

CHAPTER NO. 5.

SENATE BILL NO. 25

INTRODUCED BY GALT

BY REQUEST OF THE CODE COMMISSIONER

IN THE SENATE

January 4, 1979	Introduced and referred to Committee on Judiciary.  On Motion Senator Galt was added as author to the Pre-Filed Bill.
January 8, 1979	Committee recommend bill do pass as amended. Report adopted.
January 9, 1979	Printed and placed on members' desks.
January 10, 1979	Second reading, do pass.
January 11, 1979	Considered correctly engrossed.
January 13, 1979	Third reading, passed. Transmitted to second house.

IN THE HOUSE

January 15, 1979	Introduced and referred to Committee on Judiciary.
January 19, 1979	Committee recommend bill be concurred in and placed on Consent Calendar. Report adopted.
January 22, 1979	Third reading Consent Calendar concurred in.

IN THE SENATE

January 23, 1979

Returned from second house.  
Sent to enrolling.

Report correctly enrolled.

SENATE BILL NO. 25

INTRODUCED BY \_\_\_\_\_

BY REQUEST OF THE CODE COMMISSIONER

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO ALCOHOLIC BEVERAGES; AMENDING SECTIONS 16-1-103, 16-1-106, 16-1-403, AND 16-6-302, MCA."

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

Section 1. Section 16-1-103, MCA, is amended to read:

"16-1-103. Policy as to retail sale of liquor. It is hereby ~~declared~~ as the policy of the state that it is necessary to further regulate and control the sale and distribution of alcoholic beverages within the state ~~to eliminate certain illegal traffic in liquor now existing~~ and to ensure the entire control of the sale of liquor in the Montana department of revenue. It is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the department be empowered and authorized to grant licenses to persons qualified under this code to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this code and under rules promulgated by the department and under its strict supervision and control and to provide severe penalty for the sale of liquor except by and in state liquor stores

and by persons licensed under this code. The restrictions, regulations, and provisions contained in this code are enacted by the legislature for the protection, health, welfare, and safety of the people of the state."

Section 2. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency agreement" means an agreement between the department and a person appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than .5% of alcohol by volume.

(4) "Beer" means a malt beverage containing not more than 7% of alcohol by weight.

(5) "Brewer" means a person who produces malt beverages.

(6) "Department" means the Montana department of revenue.

(7) "Immediate family" means a spouse, dependent children, or dependent parents.

(8) "Industrial use" means a use described as industrial use by the federal Alcohol Administration Act and

1 the federal rules and regulations of 27 CFR.

2 (9) "Liquor" means an alcoholic beverage except beer.

3 (10) "Malt beverage" means an alcoholic beverage made by  
4 the fermentation of an infusion or decoction, or a  
5 combination of both, in potable brewing water, of malted  
6 barley with or without hops or their parts or their products  
7 and with or without other malted cereals and with or without  
8 the addition of unmalted or prepared cereals, other  
9 carbohydrates, or products prepared therefrom and with or  
10 without other wholesome products suitable for human food  
11 consumption.

12 (11) "Package" means a container or receptacle used for  
13 holding an alcoholic beverage.

14 (12) "Posted price" means the retail price of liquor as  
15 fixed and determined by the department and in addition  
16 thereto an excise and license tax as provided in this code.

17 (13) "Proof gallon" means a U.S. gallon of liquor at 60  
18 degrees on the Fahrenheit scale that contains 50% of alcohol  
19 by volume.

20 (14) "Public place" means a place, building, or  
21 conveyance to which the public has or may be permitted to  
22 have access and any place of public resort.

23 ~~(15) "Residence" means a building, part of a building,~~  
24 ~~or tent where a person resides but does not include any part~~  
25 ~~of a building that is not actually and exclusively used as a~~

1 ~~private-residence~~

2 ~~(16)(15)~~ "Rules" means rules published by the  
3 department pursuant to this code.

4 ~~(17)(16)~~ "State liquor facility" means a facility owned  
5 or under control of the department for the purpose of  
6 receiving, storing, transporting, or selling alcoholic  
7 beverages.

