

BALLOT LANGUAGE FOR INITIATIVE NO. 185 (I-185)

INITIATIVE NO. 185

A LAW PROPOSED BY INITIATIVE PETITION

I-185 raises taxes on all tobacco products, amends the definition to include e-cigarettes and vaping products, and dedicates funds. Taxes are increased by \$2.00 per pack of cigarettes for a total tax of \$3.70 per pack. Taxes on moist snuff increase to the greater of 83% of wholesale or \$3.70 per 1.2 ounces. The tax rate increases by 33% of the wholesale price for all other tobacco products including new taxes on e-cigarettes and vaping products. I-185 eliminates the sunset date for expanded Medicaid services for certain low-income adults, which otherwise ends June 30, 2019. I-185 dedicates a percentage of these increased tax revenues for: certain health-related programs, including some of the costs for Montana’s current Medicaid program; veterans’ services; smoking prevention and cessation programs; and long-term care services for seniors and people with disabilities.

New revenue from increases in tobacco taxes will generate \$74.3 million per year by 2023. Revenues may decline as fewer people use tobacco. The State must pay a percentage of the cost of the extended Medicaid services, which increases from 6.77% in 2019 to a cap of 10% by 2021.

YES ON INITIATIVE I-185

NO ON INITIATIVE I-185

THE COMPLETE TEXT OF INITIATIVE NO. 185 (I-185)

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

Section 1. Section 16-10-306, MCA, is amended to read:

"16-10-306. Cigarette and tobacco product labels -- federal requirements -- penalty. (1) A person may not knowingly import into this state for sale or other distribution any package of cigarettes or tobacco product that violates any federal:

(a) tax, trademark, or copyright law; or
(b) requirement for the placement of labels, warnings, or other information, including health hazards, that must be on the container or individual package.

(2) A person may not sell or offer to sell a package of cigarettes or tobacco product or affix the tax insignia on a package of cigarettes, as provided in 16-11-113, knowing that:

(a) the package is marked as manufactured for use outside of the United States;
(b) any label or language has been altered from the manufacturer's original packaging and labeling to conceal the fact that the package was manufactured for use outside of the United States; or

(c) a stamp, label, or decal was affixed to conceal the fact that the package was manufactured for use outside of the United States.

(3) A package of cigarettes or tobacco product found in this state that is marked for use outside of the United States is contraband and may be seized without a warrant by the department, any agent of the department, or any peace officer. Any cigarettes or tobacco products seized as contraband must be destroyed by the department.

(4) (a) The department may proceed against a person who violates this section through a civil action under the civil enforcement provisions of Title 16, chapter 10, part 4.

(b) A violation of this section is criminally punishable by a fine in an amount not to exceed \$10,000.

(5) For the purposes of this section:

(a) "cigarette" has the meaning ~~defined~~ provided in 16-11-102; and

(b) "tobacco product" ~~means all products containing tobacco for human consumption or use except cigarettes~~ has the meaning provided in 16-11-102."

Section 2. Section 16-11-102, MCA, is amended to read:

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

(a) "Contraband" means:

(i) any tobacco product possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of this part;

(ii) any cigarette or roll-your-own tobacco that is possessed, sold, offered for sale, distributed, held, owned, acquired, transported, imported, or caused to be imported in violation of part 4 or part 5;

(iii) any cigarettes that bear trademarks that are counterfeit under state or federal trademark laws;

(iv) any cigarettes bearing false or counterfeit insignia or tax stamps from any state; or

(v) any cigarettes or tobacco products that violate 16-10-306.

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

(c) "Person" means an individual, firm, partnership, corporation, association, company, committee, other group or persons, or other business entity, however formed.

