

HOUSE BILL NO. 48

1/07 Introduced
1/07 Referred to Judiciary
Died in Committee

1 HOUSE BILL NO. 48
2 INTRODUCED BY SWIFT

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO RAISE FROM 19 TO 21
5 THE LEGAL AGE AT WHICH PERSONS MAY POSSESS, CONSUME, OR BE
6 SOLD OR OTHERWISE GIVEN ALCOHOLIC BEVERAGES; AMENDING
7 SECTIONS 16-3-301, 16-4-401, 16-6-305, 16-6-314, 45-5-623,
8 AND 45-5-624, MCA; AND PROVIDING A CONTINGENT EFFECTIVE
9 DATE."

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

12 Section 1. Section 16-3-301, MCA, is amended to read:

13 "16-3-301. Unlawful purchases, sales, or deliveries.

14 (1) It shall be unlawful for a licensed retailer to purchase
15 or acquire beer from anyone except a brewer or wholesaler
16 licensed under the provisions of this code.

17 (2) It shall be unlawful for any licensee, his or her
18 employee or employees, or any other person to sell, deliver,
19 or give away or cause or permit to be sold, delivered, or
20 given away any alcoholic beverage to:

21 (a) any person under 19 21 years of age;

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

24 (3) Any person under 19 21 years of age or other
25 person who knowingly misrepresents his or her qualifications

1 for the purpose of obtaining an alcoholic beverage from such
2 licensee shall be equally guilty with said licensee and
3 shall, upon conviction thereof, be subject to the penalty
4 provided in 45-5-624; provided, however, that nothing herein
5 contained shall be construed as authorizing or permitting
6 the sale of an alcoholic beverage to any person in violation
7 of any federal law.

8 (4) It shall be further mandatory under the provisions
9 of this code that all licensees display in a prominent place
10 in their premises a placard as issued by the department
11 stating fully the consequences for violations of the
12 provisions of this code by persons under 19 21 years of
13 age."

14 Section 2. Section 16-4-401, MCA, is amended to read:

15 "16-4-401. License as privilege -- criteria for
16 decision on application. (1) A license under this code is a
17 privilege which the state may grant to an applicant and is
18 not a right to which any applicant is entitled.

19 (2) Except as provided in subsection (6), in the case
20 of a license that permits on-premises consumption, the
21 department must find in every case in which it makes an
22 order for the issuance of a new license or for the approval
23 of the transfer of a license that:

24 (a) in the case of an individual applicant:

25 (i) the applicant will not possess an ownership



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1 interest in more than one establishment licensed under this
2 chapter for all-beverages sales;

3 (ii) the applicant or any member of his immediate
4 family is without financing from or any affiliation to a
5 manufacturer, bottler, or distributor of beer, wine, or
6 liquor;

7 (iii) the applicant is a resident of the state and is
8 qualified to vote in a state election;

9 (iv) the applicant's past record and present status as
10 a purveyor of alcoholic beverages and as a businessman and
11 citizen demonstrate that he is likely to operate his
12 establishment in compliance with all applicable laws of the
13 state and local governments; and

14 (v) the applicant is not under the age of ~~19~~ 21 years;
15 and

16 (b) in the case of a corporate applicant:

17 (i) the owners of at least 51% of the outstanding
18 stock meet the requirements of subsection (2)(a)(iii);

19 (ii) each owner of 10% or more of the outstanding stock
20 meets the requirements for an individual applicant listed in
21 subsection (2)(a) of this section;

22 (iii) the corporation is authorized to do business in
23 Montana; and

24 (iv) in the case of a corporation not listed on a
25 national stock exchange, each owner of stock meets the

1 requirements of subsection (2)(a)(i).

