of the establishment of a tobacco
2 education fee of \$500. The employee or other person who sold the tobacco product, the establishment
3 manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the
4 tobacco education material.

5 (d) A sixth offense is punishable by suspension of the licenses required by 16-11-120 and
6 16-11-303 for 3 months.

7 (e) A seventh and subsequent offense is punishable by suspension of the licenses required by
8 16-11-120 and 16-11-303 for 1 year.

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

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

13 (5) Tobacco education fees must be assessed and collected by the department of public health and
14 human services. Notice of an assessment pursuant to subsection (2) and this subsection must be made
15 by the department of public health and human services within 30 days of the alleged violation by certified
16 letter addressed to the establishment owner or manager. The notice of assessment against the owner of
17 the establishment must provide an opportunity for a hearing ~~at the offices of the department of public~~
18 ~~health and human services in Helena or by electronic equipment, to be held pursuant to the provisions of~~
19 ~~the Montana Administrative Procedure Act fair hearing rules of the department of public health and human~~
20 ~~services. THE HEARING MAY BE CONDUCTED USING ELECTRONIC EQUIPMENT AND MUST COMPLY~~
21 ~~WITH THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT.~~ Within 30 days from
22 the date on which the notice of assessment was mailed, the owner or manager shall notify the department
23 of public health and human services that the owner or manager objects to the assessment and request a
24 hearing pursuant to this subsection.

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

1 notice of assessment must provide an opportunity for a hearing ~~at the offices of the department of public~~
2 ~~health and human services in Helena or by electronic equipment, to be held pursuant to the provisions of~~
3 ~~the Montana Administrative Procedure Act fair hearing rules of the department of public health and human~~
4 ~~services.~~ THE HEARING MAY BE CONDUCTED USING ELECTRONIC EQUIPMENT AND MUST COMPLY
5 WITH THE PROVISIONS OF THE MONTANA ADMINISTRATIVE PROCEDURE ACT. Within 30 days from
6 the date on which the notice of assessment was mailed, the employee shall notify the department of public
7 health and human services that the employee objects to the assessment and requests a hearing pursuant
8 to this subsection.

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

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

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

30 -END-

HOUSE BILL NO. 331

INTRODUCED BY SOFT, GROSFIELD, MCGEE, KITZENBERG, GRIMES, BOHLINGER, GILLAN, BAER,
 THOMAS, BISHOP, WILSON, BURNETT, HALLIGAN, MILLS, WELLS, TUSS, R. JOHNSON, RYAN, ECK,
 CAREY, DOWELL, GALVIN, PEASE, KOTTEL, AHNER, EWER, OHS, CLARK, CHRISTIAENS, HARPER

A BILL FOR AN ACT ENTITLED: "AN ACT AMENDING THE YOUTH ACCESS TO TOBACCO PRODUCTS
 CONTROL ACT; RESTRICTING THE PLACEMENT FOR SALE OF INDIVIDUALLY PACKAGED TOBACCO
 PRODUCTS; PROHIBITING SALE OF TOBACCO PRODUCTS THROUGH VENDING MACHINES; PROVIDING
 FOR HEARINGS PURSUANT TO CERTAIN RULES; AND AMENDING SECTIONS ~~16-11-305~~, 16-11-306,
 AND 16-11-308, MCA."

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

~~Section 1. Section 16-11-305, MCA, is amended to read:~~

~~"16-11-305. Sale or distribution of tobacco products to persons under 18 years of age prohibited
 placement for sale of individually packaged tobacco products. (1) A person may not sell or distribute a
 tobacco product to an individual under 18 years of age, whether over the counter, by vending machine,
 or otherwise.~~

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

~~(3) Individual packages of cigarettes and other individually packaged tobacco products must be
 placed behind a sales counter and may not be sold or distributed other than in a direct, face-to-face
 exchange between a retail sales clerk and an adult consumer."~~

Section 1. Section 16-11-306, MCA, is amended to read:

"16-11-306. Sales from of tobacco through vending machines ~~prohibited~~ **RESTRICTED**. (1)
 Tobacco products may ~~not~~ be sold through a vending machine ~~only in:~~ **ONLY IN:**

~~(1) VENDING MACHINES THAT DO NOT CONTAIN NONTOBACCO PRODUCTS OF ANY KIND;~~

~~(2) PLACES WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED ON THE PREMISES;~~

~~(3) A LOCATION WHERE THE VENDING MACHINE IS UNDER THE DIRECT LINE OF SIGHT~~

1 ~~SUPERVISION OF THE OWNER OR AN EMPLOYEE OF THE ESTABLISHMENT; AND~~
2 ~~(4) A RESTAURANT IF THE RESTAURANT HAS A BAR AND THE RESTAURANT AREA SHARES~~
3 ~~SEATING WITH THE BAR AREA PLACES WHERE ALCOHOLIC BEVERAGES ARE SOLD AND CONSUMED~~
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13 ~~PRODUCTS BY THE OWNER OR EMPLOYEE FOR THE PURPOSES OF 16-11-305.~~

14 ~~(1) factories, businesses, offices, and other places not open to the general public;~~
15 ~~(2) places to which individuals under 18 years of age are not permitted access;~~
16 ~~(3) places where alcoholic beverages are sold and consumed on the premises; and~~
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18 ~~of the establishment. The sale of tobacco products from a vending machine under direct supervision of the~~
19 ~~owner or an employee of the establishment is considered a sale of tobacco products by that person for~~
20 ~~purposes of 16-11-305."~~

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

23 "16-11-308. **Tobacco education fee.** (1) Failure to obtain a license₂ as required by 16-11-303₂ or
24 to post signs₂ as provided in 16-11-304₂ is punishable by a civil penalty of \$100. The department may
25 collect the penalty in the manner provided for the collection of other debts.

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

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30 public health and human services to the owner of the establishment.

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3 manager, and the establishment owner, if the owner is a sole proprietor or partner, shall read and view the
4 tobacco education material.

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6 16-11-303 for 3 months.

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8 16-11-120 and 16-11-303 for 1 year.

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30

-END-