8 ~~(18)(17)~~ "State liquor store" means a retail store  
9 operated by the department in accordance with this code for  
10 the purpose of selling liquor.

11 ~~(19)(18)~~ "Storage depot" means a building or structure  
12 owned or operated by a brewer at any point in the state of  
13 Montana off and away from the premises of a brewery, and  
14 which structure is equipped with refrigeration or cooling  
15 apparatus for the storage of beer and from which a brewer  
16 may sell or distribute beer as permitted by this code.

17 ~~(20)(19)~~ "Warehouse" means a building or structure  
18 owned or operated by a licensed wholesaler for the  
19 receiving, storage, and distribution of beer as permitted by  
20 this code.

21 ~~(21)(20)~~ "Wine" means an alcoholic beverage made from  
22 the normal alcoholic fermentation of the juice of sound,  
23 ripe fruit or other agricultural products without addition  
24 or abstraction, except as may occur in the usual cellar  
25 treatment of clarifying and aging, and that contains not



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LC0044

1979 Legislature  
Code Commissioner Bill - Summary

SENATE Bill No. 25

AN ACT TO GENERALLY REVISE AND CLARIFY THE LAW RELATING TO ALCOHOLIC BEVERAGES.

(This summary does not include discussion of routine form or grammatical changes.)

Section 1. 16-1-103. Deleted obsolete language in first sentence.

Section 2. 16-1-106. Deleted definition of "residence" as the term is not used in the alcoholic beverages code.

Section 3. 16-1-403. The term "carrier" is used consistently throughout the section except for one instance. Amendment will make all terminology consistent.

Section 4. 16-6-302. Grammatical change.

Section 5. 16-10-102. Changes "act" to "chapter" to change a reference that was overlooked during recodification.

Approved by Committee  
on Judiciary

1 SENATE BILL NO. 25  
2 INTRODUCED BY GALT  
3 BY REQUEST OF THE CODE COMMISSIONER  
4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY ~~THE~~ LAW TITLE 16, MCA, RELATING TO ~~ALCOHOLIC~~  
7 BEVERAGES ALCOHOL AND TOBACCO; AMENDING SECTIONS 16-1-103,  
8 16-1-106, 16-1-403, ~~AND~~ 16-6-302, AND 16-10-102, MCA."  
9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
11 Section 1. Section 16-1-103, MCA, is amended to read:  
12 "16-1-103. Policy as to retail sale of liquor. It is  
13 ~~hereby declared as~~ the policy of the state that it is  
14 necessary to further regulate and control the sale and  
15 distribution of alcoholic beverages within the state ~~to~~  
16 ~~eliminate certain illegal traffic in liquor now existing,~~  
17 and to ensure the entire control of the sale of liquor in  
18 the Montana department of revenue. It is advisable and  
19 necessary, in addition to the operation of the state liquor  
20 stores now provided by law, that the department be empowered  
21 and authorized to grant licenses to persons qualified under  
22 this code to sell liquor purchased by them at state liquor  
23 stores at retail posted price in accordance with this code  
24 and under rules promulgated by the department and under its  
25 strict supervision and control and to provide severe penalty

1 for the sale of liquor except by and in state liquor stores  
2 and by persons licensed under this code. The restrictions,  
3 regulations, and provisions contained in this code are  
4 enacted by the legislature for the protection, health,  
5 welfare, and safety of the people of the state."  
6 Section 2. Section 16-1-106, MCA, is amended to read:  
7 "16-1-106. Definitions. As used in this code, the  
8 following definitions apply:  
9 (1) "Agency agreement" means an agreement between the  
10 department and a person appointed to sell liquor as a  
11 commission merchant rather than as an employee.  
12 (2) "Alcohol" means ethyl alcohol, also called  
13 ethanol, or the hydrated oxide of ethyl.  
14 (3) "Alcoholic beverage" means a compound produced and  
15 sold for human consumption as a drink that contains more  
16 than .5% of alcohol by volume.  
17 (4) "Beer" means a malt beverage containing not more  
18 than 7% of alcohol by weight.  
19 (5) "Brewer" means a person who produces malt  
20 beverages.  
21 (6) "Department" means the Montana department of  
22 revenue.  
23 (7) "Immediate family" means a spouse, dependent  
24 children, or dependent parents.  
25 (8) "Industrial use" means a use described as

1 industrial use by the federal Alcohol Administration Act and  
2 the federal rules and regulations of 27 CFR.

