

HOUSE BILL NO. 28

INTRODUCED BY D. FERN

BY REQUEST OF THE LOCAL GOVERNMENT INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING FOR A TAX ON FIREWORKS TO PROVIDE FUNDING FOR EMERGENCY SERVICES; PROVIDING THAT THE TAX IS COLLECTED BY FIREWORKS WHOLESALERS; PROVIDING FOR DISTRIBUTION OF THE TAX REVENUE; PROVIDING FOR A PORTION OF THE REVENUE TO BE USED FOR WORKERS' COMPENSATION COVERAGE FOR VOLUNTEER FIREFIGHTERS; CREATING AN EMERGENCY MEDICAL AND TRAUMA SERVICES GRANT PROGRAM; PROVIDING RULEMAKING AUTHORITY; AND PROVIDING AN EFFECTIVE DATE AND A TERMINATION DATE."

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

NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions apply:

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

(2) "Fireworks" has the meaning provided in 50-37-101.

(3) "Fireworks wholesaler" means a person who sells fireworks in the state and has obtained the fireworks wholesaler permit required in 50-37-104.

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

NEW SECTION. **Section 2. Tax on fireworks -- exemption for sale to tribal member.** (1) A 5% tax is imposed on fireworks sold in Montana by a wholesaler.

(2) A fireworks wholesaler shall submit reports to the department by January 30 and August 30 each year listing the total dollar amount of sales. The report must be made on forms prescribed by the department.

(3) At the time the report is filed, the fireworks wholesaler shall submit a payment equal to the percentage provided in subsection (1) of the total dollar amount of sales.

(4) The department shall deposit the taxes paid under this section in the fireworks tax state special

1 revenue account provided for in [section 10].

2 (5) (a) Subject to the credit provided for in subsection (5)(b), the tax must be collected on sales of
3 fireworks to retailers on a Montana Indian reservation.

4 (b) A fireworks wholesaler making a sale of fireworks to a retailer within the boundaries of a Montana
5 Indian reservation may apply to the department for a refund or credit for taxes collected on fireworks sold by the
6 retailer to a member of the federally recognized Indian tribe on whose reservation the sale is made. A fireworks
7 wholesaler who does not file a claim within 1 year of the shipment date forfeits the refund or credit.

8 (6) The tax imposed by [sections 1 through 10] and related interest and penalties are a personal debt
9 of the person required to file a return from the time that the liability arises, regardless of when the time for
10 payment of the liability occurs.

11 (7) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties,
12 and interest owed under [sections 3 through 6]:

13 (a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state taxes
14 provided for in [sections 3 through 6] and who fails to pay the taxes is liable to the state for the taxes and the
15 penalty and interest due on the amounts;

16 (b) each officer of the corporation, to the extent that the officer has access to the requisite records, is
17 individually liable along with the corporation for filing statements and for unpaid taxes, penalties, and interest upon
18 a determination that the officer:

19 (i) possessed the responsibility to file statements and pay taxes on behalf of the corporation; and

20 (ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or the
21 payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to
22 file statements required by [sections 1 through 10] or pay taxes due as required by [sections 1 through 10];

23 (c) each partner of a partnership is jointly and severally liable, along with the partnership, for any
24 statements, taxes, penalties, and interest due while a partner;

25 (d) each member of a limited liability company that is treated as a partnership or as a corporation for
26 income tax purposes is jointly and severally liable, along with the limited liability company, for any statements,
27 taxes, penalties, and interest due while a member;

28 (e) the member of a single-member limited liability company that is disregarded for income tax purposes
29 is jointly and severally liable, along with the limited liability company, for any statements, taxes, penalties, and
30 interest due while a member; and

1 (f) each manager of a manager-managed limited liability company is jointly and severally liable, along
2 with the limited liability company, for any statements, taxes, penalties, and interest due while a manager.

3 (8) In determining which corporate officer is liable, the department is not limited to considering the
4 elements set forth in subsection (7)(a) to establish individual liability and may consider any other available
5 information.

6 (9) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of
7 penalty and interest against the corporation. The individual remains liable for any statements and the amount of
8 taxes, penalties, and interest unpaid by the entity.

9
10 **NEW SECTION. Section 3. Returns -- payment -- recordkeeping -- authority of department.** (1)

11 Each fireworks wholesaler shall file a return, on a form provided by the department, and pay the tax due as
12 provided in [section 2].

13 (2) Each return must be authenticated by the person filing the return or by the person's agent authorized
14 in writing to file the return.

15 (3) (a) A person required to pay to the department the taxes imposed by [sections 1 through 10] shall
16 keep for 5 years:

17 (i) all receipts issued; and

18 (ii) an accurate record of all sales of fireworks, showing the name and address of each purchaser, the
19 date of sale, and the quantity, kind, and retail price of each product sold.

