

SENATE BILL NO. 195

INTRODUCED BY J. TREBAS, M. NIKOLAKAKOS, D. EMRICH, G. NIKOLAKAKOS

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LAWS RELATED TO AGE; PROVIDING THAT A PERSON WHO IS AT LEAST 18 YEARS OF AGE BUT UNDER THE AGE OF 21 MAY POSSESS AND CONSUME BEER OR TABLE WINE WHILE WITH CERTAIN PEOPLE; REQUIRING COUNTIES OR LOCAL GOVERNMENTS TO OPT IN THROUGH ORDINANCE OR RESOLUTION; AND AMENDING SECTIONS 16-3-301, 16-3-309, 16-4-1002, 16-4-1006, AND 16-6-305, MCA."

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

**NEW SECTION. Section 1. Possession of beer or wine for minors -- over age 18 but less than age 21 -- parental consent -- spouses.** (1) Subject to subsection (2), a person who is at least 18 years of age but under the age of 21 may possess and consume beer or table wine with the consent and in the presence of the person's parent, legal guardian, or spouse who is 21 years of age or older. The consumption of beer or table wine may be on private property or at a location licensed for on-premises consumption, if permitted by the licensee. It is not unlawful for the person's parent, legal guardian, or spouse or a licensee to furnish beer or table wine to the person who is at least 18 years of age.

(2) A local government may, by ordinance, adopt regulations pursuant to 16-3-309 to allow alcohol consumption by persons who are at least 18 years of age but under the age of 21 as provided in subsection (1) of this section.

**Section 2.** Section 16-3-301, MCA, is amended to read:

**"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1)

Except as allowed in 16-4-213(8), it is unlawful for a licensed retailer to:

(a) purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler licensed under the provisions of this code;

(b) purchase or acquire table wine from anyone except a liquor store agent or winery or table wine

1 distributor licensed under the provisions of this code;

2 (c) purchase or acquire wine from anyone except a liquor store agent or winery;

3 (d) transport alcoholic beverages from one licensed premises or other facility to any other licensed  
4 premises owned by the licensee; or

5 (e) purchase or acquire liquor from anyone except an agency liquor store.

6 (2) It is unlawful for a licensed distributor or wholesaler to purchase beer, table wine, or wine from  
7 anyone except a brewery, winery, or wholesaler licensed or registered under this code.

8 (3) It is unlawful for a liquor store agent to purchase table wine or sacramental wine from anyone  
9 except a table wine distributor licensed under this code.

10 (4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or  
11 give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

12 (a) except as provided in [section 1], any person under 21 years of age; or

13 (b) any person actually, apparently, or obviously intoxicated.

14 (5) Any person under 21 years of age or any other person who knowingly misrepresents the  
15 person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with  
16 the licensee and, on conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section  
17 may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of  
18 any federal law.

19 (6) All licensees shall display in a prominent place in their premises a placard, issued by the  
20 department, stating fully the consequences for violations of the provisions of this code by persons under 21  
21 years of age.

22 (7) For purposes of 45-5-623 and this title, the establishment of the following facts by a person  
23 making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of  
24 innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

25 (a) the purchaser falsely represented and supported with documentary evidence that an ordinary  
26 and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

27 (b) the appearance of the purchaser was such that an ordinary and prudent person would believe  
28 the purchaser to be of legal age to purchase alcoholic beverages; and

1 (c) the sale was made in good faith and in reasonable reliance on the representation and  
2 appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

3 (8) A licensed retailer may purchase beer and table wine from a licensed in-state retailer and  
4 transport the purchased beer and table wine to the licensed retailer's premises. The department may penalize  
5 retailers purchasing beer and table wine from out-of-state retailers subject to this code. Purchases under this  
6 subsection are limited to a maximum of 6 gallons a day. (See compiler's comments for contingent termination of  
7 certain text.)"

8

9 **Section 3.** Section 16-3-309, MCA, is amended to read:

10 **"16-3-309. Sales prohibited by ordinance.** (1) An incorporated city may enact an ordinance defining  
11 certain areas in its incorporated limits where alcoholic beverages may or may not be sold.