3 (9) "Liquor" means an alcoholic beverage except beer.

4 (10) "Malt beverage" means an alcoholic beverage made by  
5 the fermentation of an infusion or decoction, or a  
6 combination of both, in potable brewing water, of malted  
7 barley with or without hops or their parts or their products  
8 and with or without other malted cereals and with or without  
9 the addition of unmalted or prepared cereals, other  
10 carbohydrates, or products prepared therefrom and with or  
11 without other wholesome products suitable for human food  
12 consumption.

13 (11) "Package" means a container or receptacle used for  
14 holding an alcoholic beverage.

15 (12) "Posted price" means the retail price of liquor as  
16 fixed and determined by the department and in addition  
17 thereto an excise and license tax as provided in this code.

18 (13) "Proof gallon" means a U.S. gallon of liquor at 60  
19 degrees on the Fahrenheit scale that contains 50% of alcohol  
20 by volume.

21 (14) "Public place" means a place, building, or  
22 conveyance to which the public has or may be permitted to  
23 have access and any place of public resort.

24 ~~(15) "Residence" means a building, part of a building,~~  
25 ~~or tent where a person resides but does not include any part~~

1 ~~of a building that is not actually and exclusively used as a~~  
2 ~~private residence.~~

3 ~~(16)(15)~~ "Rules" means rules published by the  
4 department pursuant to this code.

5 ~~(17)(16)~~ "State liquor facility" means a facility owned  
6 or under control of the department for the purpose of  
7 receiving, storing, transporting, or selling alcoholic  
8 beverages.

9 ~~(18)(17)~~ "State liquor store" means a retail store  
10 operated by the department in accordance with this code for  
11 the purpose of selling liquor.

12 ~~(19)(18)~~ "Storage depot" means a building or structure  
13 owned or operated by a brewer at any point in the state of  
14 Montana off and away from the premises of a brewery, and  
15 which structure is equipped with refrigeration or cooling  
16 apparatus for the storage of beer and from which a brewer  
17 may sell or distribute beer as permitted by this code.

18 ~~(20)(19)~~ "Warehouse" means a building or structure  
19 owned or operated by a licensed wholesaler for the  
20 receiving, storage, and distribution of beer as permitted by  
21 this code.

22 ~~(21)(20)~~ "Wine" means an alcoholic beverage made from  
23 the normal alcoholic fermentation of the juice of sound,  
24 ripe fruit or other agricultural products without addition  
25 or abstraction, except as may occur in the usual cellar



1 treatment of clarifying and aging, and that contains not  
 2 less than 7% or more than 24% of alcohol by volume. Wine  
 3 may be ameliorated to correct natural deficiencies,  
 4 sweetened, and fortified in accordance with applicable  
 5 federal regulations and the customs and practices of the  
 6 industry. Other alcoholic beverages not defined as above  
 7 but made in the manner of wine, and labeled and sold as wine  
 8 in accordance with federal regulations are also wine."

9 Section 3. Section 16-1-403, MCA, is amended to read:

10 "16-1-403. Excise tax accounting methods -- report  
 11 forms. (1) The method provided in 16-1-402 shall be presumed  
 12 to determine fairly and correctly the liquor purchased  
 13 outside this state and sold for consumption within this  
 14 state. Any carrier aggrieved by the application of ~~such the~~  
 15 method may petition the department for use of some other  
 16 method. Thereupon, if the department finds that the  
 17 application of ~~such the~~ method will be unjust to the  
 18 carrier, it may allow the use of the method petitioned for  
 19 by the ~~airline carrier~~ or may use such other method as will  
 20 fairly reflect the liquor purchased outside this state and  
 21 served for consumption within this state.