20 (b) For the purpose of determining compliance with the provisions of [sections 1 through 10], the
21 department is authorized to examine or cause to be examined any books, papers, records, or memoranda
22 relevant to making a determination of the amount of tax due, whether the books, papers, records, or memoranda
23 are the property of or in the possession of the person filing the return or another person. In determining
24 compliance, the department may use statistical sampling and other sampling techniques consistent with generally
25 accepted auditing standards. The department may also:

26 (i) require the attendance of a person having knowledge or information relevant to a return;

27 (ii) compel the production of books, papers, records, or memoranda by the person required to attend;

28 (iii) implement the provisions of 15-1-703 if the department determines that the collection of the tax is or
29 may be jeopardized because of delay;

30 (iv) take testimony on matters material to the determination; and

1 (v) administer oaths or affirmations.

2 (4) Pursuant to rules established by the department, returns may be computer-generated and
3 electronically filed.

4

5 **NEW SECTION. Section 4. Deficiency assessment -- penalty and interest -- statute of limitations.**

6 (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a return,
7 it shall mail to the fireworks wholesaler a notice, pursuant to 15-1-211, of the additional tax proposed to be
8 assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed.
9 The fireworks wholesaler may seek review of the determination pursuant to 15-1-211.

10 (2) Penalty and interest must be added to a deficiency assessment as provided in 15-1-216. The
11 department may waive any penalty pursuant to 15-1-206.

12 (3) The amount of tax due under any return may be determined by the department within 5 years after
13 the return was filed, regardless of whether the return was filed on or after the last day prescribed for filing. For
14 purposes of this section, a return due under [sections 1 through 10] and filed before the last day prescribed by
15 law or rule is considered to be filed on the last day prescribed for filing.

16

17 **NEW SECTION. Section 5. Procedure to compute tax in absence of statement -- estimation of tax**

18 **-- failure to file -- penalty and interest.** (1) If the fireworks wholesaler fails to file any return required by [section
19 3] within the time required, the department may, at any time, audit the fireworks wholesaler or estimate the taxes
20 due from any information in its possession and, based on the audit or estimate, assess the fireworks wholesaler
21 for the taxes, penalties, and interest due the state.

22 (2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail
23 to the fireworks wholesaler a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be
24 assessed. The notice must contain a statement that if payment is not made, a warrant for distraint may be filed.
25 The fireworks wholesaler may seek review of the determination pursuant to 15-1-211. The department may waive
26 any penalty pursuant to 15-1-206.

27

28 **NEW SECTION. Section 6. Authority to collect delinquent taxes.** (1)(a) The department shall collect
29 taxes that are delinquent as determined under [sections 1 through 10].

30 (b) If a tax imposed by [sections 1 through 10] or any portion of the tax is not paid when due, the

1 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

2 (2) In addition to any other remedy, in order to collect delinquent taxes after the time for appeal has
3 expired, the department may direct the offset of tax refunds or other funds due the fireworks wholesaler from the
4 state, except wages subject to the provisions of 25-13-614 and retirement benefits.

5 (3) As provided in 15-1-705, the fireworks wholesaler has the right to a review of the tax liability prior to
6 any offset by the department.

7 (4) The department may file a claim for state funds on behalf of the fireworks wholesaler if a claim is
8 required before funds are available for offset.

9

10 **NEW SECTION. Section 7. Refunds -- interest -- limitations.** (1) Except as provided in [section 2(5)],
11 a claim for a refund or credit as a result of overpayment of taxes collected under [sections 1 through 10] must be
12 filed within 5 years of the date that the return was due, without regard to any extension of time for filing.

13 (2) (a) Interest paid by the department on an overpayment must be paid or credited at the same rate as
14 the rate charged on delinquent taxes under 15-1-216.

15 (b) Except as provided in subsection (2)(c), interest must be paid from the date that the return was due
16 or the date of overpayment, whichever is later. Interest does not accrue during any period in which the processing
17 of a claim is delayed more than 30 days because the taxpayer has not furnished necessary information.

18 (c) The department is not required to pay interest if:

19 (i) the overpayment is refunded or credited within 6 months of the date that a claim was filed; or

20 (ii) the amount of overpayment and interest does not exceed \$1.

21

22 **NEW SECTION. Section 8. Information -- confidentiality -- agreements with another state.** (1) (a)
23 Except as provided in subsections (2) through (5), in accordance with 15-30-2618 and 15-31-511, it is unlawful
24 for an employee of the department or any other public official or public employee to disclose or otherwise make
25 known information that is disclosed in a return or report required to be filed under [sections 1 through 10] or
26 information that concerns the affairs of the person making the return and that is acquired from the person's
27 records, officers, or employees in an examination or audit.

28 (b) This section may not be construed to prohibit the department from publishing statistics if they are
29 classified in a way that does not disclose the identity of a person making a return or the content of any particular
30 report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-2618

1 or 15-31-511 for violating the confidentiality of individual income tax or corporate income tax information.