12 (2) A county may enact an ordinance or resolution defining certain areas in the county, not within  
13 the incorporated limits of a city, where alcoholic beverages may or may not be sold.

14 (3) In enacting such an ordinance or resolution, the county or city may provide that the provisions  
15 of 16-3-306(1) do not apply within the jurisdictional area of the ordinance or resolution. If a county or city has  
16 supplanted the provisions of 16-3-306(1), upon request of the department the governing body of the county or  
17 city must certify to the department whether or not the person or individual identified in the request may lawfully  
18 sell alcoholic beverages under the terms of the ordinance or resolution. The department is bound by the  
19 determination set forth in the certification.

20 (4) A county or local government may enact an ordinance or resolution to allow alcohol  
21 consumption as provided in [section 1].

22 (4)(5) No county or incorporated city may by ordinance restrict the number of licenses that the  
23 department may issue."

24

25 **Section 4.** Section 16-4-1002, MCA, is amended to read:

26 **"16-4-1002. Legislative intent.** It is the intent of this part that retail establishments and manufacturers  
27 licensed to sell or serve alcoholic beverages to the public ensure that all licensees and their employees that sell  
28 or serve alcoholic beverages are appropriately trained to comply with state law prohibiting the sale or service of

1 alcoholic beverages to persons under 21 years of age, except as provided under [section 1], and to persons  
2 who are intoxicated. This part does not apply to special permits issued under 16-4-301."

3

4 **Section 5.** Section 16-4-1006, MCA, is amended to read:

5 **"16-4-1006. Responsible server and sales training program.** (1) The department shall certify all  
6 server and sales training programs that include the following:

- 7 (a) effects of alcohol on the human body;
- 8 (b) information, including criminal, civil, and administrative penalties, related to 27-1-710 and this  
9 code;
- 10 (c) procedures for checking identification, including compliance with [section 1];
- 11 (d) procedures for gathering proper documentation that may affect the licensee's liability;
- 12 (e) training for skills to handle difficult situations and to learn evaluation techniques regarding  
13 intoxicated persons or others that pose potential liability;
- 14 (f) a final test; and
- 15 (g) a certificate of completion, which must be provided to participants who pass the final test.
- 16 (2) The department may not provide a responsible server and sales training program."

17

18 **Section 6.** Section 16-6-305, MCA, is amended to read:

19 **"16-6-305. Age limit for sale or provision of alcoholic beverages -- liability of provider.** (1) (a)  
20 Except as provided in [section 1], and in the case of an alcoholic beverage provided in a nonintoxicating  
21 quantity to a person under 21 years of age by the person's ~~parent or guardian~~, physician or dentist for medicinal  
22 purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in  
23 connection with a religious observance, a person may not sell or otherwise provide an alcoholic beverage to a  
24 person under 21 years of age.

25 (b) ~~A parent, guardian, or other~~ Except as provided in [section 1], a person may not knowingly sell  
26 or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age.

27 (c) For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic  
28 beverage that is sufficient to produce:

1 (i) a blood, breath, or urine alcohol concentration in excess of 0.05; or

2 (ii) substantial or visible mental or physical impairment.

3 (2) ~~A-Except as provided in [section 1], a person is guilty of a misdemeanor who:~~

4 (a) invites a person under the age of 21 years into a public place where an alcoholic beverage is  
5 sold and treats, gives, or purchases an alcoholic beverage for the person;

6 (b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or  
7 purchase alcoholic beverages for the person; ~~or~~

8 (c) holds out the person to be 21 years of age or older to the owner of the establishment or to the  
9 owner's employee; or

10 (d) falsely holds out the person meets the requirements of [section 1].

11 (3) It is unlawful for any person to fraudulently misrepresent the person's age to any dispenser of  
12 alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in  
13 any identification card, including a tribal identification card.

14 (4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition  
15 to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by  
16 the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the  
17 result of the intoxicated condition created by the violation. (See compiler's comments for contingent termination  
18 of certain text.)"

19  
20 NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an  
21 integral part of Title 16, and the provisions of Title 16 apply to [section 1].

22 - END -