22 (2) The department shall prescribe report forms which  
 23 shall be used by the carriers in reporting their sales and  
 24 computing their liability for excise taxes and markup.  
 25 Report forms shall be filed and payment of excise taxes and

1 state markup shall be made on a quarterly basis. The filing  
 2 of report forms and payment of excise taxes and state markup  
 3 shall be made not later than the last day of the month  
 4 immediately following the close of each quarterly period."

5 Section 4. Section 16-6-302, MCA, is amended to read:

6 "16-6-302. Penalty for sale of alcoholic beverage  
 7 without license. Any person who has not been issued a  
 8 license under this code who ~~shall sell~~ sells or ~~keep~~ keeps  
 9 for sale any alcoholic beverage ~~shall be~~ is guilty of a  
 10 felony and upon conviction thereof ~~shall be fined~~ is  
 11 punishable by a fine of not less than \$1,000 or more than  
 12 \$5,000 or ~~be imprisoned by imprisonment~~ in the state prison  
 13 for not less than 1 or more than 5 years or by both such  
 14 fine and imprisonment."

15 Section 5. Section 16-10-102, MCA, is amended to read:

16 "16-10-102. Declaration of policy. ~~It is hereby~~  
 17 ~~declared that the~~ The advertising, offering for sale, or  
 18 sale of cigarettes below cost in the retail and wholesale  
 19 trades with the intent of injuring competitors or lessening  
 20 competition is an unfair and deceptive business practice. It  
 21 is ~~hereby declared to be~~ the policy of the state to promote  
 22 the public welfare, and it is the purpose of this act  
 23 ~~chapter~~ to carry out that policy in the public interest,  
 24 stabilize the sale of cigarettes, and maximize and protect  
 25 the state revenues from this source."

-End-

-6-

1 SENATE BILL NO. 25  
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 7 BEVERAGES ALCOHOL AND TOBACCO; AMENDING SECTIONS 16-1-103,  
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 15 distribution of alcoholic beverages within the state--~~to~~  
 16 ~~eliminate--certain--illegal--traffic-in-liquor--now-existing~~  
 17 and to ensure the entire control of the sale of liquor in  
 18 the Montana department of revenue. It is advisable and  
 19 necessary, in addition to the operation of the state liquor  
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1 industrial use by the federal Alcohol Administration Act and  
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16 fixed and determined by the department and in addition  
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4 department pursuant to this code.

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24 ripe fruit or other agricultural products without addition  
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1 treatment of clarifying and aging, and that contains not  
 2 less than 7% or more than 24% of alcohol by volume. Wine  
 3 may be ameliorated to correct natural deficiencies,  
 4 sweetened, and fortified in accordance with applicable  
 5 federal regulations and the customs and practices of the  
 6 industry. Other alcoholic beverages not defined as above  
 7 but made in the manner of wine and labeled and sold as wine  
 8 in accordance with federal regulations are also wine."

9 Section 3. Section 16-1-403, MCA, is amended to read:

10 "16-1-403. Excise tax accounting methods -- report  
 11 forms. (1) The method provided in 16-1-402 shall be presumed  
 12 to determine fairly and correctly the liquor purchased  
 13 outside this state and sold for consumption within this  
 14 state. Any carrier aggrieved by the application of such ~~the~~  
 15 method may petition the department for use of some other  
 16 method. Thereupon, if the department finds that the  
 17 application of such ~~the~~ method will be unjust to the  
 18 carrier, it may allow the use of the method petitioned for  
 19 by the ~~retailer~~ carrier or may use such other method as will  
 20 fairly reflect the liquor purchased outside this state and  
 21 served for consumption within this state.

22 (2) The department shall prescribe report forms which  
 23 shall be used by the carriers in reporting their sales and  
 24 computing their liability for excise taxes and markup.  
 25 Report forms shall be filed and payment of excise taxes and

1 state markup shall be made on a quarterly basis. The filing  
 2 of report forms and payment of excise taxes and state markup  
 3 shall be made not later than the last day of the month  
 4 immediately following the close of each quarterly period."

