

HOUSE BILL NO. 654

INTRODUCED BY Z. BROWN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS FOR FUNDING FOR TREATMENT
5 COURTS; PROVIDING FOR A TAX ON THE SALE OF OPIOIDS; REQUIRING LICENSING OF OPIOID
6 SELLERS; PROVIDING FOR QUARTERLY PAYMENTS OF THE TAX; PROVIDING A PENALTY AND
7 INTEREST FOR NONPAYMENT OF THE TAX; PROVIDING PENALTIES FOR DISCLOSURE OF
8 CONFIDENTIAL INFORMATION; ALLOWING THE DEPARTMENT OF REVENUE TO SHARE INFORMATION
9 WITH CERTAIN STATES AND ENTITIES; PROVIDING RULEMAKING AUTHORITY TO THE DEPARTMENT
10 OF REVENUE; CREATING A TREATMENT COURT SUPPORT SPECIAL REVENUE ACCOUNT FOR DEPOSIT
11 OF OPIOID TAX PROCEEDS; REQUIRING THE COURT ADMINISTRATOR TO ESTABLISH PROCEDURES
12 TO DISTRIBUTE ACCOUNT FUNDS; PROVIDING PRIORITIES, ELIGIBLE RECIPIENTS, AND USES FOR
13 ACCOUNT FUNDS; PROVIDING A STATUTORY APPROPRIATION; AMENDING SECTIONS 3-1-702 AND
14 17-7-502, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

15
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17
18 NEW SECTION. **Section 1. Definitions.** As used in [sections 1 through 10], the following definitions
19 apply:

- 20 (1) "Department" means the department of revenue provided for in 2-15-1301.
- 21 (2) "Opioid" has the meaning provided for "opiate" in 50-32-101.
- 22 (3) "Person" means an individual, firm, partnership, corporation, association, company, committee, other
23 group of persons, or other business entity, however formed.
- 24 (4) "Purchase price" means the total value of anything paid or delivered, in money or any other form, for
25 a sale or purchase without any deduction on account of the cost or value of the property sold, cost or value of
26 transportation, cost or value of labor, interest or discount paid or allowed after the sale is consummated, any tax
27 imposed by the state, or any other expense.
- 28 (5) "Seller" means a manufacturer, producer, wholesaler, importer, or distributor of opioids.

29
30 NEW SECTION. **Section 2. Taxation of opioids -- payment -- penalty and interest.** (1) There is a



1 tax imposed on the gross receipts from the initial sale of opioids into the state, to be paid by the seller, at a rate
2 of 10% of the purchase price.

3 (2) The tax may not be added as a separate line item on a sales slip, invoice, receipt, or other statement
4 or memorandum of the price paid by the retail customer.

5 (3) The tax is imposed the first time an opioid is sold in this state and shall be collected and remitted by
6 the seller to the department.

7 (4) A person who purchases opioids for resale on which the opioids tax has not been collected and paid
8 to the department shall comply with all provisions of [sections 1 through 10] and the rules adopted to implement
9 [sections 1 through 10] as if the person was the initial seller of the opioid.

10 (5) The tax may not be imposed on opioid products in the following circumstances:

11 (a) the product is exported for sale outside the state; or

12 (b) the product is not subject to taxation by the state under any federal law.

13 (6) All taxes, interest, and penalties collected or received must be deposited in the treatment court
14 support account provided for in [section 11(1)].

15 (7) A tax not received by the department within the time requirements of this section is delinquent and
16 subject to penalty and interest as provided in 15-1-216.

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

20 (9) For the purpose of determining liability for the filing of statements and the payment of taxes, penalties,
21 and interest owed under [sections 4 through 7]:

22 (a) the officer of a corporation whose responsibility it is to truthfully account for and pay to the state taxes
23 provided for in [sections 4 through 7] and who fails to pay the taxes is liable to the state for the taxes and the
24 penalty and interest due on the amounts;

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

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

29 (ii) possessed the responsibility on behalf of the corporation for directing the filing of statements or the
30 payment of other corporate obligations and exercised that responsibility, resulting in the corporation's failure to

1 file statements required by [sections 1 through 10] or pay taxes due as required by [sections 1 through 10];

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

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

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

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

12 (10) In determining which corporate officer is liable, the department is not limited to considering the
13 elements set forth in subsection (9)(a) to establish individual liability and may consider any other available
14 information.

