

# MONTANA 2018 VOTER INFORMATION PAMPHLET ADDENDUM

This mailing is an addendum to the 2018 Voter Information Pamphlet that you received recently. The text in that pamphlet is accurate, however, there are several instances (see reverse side of this page) where language should have either been underlined or have a line through the middle of the words. In plain language: underlined words are proposed new statutory language, and lined-through (stricken) words are proposed to be removed from statute.

The only areas affected are for Initiative 185 and Initiative 186.

You may also visit our website at [sosmt.gov](http://sosmt.gov) for a digital copy of the 2018 Voter Information Pamphlet with Addendum (revised 10/10/2018).

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

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(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).

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(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 5, 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.

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(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) (e) (5):

(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).

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(13)(a) The reclamation plan must contain measures sufficient to prevent the pollution of water without the need for perpetual treatment.

(b) For purposes of this subsection (13), the term "perpetual treatment" includes activities necessary to treat acid mine drainage or perpetual leaching of contaminants, including arsenic, mercury and lead.

(c) This subsection (13) applies except in the case of a proposed amendment to an operating permit or reclamation plan pursuant to which a mine has been permitted on or before November 6, 2018.

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(3) The department shall deny an application for a permit or an application for an amendment to a permit unless the department finds, in writing and based on clear and convincing evidence, that the reclamation plan meets the requirements of 82-4-336(13). This subsection (3) applies except in the case of a proposed amendment to an operating permit or reclamation plan pursuant to which a mine has been permitted on or before November 6, 2018."

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(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:

(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).

(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.

- (i) of stability structurally competent to withstand geologic and climatic conditions without significant failure that would be a threat to public safety and the environment;
- (ii) that affords some utility to humans or the environment;
- (iii) that mitigates postreclamation visual contrasts between reclamation lands and adjacent lands; and
- (iv) that mitigates or prevents undesirable offsite environmental impacts.

(c) The use of backfilling as a reclamation measure is neither required nor prohibited in all cases. A department decision to require any backfill measure must be based on whether and to what extent the backfilling is appropriate under the site-specific circumstances and conditions in order to achieve the standards described in subsection (9)(b).

(10) The reclamation plan must provide sufficient measures to ensure public safety and to prevent the pollution of air or water and the degradation of adjacent lands.

(11) A reclamation plan must be approved by the department if it adequately provides for the accomplishment of the requirements and standards set forth in this section.

(12) The reclamation plan must provide for permanent landscaping and contouring to minimize the amount of precipitation that infiltrates into disturbed areas that are to be graded, covered, or vegetated, including but not limited to tailings impoundments and waste rock dumps. The plan must also provide measures to prevent objectionable postmining ground water discharges.

(13)(a) The reclamation plan must contain measures sufficient to prevent the pollution of water without the need for perpetual treatment.

(b) For purposes of this subsection (13), the term "perpetual treatment" includes activities necessary to treat acid mine drainage or perpetual leaching of contaminants, including arsenic, mercury and lead.

(c) This subsection (13) applies except in the case of a proposed amendment to an operating permit or reclamation plan pursuant to which a mine has been permitted on or before November 6, 2018.

~~(13)~~ (14) The reclamation plan must include, if applicable, the requirements for postclosure monitoring of a tailings storage facility agreed to by a panel pursuant to 82-4-377."

**Section 2.** Section 82-4-351, MCA, is amended to read:

**"82-4-351. Reasons for denial of permit.** (1) An application for a permit or an application for an amendment to a permit may be denied for the following reasons:

(a) the plan of operation or reclamation conflicts with Title 75, chapter 2, as amended, Title 75, chapter 5, as amended, Title 75, chapter 6, as amended, or rules adopted pursuant to these laws;

(b) the reclamation plan does not provide an acceptable method for accomplishment of reclamation as required by this part.

(2) ~~(A)~~ Except as stated in subsection 3, a denial of a permit must be in writing, state the reasons for denial, and be based on a preponderance of the evidence.

(3) The department shall deny an application for a permit or an application for an amendment to a permit unless the department finds, in writing and based on clear and convincing evidence, that the reclamation plan meets the requirements of 82-4-336(13). This subsection (3) applies except in the case of a proposed amendment to an operating permit or reclamation plan pursuant to which a mine has been permitted on or before November 6, 2018."

NEW SECTION. Section 3. {standard} Effective dates. [This Act] is effective upon approval by the electorate.

NEW SECTION. Section 4. {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 5. {standard} Applicability. [This act] applies after November 6, 2018