5 Section 4. Section 16-6-302, MCA, is amended to read:

6 "16-6-302. Penalty for sale of alcoholic beverage  
 7 without license. Any person who has not been issued a  
 8 license under this code who ~~shall sell~~ sells or keep keeps  
 9 for sale any alcoholic beverage ~~shall be~~ is guilty of a  
 10 felony and upon conviction thereof ~~shall be fined~~ is  
 11 punishable by a fine of not less than \$1,000 or more than  
 12 \$5,000 or be imprisoned by imprisonment in the state prison  
 13 for not less than 1 or more than 5 years or by both such  
 14 fine and imprisonment."

15 Section 5. Section 16-10-102, MCA, is amended to read:

16 "16-10-102. Declaration of policy. ~~It is hereby~~  
 17 declared that the ~~the~~ advertising, offering for sale, or  
 18 sale of cigarettes below cost in the retail and wholesale  
 19 trades with the intent of injuring competitors or lessening  
 20 competition is an unfair and deceptive business practice. It  
 21 is hereby declared to be the policy of the state to promote  
 22 the public welfare, and it is the purpose of this act  
 23 chapter to carry out that policy in the public interest,  
 24 stabilize the sale of cigarettes, and maximize and protect  
 25 the state revenues from this source."

-End-

-6-

1 SENATE BILL NO. 25

2 INTRODUCED BY GALT

3 BY REQUEST OF THE CODE COMMISSIONER

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE AND  
6 CLARIFY THE ~~LAW~~ TITLE 16, MCA, RELATING TO ~~ALCOHOLIC~~  
7 BEVERAGES ALCOHOL AND TOBACCO; AMENDING SECTIONS 16-1-103,  
8 16-1-106, 16-1-403, ~~AND 16-6-302, AND 16-10-102, MCA.~~"

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

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19 necessary, in addition to the operation of the state liquor  
20 stores now provided by law, that the department be empowered  
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22 this code to sell liquor purchased by them at state liquor  
23 stores at retail posted price in accordance with this code  
24 and under rules promulgated by the department and under its  
25 strict supervision and control and to provide severe penalty

1 for the sale of liquor except by and in state liquor stores  
2 and by persons licensed under this code. The restrictions,  
3 regulations, and provisions contained in this code are  
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6 Section 2. Section 16-1-106, MCA, is amended to read:

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8 following definitions apply:

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16 than .5% of alcohol by volume.

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18 than 7% of alcohol by weight.

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20 beverages.

21 (6) "Department" means the Montana department of  
22 revenue.

23 (7) "Immediate family" means a spouse, dependent  
24 children, or dependent parents.

25 (8) "Industrial use" means a use described as

1 industrial use by the federal Alcohol Administration Act and  
2 the federal rules and regulations of 27 CFR.

3 (9) "Liquor" means an alcoholic beverage except beer.

4 (10) "Malt beverage" means an alcoholic beverage made by  
5 the fermentation of an infusion or decoction, or a  
6 combination of both, in potable brewing water, of malted  
7 barley with or without hops or their parts or their products  
8 and with or without other malted cereals and with or without  
9 the addition of unmalted or prepared cereals, other  
10 carbohydrates, or products prepared therefrom and with or  
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16 fixed and determined by the department and in addition  
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19 degrees on the Fahrenheit scale that contains 50% of alcohol  
20 by volume.

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22 conveyance to which the public has or may be permitted to  
23 have access and any place of public resort.

24 ~~(15) "Residence" means a building, part of a building,~~  
25 ~~or tent where a person resides but does not include any part~~

1 ~~of a building that is not actually and exclusively used as a~~  
2 ~~private residence~~

3 ~~(16)~~(15) "Rules" means rules published by the  
4 department pursuant to this code.

5 ~~(17)~~(16) "State liquor facility" means a facility owned  
6 or under control of the department for the purpose of  
7 receiving, storing, transporting, or selling alcoholic  
8 beverages.

9 ~~(18)~~(17) "State liquor store" means a retail store  
10 operated by the department in accordance with this code for  
11 the purpose of selling liquor.