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

(a) "Cigarette" means any product that contains nicotine, is intended to be burned or heated under ordinary conditions of use, and consists of or contains:

(i) any roll of tobacco wrapped in paper or in any substance not containing tobacco;

(ii) tobacco, in any form, that is functional in the product and that, because of its appearance, the type of tobacco used in the filler, or its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette; or

(iii) any roll of tobacco wrapped in any substance containing tobacco that, because of its appearance or the type of tobacco used in the filler and regardless of its packaging and labeling, is likely to be offered to or purchased by consumers as a cigarette described in subsection (2)(a)(i).

(b) "Controlling person" means a person who owns an equity interest of 10% or more of a business or the equivalent.

(c) "Directory" means the tobacco product directory as provided in 16-11-504.

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

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

(f) "Licensed retailer" means any person, other than a wholesaler, subjobber, or tobacco product vendor, who is licensed under the provisions of this part.

(g) "Licensed subjobber" means a subjobber licensed under the provisions of this part. The person must be treated as a wholesaler.

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

(i) "Manufacturer" means any person who fabricates tobacco products from raw materials for the purpose of resale.

(j) "Manufacturer's original container" means the original master shipping case or original shipping case used by the tobacco product manufacturer to ship multipack units, such as boxes, cartons, and sleeves, to warehouse distribution points.

(k) "Moist snuff" means any finely cut, ground, or powdered tobacco, other than dry snuff, that is intended to be placed in the oral cavity.

(l) "Record" means an original document, a legible facsimile, or an electronically preserved copy.

(m) "Retailer" means a person, other than a wholesaler, who is engaged in the business of selling tobacco products to the ultimate consumer. The term includes a person who operates fewer than 10 tobacco product vending machines.

(n) "Roll-your-own tobacco" means any tobacco that, because of its appearance, type, packaging, or labeling, is suitable for use and likely to be offered to or purchased by consumers as tobacco for making cigarettes.

(o) "Sale" or "sell" means any transfer of tobacco products for consideration, exchange, barter, gift, offer for sale, or distribution in any manner or by any means.

(p) "Sole distributor" means a person who either causes a unique brand of tobacco

products to be manufactured according to distinctive specifications and acts as the exclusive distributor of the tobacco products or is the exclusive distributor of a brand of tobacco products within the continental United States.

(q) "Subjobber" means a person who purchases from a licensed wholesaler cigarettes with the Montana cigarette tax insignia affixed and sells or offers to sell tobacco products to a licensed retailer or tobacco product vendor. An isolated sale or exchange of cigarettes between licensed retailers does not constitute those retailers as subjobbers.

(r) (i) "Tobacco product" means: ~~cigarettes and all other products containing tobacco that are~~

(A) a product containing, made, or derived from tobacco or that contains nicotine that is intended for human consumption or use is likely to be consumed, whether smoked, heated, chewed, absorbed, dissolved, inhaled, or ingested by any other means, including but not limited to a cigarette, a cigar, pipe tobacco, chewing tobacco, snuff, or snus; and

(B) any substance, regardless of whether or not it contains nicotine, consumed during the use of a device that can be used to deliver nicotine or another substance in any form, including aerosolized or vaporized, to the person inhaling from the device, including but not limited to an e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah.

(ii) The term does not include:

(A) a drug, device, or combination product, as defined in the Federal Food, Drug, and Cosmetic Act, authorized by the United States food and drug administration for sale as a tobacco cessation product or for other therapeutic purposes when the product is marketed and sold solely for such an approved purpose; or

(B) filters, rolling papers, a pipe, or a device described in subsection (2)(r)(i)(B).

(s) (i) "Tobacco product vendor" means a person doing business in the state who purchases tobacco products through a wholesaler, subjobber, or retailer for 10 or more tobacco product vending machines that the person operates for a profit in premises or locations other than the person's own.

(ii) A tobacco product vendor must be treated as a wholesaler.

(t) "Wholesale price" means the established price for which a manufacturer sells a tobacco product to a wholesaler or any other person before any discount or reduction.