15 (11) In the case of a bankruptcy, the liability of the individual remains unaffected by the discharge of
16 penalty and interest against the corporation. The individual remains liable for any statements and the amount of
17 taxes, penalties, and interest unpaid by the entity.

18 (12) The department shall provide the taxpayer with notice of the uniform dispute review procedure
19 available under 15-1-211 for disputing the failure to comply with payment of the taxes or the provisions of
20 [sections 1 through 10]. A request for hearing must be made within 30 days of the date of the notice.

21
22 **NEW SECTION. Section 3. License requirements.** (1) A person engaging in the initial sale of opioids
23 in the state shall first obtain a license from the department and pay the annual license fee of \$500. The license
24 is valid from January 1 through December 31 each year. If a license is obtained after January 1 in any year, the
25 license is valid from the date the license is obtained through December 31 of that year.

26 (2) The department shall maintain on its website a current list of approved licensed opioid sellers eligible
27 to sell opioids in the state.

28 (3) The annual license fee revenue must be deposited in the general fund.

29
30 **NEW SECTION. Section 4. Quarterly reporting -- returns -- payment -- recordkeeping -- authority**

1 **of the department.** (1) A seller of opioids collecting the tax shall file with the department a quarterly return on
2 a form prepared by the department. The return must indicate the quantity and gross sales value of opioid products
3 sold in the state for the previous quarter and additional information that may be required by the department.

4 (2) Each seller shall pay the tax due as provided in [section 2]. The return and the tax must be remitted
5 to the department by the 30th day of the month following the quarter due.

6 (3) Each return must be authenticated by the person filing the return or by the person's agent authorized
7 in writing to file the return.

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

10 (i) all receipts issued; and

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

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

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

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

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

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

24 (v) administer oaths or affirmations.

25 (5) Pursuant to rules established by the department, returns may be computer-generated and
26 electronically filed.

27

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

29 (1) If the department determines that the amount of the tax due is greater than the amount disclosed by a return,
30 it shall mail to the seller a notice, pursuant to 15-1-211, of the additional tax proposed to be assessed. The notice

1 must contain a statement that if payment is not made, a warrant for distraint may be filed. The seller may seek
2 review of the determination pursuant to 15-1-211.

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

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

9

10 **NEW SECTION. Section 6. Procedure to compute tax in absence of statement -- estimation of tax**
11 **-- failure to file -- penalty and interest.** (1) If the seller fails to file a return required by [section 4] within the time
12 required, the department may, at any time, audit the seller or estimate the taxes due from any information in its
13 possession and, based on the audit or estimate, assess the seller for the taxes, penalties, and interest due the
14 state.

15 (2) The department shall impose penalty and interest as provided in 15-1-216. The department shall mail
16 to the seller a notice, pursuant to 15-1-211, of the tax, penalty, and interest proposed to be assessed. The notice
17 must contain a statement that if payment is not made, a warrant for distraint may be filed. The seller may seek
18 review of the determination pursuant to 15-1-211. The department may waive any penalty pursuant to 15-1-206.
19

20 **NEW SECTION. Section 7. Authority to collect delinquent taxes.** (1)(a) The department shall collect
21 taxes that are delinquent as determined under [sections 1 through 10].

22 (b) If a tax imposed by [sections 1 through 10] or any portion of the tax is not paid when due, the
23 department may issue a warrant for distraint as provided in Title 15, chapter 1, part 7.

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

27 (3) As provided in 15-1-705, the seller has the right to a review of the tax liability prior to any offset by
28 the department.

29 (4) The department may file a claim for state funds on behalf of the seller if a claim is required before
30 funds are available for offset.

1
2 **NEW SECTION. Section 8. Refunds -- interest -- limitations.** (1) A claim for a refund or credit as a
3 result of overpayment of taxes collected under [sections 1 through 10] must be filed within 5 years of the date that
4 the return was due, without regard to any extension of time for filing.