2 (2) (a) The department may enter into an agreement with the taxing officials of another state for the
3 interpretation and administration of the laws of their state that provide for the collection of a sales tax or use tax
4 in order to promote fair and equitable administration of the laws and to eliminate double taxation.

5 (b) In order to implement the provisions of [sections 1 through 10], the department may furnish
6 information on a reciprocal basis to the taxing officials of another state if the information remains confidential
7 under statutes within the state receiving the information that are similar to this section.

8 (3) In order to facilitate processing of returns and payment of taxes required by [sections 1 through 10],
9 the department may contract with vendors and may disclose data to the vendors. The data disclosed must be
10 administered by the vendor in a manner consistent with this section.

11 (4) (a) The officers charged with the custody of the reports and returns may not be required to produce
12 them or evidence of anything contained in them in an action or proceeding in a court, except in an action or
13 proceeding:

14 (i) to which the department is a party under the provisions of [sections 1 through 10] or any other taxing
15 act; or

16 (ii) on behalf of a party to any action or proceedings under the provisions of [sections 1 through 10] or
17 other taxes when the reports or facts shown by the reports are directly involved in the action or proceedings.

18 (b) The court may require the production of and may admit in evidence only as much of the reports or
19 of the facts shown by the reports as are pertinent to the action or proceedings.

20 (5) This section may not be construed to limit the investigative authority of the legislative branch, as
21 provided in 5-11-106, 5-12-303, or 5-13-309.

22
23 **NEW SECTION. Section 9. Department to make rules.** The department of revenue shall prescribe
24 rules necessary to carry out the purposes of imposing and collecting the fireworks tax.

25
26 **NEW SECTION. Section 10. Fireworks tax state special revenue account.** (1) There is a fireworks
27 tax account in the state special revenue fund provided for in 17-2-102. Revenue from the fireworks tax provided
28 for in [section 2] must be deposited in the account.

29 (2) The funds in the account must be used as follows:

30 (a) \$250,000 per year for assisting local fire agencies with purchasing workers' compensation coverage

1 for volunteer firefighters as provided in [section 11]; and

2 (b) the remainder for grants for emergency medical and trauma services as provided in [section 12].

3

4 **NEW SECTION. Section 11. Workers' compensation coverage for local fire entities -- rulemaking.**

5 (1) The department of natural resources and conservation shall create a program for assisting a governing body
6 of a local fire agency organized under Title 7, chapter 33, with purchasing workers' compensation coverage for
7 volunteer firefighters.

8 (2) The department shall adopt rules governing the distribution of the funding provided for in [section
9 10(2)(a)]. The rules must provide a process for local fire agencies to request assistance and must establish
10 eligibility criteria. Funding may be provided to a local fire agency for up 2 years, after which the department shall
11 review whether to continue the funding.

12 (3) For the purposes of this section, a governing body of a local fire agency organized under Title 7,
13 chapter 33, does not include a governing body of a city of the first class or second class, including a city to which
14 7-33-4109 applies, that provides workers' compensation coverage to employees as defined in 39-71-118.

15

16 **NEW SECTION. Section 12. Emergency medical and trauma services grant program --**

17 **rulemaking.** (1) The department of public health and human services shall create an emergency medical and
18 trauma services grant program for the development, maintenance, and improvement of emergency medical and
19 trauma services with the revenue provided for in [section 10(2)(b)].

20 (2) The grants must be made on the basis of substantiated need, with priority given to applicants that
21 have underdeveloped or aged emergency medical and trauma services equipment or systems.

22 (3) Grants awarded under this section require local matching funds unless the department waives the
23 matching funds requirement upon demonstration that local sources of matching funds are not available.

24 (4) The department shall adopt rules to implement the emergency medical and trauma services grant
25 program. The rules must:

26 (a) establish eligibility criteria and priorities for emergency medical and trauma services grants;

27 (b) provide for an application process, including an annual deadline to apply for the grants;

28 (c) provide the date by which grants will be awarded each year; and

29 (d) provide matching funds criteria.

30

1 NEW SECTION. **Section 13. Notification to tribal governments.** The secretary of state shall send
2 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
3 Chippewa tribe.

4
5 NEW SECTION. **Section 14. Codification instruction.** (1) [Sections 1 through 10] are intended to be
6 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 10].

7 (2) [Section 11] is intended to be codified as an integral part of Title 76, chapter 13, and the provisions
8 of Title 76, chapter 13, apply to [section 11].

9 (3) [Section 12] is intended to be codified as an integral part of Title 50, chapter 6, and the provisions
10 of Title 50, chapter 6, apply to [section 12].

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12 NEW SECTION. **Section 15. Effective date.** [This act] is effective October 1, 2019.

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14 NEW SECTION. **Section 16. Termination.** [This act] terminates September 30, 2023.

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