(u) "Wholesaler" means a person who:

(i) purchases tobacco products from a manufacturer for the purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers; or

(ii) purchases tobacco products from a sole distributor, another wholesaler, or any other person for the purpose of selling tobacco products to subjobbers, tobacco product vendors, wholesalers, or retailers."

Section 3. Section 16-11-111, MCA, is amended to read:

"16-11-111. Cigarette, tobacco products, and moist snuff sales tax -- exemption for sale to tribal member. (1) (a) A tax on the purchase of cigarettes for consumption, use, or any purpose other than resale in the regular course of business is imposed and must be precollected by the wholesaler and paid to the state of Montana. The tax is ~~\$1.70~~ \$3.70 on each package containing 20 cigarettes. Whenever packages contain other than 20 cigarettes, there is a tax on each cigarette equal to 1/20 the tax on a package containing 20 cigarettes.

(b) The tax computed under subsection (1)(a) applies to illegally packaged cigarettes under 16-11-307.

(2) The tax imposed in subsection (1) does not apply to quota cigarettes.

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

(4) Pursuant to the procedure provided in subsection (5), a wholesaler making a sale of cigarettes to a retailer within the boundaries of a Montana Indian reservation may apply to the department for a refund or credit for taxes precollected on cigarettes sold by the retailer to a member of the federally recognized Indian tribe or tribes on whose reservation the sale is made. A wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

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

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

(7) There must be collected and paid to the state of Montana a tax of ~~50%~~ 83% of the wholesale price, to the wholesaler, of all tobacco products other than cigarettes and moist snuff. The tax on moist snuff is ~~85 cents an ounce~~ the greater of 83% of the wholesale price or the tax on each pack of 20 cigarettes under subsection (1)(a) per 1.2 ounces of moist snuff. ~~For a package of moist snuff less than 1.2 ounces based upon the net weight of the package listed by the manufacturer, the tax must be calculated as if the package weighs 1.2 ounces. For packages of moist snuff that are less than or greater than 1 ounce, the tax must be proportional to the size of the package.~~ Tobacco products shipped from Montana and destined for retail sale and consumption outside the state are not subject to this tax.

(8) The tax imposed by subsection (7) must be precollected and paid by a wholesaler to the department upon sale to a Montana retailer. A wholesaler who fails to report or pay the tax required by this part must be assessed penalty and interest as provided in 15-1-216.

(9) A retailer who purchases tobacco products for resale on which the tobacco products tax has not been collected and paid to the department shall comply with all the provisions of this part and the rules adopted to implement this part as if it were a wholesaler.

(10) A retailer must assume that the tobacco products tax has not been collected and paid to the department in the absence of a statement on the retailer's invoice or sales slip for the tobacco products that states that the applicable Montana tobacco products tax is included in the total billing cost."

Section 4. Section 16-11-114, MCA, is amended to read:

"16-11-114. Insignia discount. (1) Each licensed wholesaler is entitled to purchase an insignia at full face value less the following percentage of the face value upon payment for the insignia as defrayment of the costs of affixing insignia and precollecting the tax on behalf of the state of Montana:

(a) ~~0.90%~~ 0.478% for the first ~~2,580~~ 3,000 cartons or portion of ~~2,580~~ 3,000 cartons purchased in any calendar month;

(b) ~~0.60%~~ 0.318% for the next ~~2,580~~ 3,000 cartons or portion of ~~2,580~~ 3,000 cartons purchased in any calendar month; and

(c) ~~0.45%~~ 0.239% for purchases in excess of ~~5,160~~ 6,000 cartons in any calendar month.

(2) The taxes for tobacco products, other than cigarettes, that are paid by the wholesaler must be paid to the department in full less a 1.5% defrayment for the wholesaler's collection and administrative expenses and must, in accordance with the provisions of 17-2-124, be deposited by the department in the state general fund except as provided in 16-11-119. Refunds of the tax paid must be made as provided in 15-1-503 in cases in which the tobacco products purchased become unsalable."