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

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

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

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

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

13
14 **NEW SECTION. Section 9. Information -- confidentiality -- agreements with another state.** (1) (a)
15 Except as provided in subsections (2) through (5), in accordance with 15-30-2618 and 15-31-511, it is unlawful
16 for an employee of the department or any other public official or public employee to disclose or otherwise make
17 known information that is disclosed in a return or report required to be filed under [sections 1 through 10] or
18 information that concerns the affairs of the person making the return and that is acquired from the person's
19 records, officers, or employees in an examination or audit.

20 (b) This section may not be construed to prohibit the department from publishing statistics if they are
21 classified in a way that does not disclose the identity of a person making a return or the content of any particular
22 report or return. A person violating the provisions of this section is subject to the penalty provided in 15-30-2618
23 or 15-31-511 for violating the confidentiality of individual income tax or corporate income tax information.

24 (2) (a) This section may not be construed to prohibit the department from providing information obtained
25 under [sections 1 through 10] to:

26 (i) the department of justice or law enforcement to be used for the purpose of investigation and
27 prevention of noncompliance, tax evasion, fraud, and abuse under [sections 1 through 10]; or

28 (ii) the department of public health and human services to be used for the purpose of investigation and
29 prevention of noncompliance, fraud, and abuse under [sections 1 through 10].

30 (b) The department may enter into an agreement with the taxing officials of another state for the

1 interpretation and administration of the laws of that state that provide for the collection of the tax in order to
2 promote fair and equitable administration of the laws and to eliminate double taxation.

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

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

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

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

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

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

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

20
21 **NEW SECTION. Section 10. Rulemaking.** The department may adopt rules to administer and enforce
22 the provisions of [sections 1 through 10].

23
24 **NEW SECTION. Section 11. Treatment court support account -- distribution of funds -- report.**

25 (1) There is a treatment court support account in the state special revenue fund. Money in the account is
26 statutorily appropriated, as provided in 17-7-502, to the office of court administrator for purposes provided in
27 subsection (3).

28 (2) The supreme court administrator shall establish procedures for the distribution and accountability of
29 money in the account. The court administrator shall give priority to funding programs or services in rural or
30 underserved areas of the state or that address opioid abuse.

1 (3) Money in the treatment court support account must be used to expand the capacity and quality of
 2 existing treatment courts and extend treatment courts to areas of the state that are unserved by a treatment court.
 3 District, local, and tribal treatment courts are eligible to receive treatment court support account funds. Funding
 4 from the account may be used solely to fund services required for participants, drug and alcohol testing, case
 5 management services, treatment court staff, technology, program evaluation, or other needs identified by the
 6 supreme court administrator related to efficient and effective operation of treatment courts. The court
 7 administrator may use account funds to hire a grant writer or contract for grant writing services.

8

9 **Section 12.** Section 3-1-702, MCA, is amended to read:

10 **"3-1-702. Duties.** The court administrator is the administrative officer of the court. Under the direction
 11 of the supreme court, the court administrator shall:

12 (1) prepare and present judicial budget requests to the legislature, including the costs of the state-funded
 13 district court program;

14 (2) collect, compile, and report statistical and other data relating to the business transacted by the courts
 15 and provide the information to the legislature on request;

16 (3) to the extent possible, provide that current and future information technology applications are
 17 coordinated and compatible with the standards and goals of the executive branch as expressed in the state
 18 strategic information technology plan provided for in 2-17-521;

19 (4) recommend to the supreme court improvements in the judiciary;

20 (5) administer legal assistance for indigent victims of domestic violence, as provided in 3-2-714;

21 (6) administer state funding for district courts, as provided in chapter 5, part 9;

22 (7) administer and report on the child abuse and neglect court diversion pilot project provided in
 23 41-3-305;

24 (8) administer the pretrial program provided for in 3-1-708;

25 (9) administer the treatment court support account provided for in [section 11];

26 ~~(9)~~(10) administer the judicial branch personnel plan; and

27 ~~(10)~~(11) perform other duties that the supreme court may assign. (Subsection (7) terminates June 30,
 28 2019 -- secs. 5, 7, Ch. 141, L. 2017.)"