12 ~~(19)~~(18) "Storage depot" means a building or structure  
13 owned or operated by a brewer at any point in the state of  
14 Montana off and away from the premises of a brewery, and  
15 which structure is equipped with refrigeration or cooling  
16 apparatus for the storage of beer and from which a brewer  
17 may sell or distribute beer as permitted by this code.

18 ~~(20)~~(19) "Warehouse" means a building or structure  
19 owned or operated by a licensed wholesaler for the  
20 receiving, storage, and distribution of beer as permitted by  
21 this code.

22 ~~(21)~~(20) "Wine" means an alcoholic beverage made from  
23 the normal alcoholic fermentation of the juice of sound,  
24 ripe fruit or other agricultural products without addition  
25 or abstraction, except as may occur in the usual cellar

1 treatment of clarifying and aging, and that contains not  
 2 less than 7% or more than 24% of alcohol by volume. Wine  
 3 may be ameliorated to correct natural deficiencies,  
 4 sweetened, and fortified in accordance with applicable  
 5 federal regulations and the customs and practices of the  
 6 industry. Other alcoholic beverages not defined as above  
 7 but made in the manner of wine ~~and~~ labeled and sold as wine  
 8 in accordance with federal regulations are also wine."

9 Section 3. Section 16-1-403, MCA, is amended to read:

10 "16-1-403. Excise tax accounting methods -- report  
 11 forms. (1) The method provided in 16-1-402 shall be presumed  
 12 to determine fairly and correctly the liquor purchased  
 13 outside this state and sold for consumption within this  
 14 state. Any carrier aggrieved by the application of such ~~the~~  
 15 method may petition the department for use of some other  
 16 method. Thereupon, if the department finds that the  
 17 application of such ~~the~~ method will be unjust to the  
 18 carrier, it may allow the use of the method petitioned for  
 19 by the ~~airline carrier~~ or may use such other method as will  
 20 fairly reflect the liquor purchased outside this state and  
 21 served for consumption within this state.

22 (2) The department shall prescribe report forms which  
 23 shall be used by the carriers in reporting their sales and  
 24 computing their liability for excise taxes and markup.  
 25 Report forms shall be filed and payment of excise taxes and

1 state markup shall be made on a quarterly basis. The filing  
 2 of report forms and payment of excise taxes and state markup  
 3 shall be made not later than the last day of the month  
 4 immediately following the close of each quarterly period."

5 Section 4. Section 16-6-302, MCA, is amended to read:

6 "16-6-302. Penalty for sale of alcoholic beverage  
 7 without license. Any person who has not been issued a  
 8 license under this code who ~~shall sell~~ sells or ~~keep~~ keeps  
 9 for sale any alcoholic beverage ~~shall be~~ is guilty of a  
 10 felony and upon conviction thereof ~~shall be fined~~ is  
 11 punishable by a fine of not less than \$1,000 or more than  
 12 \$5,000 or ~~be imprisoned by imprisonment~~ in the state prison  
 13 for not less than 1 or more than 5 years or by both such  
 14 fine and imprisonment."

15 Section 5. Section 16-10-102, MCA, is amended to read:

16 "16-10-102. Declaration of policy. ~~it is hereby~~  
 17 ~~declared that the~~ the advertising, offering for sale, or  
 18 sale of cigarettes below cost in the retail and wholesale  
 19 trades with the intent of injuring competitors or lessening  
 20 competition is an unfair and deceptive business practice. It  
 21 is hereby ~~declared to be~~ the policy of the state to promote  
 22 the public welfare, and it is the purpose of this ~~act~~  
 23 ~~chapter~~ to carry out that policy in the public interest,  
 24 stabilize the sale of cigarettes, and maximize and protect  
 25 the state revenues from this source."

-End-

January 8, 1979

STANDING COMMITTEE REPORT

That Senate Bill No. 25 be amended as follows:

1. Title, line 6  
Strike: "THE LAW"  
Insert: "TITLE 16, MCA,"  
  
Strike: "ALCOHOLIC BEVERAGES"  
Insert: "ALCOHOL AND TOBACCO"
2. Title, line 7  
Strike: "AND"  
Following "16-6-302,"  
Insert: "AND 16-10-102,"