Section 5. Section 16-11-119, MCA, is amended to read:

"16-11-119. Disposition of taxes -- statutory appropriation. (1) A sum equal to the amount necessary to purchase cigarette tax stamps must be deposited to or allocated from the state special revenue fund to the credit of the department from cigarette taxes collected under the provisions of 16-11-111, as provided in subsection (5) of this section.

(2) After the deposit or allocation in subsection (1), cigarette taxes collected under the provisions of 16-11-111 must, in accordance with the provisions of 17-2-124, be deposited first into the subaccounts in the amounts set forth in 53-6-1201(4) and then the remainder as follows:

(a) 8.3% or \$2 million, whichever is greater, in the state special revenue fund to the credit of the department of public health and human services for the operation and maintenance of state veterans' nursing homes;

(b) 2.6% in the long-range building program account provided for in 17-7-205;

(c) 44% in the state special revenue fund to the credit of the health and medicaid initiatives account provided for in 53-6-1201; and

(d) the remainder to the state general fund.

(3) If money in the state special revenue fund for the operation and maintenance of state veterans' nursing homes exceeds \$2 million at the end of the fiscal year, the excess must be transferred to the state general fund.

(4) The taxes collected under the provisions of 16-11-111(7) on tobacco products other than cigarettes must in accordance with the provisions of 17-2-124 be deposited first into the subaccounts in the amounts set forth in 53-6-1201(4) and then the remainder as follows:

(a) one-half in the state general fund; and
(b) one-half in the state special revenue fund account for health and medicaid initiatives provided for in 53-6-1201.

(5) Each fiscal year, a sum equal to the amount of money necessary to purchase cigarette tax stamps is statutorily appropriated, as provided in 17-7-502, from the state special revenue fund allocation in subsection (1) to the department for tax administration responsibilities."

Section 6. Section 53-6-1201, MCA, is amended to read:

"53-6-1201. Special revenue fund -- health and medicaid initiatives. (1) There is a health and medicaid initiatives account in the state special revenue fund established by 17-2-102. This account is to be administered by the department of public health and human services.

(2) There must be deposited in the account:

(a) money from cigarette taxes deposited under 16-11-119~~(2)(c)~~;

(b) money from taxes on tobacco products other than cigarettes deposited under 16-11-119~~(4)(b)~~; and

(c) any interest and income earned on the account.

(3) ~~This~~ Subject to subsection (4), this account may be used only to provide funding for:

(a) the state funds necessary to take full advantage of available federal matching funds in order to administer the plan and maximize enrollment of eligible children under the healthy Montana kids plan, provided for under Title 53, chapter 4, part 11, and to provide outreach to the eligible children;

(b) a new need-based prescription drug program established by the legislature for children, seniors, chronically ill, and disabled persons that does not supplant similar services provided under any existing program;

(c) increased medicaid services and medicaid provider rates. The increased revenue is intended to increase medicaid services and medicaid provider rates and not to supplant the general fund in the trended traditional level of appropriation for medicaid services and medicaid provider rates.

(d) an offset to loss of revenue to the general fund as a result of new tax credits; ~~and~~

(e) grants to schools for suicide prevention activities, for the biennium beginning July 1, 2017;

(f) tobacco use prevention or cessation programs administered by the department of public health and human services;

(g) home and community-based medicaid services waiver administered by the department of public health and human services under 53-6-402 in the form of increased access by more individuals;

(h) veterans' services, including suicide prevention; and

(i) costs associated with the Montana Health and Economic Livelihood Partnership (HELP) Act set forth in Title 53, chapter 6, part 13.

(4) There are subaccounts in the health and medicaid initiatives account established by subsection (1).