29

30 **Section 13.** Section 17-7-502, MCA, is amended to read:

1 **"17-7-502. Statutory appropriations -- definition -- requisites for validity.** (1) A statutory
 2 appropriation is an appropriation made by permanent law that authorizes spending by a state agency without the
 3 need for a biennial legislative appropriation or budget amendment.

4 (2) Except as provided in subsection (4), to be effective, a statutory appropriation must comply with both
 5 of the following provisions:

6 (a) The law containing the statutory authority must be listed in subsection (3).

7 (b) The law or portion of the law making a statutory appropriation must specifically state that a statutory
 8 appropriation is made as provided in this section.

9 (3) The following laws are the only laws containing statutory appropriations: 2-17-105; [section 11];
 10 5-11-120; 5-11-407; 5-13-403; 7-4-2502; 10-1-108; 10-1-1202; 10-1-1303; 10-2-603; 10-2-807; 10-3-203;
 11 10-3-310; 10-3-312; 10-3-314; 10-3-1304; 10-4-304; 15-1-121; 15-1-218; 15-35-108; 15-36-332; 15-37-117;
 12 15-39-110; 15-65-121; 15-70-101; 15-70-130; 15-70-433; 16-11-119; 16-11-509; 17-3-106; 17-3-112; 17-3-212;
 13 17-3-222; 17-3-241; 17-6-101; 17-7-215; 18-11-112; 19-3-319; 19-3-320; 19-6-404; 19-6-410; 19-9-702;
 14 19-13-604; 19-17-301; 19-18-512; 19-19-305; 19-19-506; 19-20-604; 19-20-607; 19-21-203; 20-8-107; 20-9-534;
 15 20-9-622; 20-9-905; 20-26-617; 20-26-1503; 22-1-327; 22-3-116; 22-3-117; 22-3-1004; 23-4-105; 23-5-306;
 16 23-5-409; 23-5-612; 23-7-301; 23-7-402; 30-10-1004; 37-43-204; 37-50-209; 37-51-501; 37-54-113; 39-71-503;
 17 41-5-2011; 42-2-105; 44-4-1101; 44-12-213; 44-13-102; 50-1-115; 53-1-109; 53-6-148; 53-6-1304; 53-9-113;
 18 53-24-108; 53-24-206; 60-11-115; 61-3-321; 61-3-415; 69-3-870; 69-4-527; 75-1-1101; 75-5-1108; 75-6-214;
 19 75-11-313; 75-26-308; 76-13-150; 76-13-416; 76-17-103; 76-22-109; 77-1-108; 77-2-362; 80-2-222; 80-4-416;
 20 80-11-518; 80-11-1006; 81-1-112; 81-1-113; 81-7-106; 81-10-103; 82-11-161; 85-20-1504; 85-20-1505;
 21 [85-25-102]; 87-1-603; 90-1-115; 90-1-205; 90-1-504; 90-3-1003; 90-6-331; and 90-9-306.

22 (4) There is a statutory appropriation to pay the principal, interest, premiums, and costs of issuing,
 23 paying, and securing all bonds, notes, or other obligations, as due, that have been authorized and issued
 24 pursuant to the laws of Montana. Agencies that have entered into agreements authorized by the laws of Montana
 25 to pay the state treasurer, for deposit in accordance with 17-2-101 through 17-2-107, as determined by the state
 26 treasurer, an amount sufficient to pay the principal and interest as due on the bonds or notes have statutory
 27 appropriation authority for the payments. (In subsection (3): pursuant to sec. 10, Ch. 360, L. 1999, the inclusion
 28 of 19-20-604 terminates contingently when the amortization period for the teachers' retirement system's unfunded
 29 liability is 10 years or less; pursuant to sec. 10, Ch. 10, Sp. L. May 2000, secs. 3 and 6, Ch. 481, L. 2003, and
 30 sec. 2, Ch. 459, L. 2009, the inclusion of 15-35-108 terminates June 30, 2019; pursuant to sec. 73, Ch. 44, L.