(a) Taxes collected under the provisions of 16-11-119 must first be deposited each fiscal year into subaccounts as follows:

(i) 6% of the amount in excess of fiscal year 2018 collections, but no more than \$3 million per fiscal year, into a subaccount to be used only for tobacco prevention provided for in subsection (3)(f);

(ii) 10% of the amount in excess of fiscal year 2018 collections, but no more than \$5 million per fiscal year, into a subaccount to be used only for home and community-based medicaid waiver services provided for in subsection (3)(g);

(iii) 4% of the amount in excess of fiscal year 2018 collections, but no more than \$2 million per fiscal year, into a subaccount to be used only for veterans' services, including suicide prevention, provided for in subsection (3)(h); and

(iv) 52% of the amount in excess of fiscal year 2018 collections, but no more than \$26 million per fiscal year, into a subaccount to be used only to provide state matching funds necessary for expanded medicaid eligibility provided for in subsection (3)(i). These funds are to be used prior to and thereby reduce funds provided for in 53-6-1304(2).

(b) No money may be moved or transferred out of a subaccount established under subsection (4)(a) unless the money is used for the purposes for which the subaccount was established.

(c) With the exception of subsection (4)(a)(iv), any funding appropriation made by the legislature from a subaccount established under subsection (4)(a) may be used only to increase services as provided by that subaccount and not to supplant the general fund or state special revenue for these purposes.

(d) The legislature, in providing the funding set forth in subsection (4)(a)(iv), is encouraged to investigate enhancements to the HELP Act, including but not limited to:

(i) items contained in the HELP Act oversight committee report pursuant to 53-6-1317, including cost-sharing mechanisms;

(ii) the workforce development program provided for in Title 39, chapter 12, part 1; and

(iii) any other enhancements the legislature deems necessary.

~~(4) (a) (5)~~ On or before July 1, the budget director shall calculate a balance required to sustain each program in subsection (3) for each fiscal year of the biennium. If the budget director certifies that the reserve balance will be sufficient, then the agencies may expend the revenue for the programs as appropriated. If the budget director determines that the reserve balance of the revenue will not support the level of appropriation, the budget director shall notify each agency. Upon receipt of the notification, the agency shall adjust the operating budget for the program to reflect the available revenue as determined by the budget director.

~~(b) Until the programs or credits described in subsections (3)(b) and (3)(d) are established, the funding must be used exclusively for the purposes described in subsections (3)(a) and (3)(c).~~

~~(5)(6)~~ The phrase "trended traditional level of appropriation", as used in subsection (3)(c), means the appropriation amounts, including supplemental appropriations, as those amounts were set based on eligibility standards, services authorized, and payment amount during the past five biennial budgets.

~~(6)(7)~~ The department of public health and human services may adopt rules to implement this section."

NEW SECTION. Section 7. {standard} Repealer. Section 28, Chapter 368, Laws of 2015, is repealed.

NEW SECTION. Section 8. Transition. (1) On or before March 1, 2019, each cigarette wholesaler shall file a report with the department of revenue in a form prescribed by the department showing the number of stamped cigarettes and cigarette tax insignia on hand at 12:01 a.m. on January 1, 2019.

(2) Accompanying the report filed pursuant to subsection (1), each cigarette wholesaler shall demonstrate its adjustment to the payment of the new tax rate and pay the difference in tax between the former tax rate and the new tax rate on that portion of inventory of cigarettes and cigarette tax insignia subject to [this act] held by the cigarette wholesaler at 12:01 a.m. on January 1, 2019.

NEW SECTION. Section 9. {standard} Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 10. {standard} Effective dates. (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Section 7] is effective June 1, 2019.

NEW SECTION. Section 11. {standard} Applicability. (1) Except as provided in subsections (2) and (3), [this act] applies after December 31, 2018.

(2) Section 16-11-111(1) applies to cigarettes sold by a wholesaler after December 31, 2018, that were not reported and subject to tax under 16-11-111.

(3) Section 16-11-111(7) applies to non-cigarette tobacco products sold by wholesalers after December 31, 2018.