1 2007, the inclusion of 19-6-410 terminates contingently upon the death of the last recipient eligible under
 2 19-6-709(2) for the supplemental benefit provided by 19-6-709; pursuant to sec. 6, Ch. 61, L. 2011, the inclusion
 3 of 76-13-416 terminates June 30, 2019; pursuant to sec. 11(2), Ch. 17, L. 2013, the inclusion of 17-3-112
 4 terminates on occurrence of contingency; pursuant to sec. 27, Ch. 285, L. 2015, and sec. 1, Ch. 292, L. 2015,
 5 the inclusion of 53-9-113 terminates June 30, 2021; pursuant to sec. 6, Ch. 291, L. 2015, the inclusion of
 6 50-1-115 terminates June 30, 2021; pursuant to sec. 28, Ch. 368, L. 2015, the inclusion of 53-6-1304 terminates
 7 June 30, 2019; pursuant to sec. 5, Ch. 383, L. 2015, the inclusion of 85-25-102 is effective on occurrence of
 8 contingency; pursuant to sec. 5, Ch. 422, L. 2015, the inclusion of 17-7-215 terminates June 30, 2021; pursuant
 9 to sec. 6, Ch. 423, L. 2015, the inclusion of 22-3-116 and 22-3-117 terminates June 30, 2025; pursuant to sec.
 10 10, Ch. 427, L. 2015, the inclusion of 37-50-209 terminates September 30, 2019; pursuant to sec. 33, Ch. 457,
 11 L. 2015, the inclusion of 20-9-905 terminates December 31, 2023; pursuant to sec. 12, Ch. 55, L. 2017, the
 12 inclusion of 37-54-113 terminates June 30, 2023; pursuant to sec. 4, Ch. 122, L. 2017, the inclusion of 10-3-1304
 13 terminates September 30, 2025; pursuant to sec. 55, Ch. 151, L. 2017, the inclusion of 30-10-1004 terminates
 14 June 30, 2021; pursuant to sec. 1, Ch. 213, L. 2017, the inclusion of 90-6-331 terminates June 30, 2027; pursuant
 15 to secs. 5, 8, Ch. 284, L. 2017, the inclusion of 81-1-112, 81-1-113, and 81-7-106 terminates June 30, 2023;
 16 pursuant to sec. 1, Ch. 340, L. 2017, the inclusion of 22-1-327 terminates July 1, 2023, and pursuant to sec. 2,
 17 Ch. 340, L. 2017, and sec. 32, Ch. 429, L. 2017, is void for fiscal years 2018 and 2019; and pursuant to sec. 10,
 18 Ch. 374, L. 2017, the inclusion of 76-17-103 terminates June 30, 2027.)"

19

20 **NEW SECTION. Section 14. Transition.** The taxes collected under the provisions of this act from July
 21 1, 2019, through September 30, 2019, must be remitted to the department of revenue by October 31, 2019.

22

23 **NEW SECTION. Section 15. Notification to tribal governments.** The secretary of state shall send
 24 a copy of [this act] to each tribal government located on the seven Montana reservations and to the Little Shell
 25 Chippewa tribe.

26

27 **NEW SECTION. Section 16. Codification instruction.** (1) [Sections 1 through 10] are intended to be
 28 codified as an integral part of Title 15, and the provisions of Title 15 apply to [sections 1 through 10].

29 (2) [Section 11] is intended to be codified as an integral part of Title 3, chapter 1, part 7, and the
 30 provisions of Title 3, chapter 1, part 7, apply to [section 11].

1
2 NEW SECTION. **Section 17. Severability.** If a part of [this act] is invalid, all valid parts that are
3 severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications,
4 the part remains in effect in all valid applications that are severable from the invalid applications.

5
6 NEW SECTION. **Section 18. Effective date.** [This act] is effective on passage and approval.

7
8 NEW SECTION. **Section 19. Applicability.** [This act] applies to the sale of opioids into the state after
9 June 30, 2019.

10 - END -