2 (3) In the case of a license that permits only
3 off-premises consumption, the department must find in every
4 case in which it makes an order for the issuance of a new
5 license or for the approval of the transfer of a license
6 that:

7 (a) in the case of an individual applicant:

8 (i) the applicant will not possess an ownership
9 interest in more than one establishment licensed under this
10 chapter for all-beverages sales;

11 (ii) the applicant or any member of his immediate
12 family is without financing from or any affiliation to a
13 manufacturer, bottler, or distributor of beer, wine, or
14 liquor;

15 (iii) the applicant has not been convicted of a felony
16 or, if the applicant has been convicted of a felony, his
17 rights have been restored;

18 (iv) the applicant's past record and present status as
19 a purveyor of alcoholic beverages and as a businessman and
20 citizen demonstrate that he is likely to operate his
21 establishment in compliance with all applicable laws of the
22 state and local governments; and

23 (v) the applicant is not under the age of ~~19~~ 21 years;
24 and

25 (b) in the case of a corporate applicant:

1 (i) the owners of at least 51% of the outstanding
2 stock meet the requirements of subsection (3)(a)(iii);

3 (ii) each owner of 10% or more of the outstanding stock
4 meets the requirements for an individual listed in
5 subsection (3)(a) of this section; and

6 (iii) the corporation is authorized to do business in
7 Montana.

8 (4) In the case of a license that permits the
9 manufacture or wholesaling of an alcoholic beverage, the
10 department must find in every case in which it makes an
11 order for the issuance of a new license or for the approval
12 of the transfer of a license that:

13 (a) in the case of an individual applicant:

14 (i) the applicant has no ownership interest in any
15 establishment licensed under this chapter for retail
16 alcoholic beverages sales;

17 (ii) the applicant has not been convicted of a felony
18 or, if the applicant has been convicted of a felony, his
19 rights have been restored;

20 (iii) the applicant's past record and present status as
21 a purveyor of alcoholic beverages and as a businessman and
22 citizen demonstrate that he is likely to operate his
23 establishment in compliance with all applicable laws of the
24 state and local governments;

25 (iv) the applicant is not under the age of ~~19~~ 21 years;

1 and

2 (v) an applicant for a wholesale license is neither a
3 manufacturer of an alcoholic beverage nor is owned or
4 controlled by a manufacturer of an alcoholic beverage; and

5 (b) in the case of a corporate applicant:

6 (i) the owners of at least 51% of the outstanding
7 stock meet the requirements of subsection (4)(a)(ii);

8 (ii) each owner of 10% or more of the outstanding stock
9 meets the requirements for an individual listed in
10 subsection (4)(a) of this section;

11 (iii) an applicant for a wholesale license is neither a
12 manufacturer of an alcoholic beverage nor is owned or
13 controlled by a manufacturer of an alcoholic beverage; and

14 (iv) the corporation is authorized to do business in
15 Montana.

16 (5) In the case of a corporate applicant, the
17 requirements of subsections (2)(b), (3)(b), and (4)(b) apply
18 separately to each class of stock.

19 (6) The provisions of subsection (2) do not apply to
20 an applicant for or holder of a license pursuant to
21 16-4-302."

22 Section 3. Section 16-6-305, MCA, is amended to read:

23 "16-6-305. Age limit for sale of alcoholic beverages.

24 (1) Except in the case of an alcoholic beverage given to a
25 person under ~~19~~ 21 years of age by his parent or guardian

1 for beverage or medicinal purposes or administered to him by
 2 his physician or dentist for medicinal purposes or sold to
 3 him by a vendor or druggist upon the prescription of a
 4 physician, no person shall sell, give, or otherwise supply
 5 an alcoholic beverage to any person under ~~19~~ 21 years of age
 6 or permit any person under that age to consume an alcoholic
 7 beverage.

8 (2) Any person shall be guilty of a misdemeanor who:

9 (a) invites a person under the age of ~~19~~ 21 years into
 10 a public place where an alcoholic beverage is sold and
 11 treats, gives, or purchases an alcoholic beverage for such
 12 person;

13 (b) permits such person in a public place where an
 14 alcoholic beverage is sold to treat, give, or purchase
 15 liquor for him; or

16 (c) holds out such person to be ~~19~~ 21 years of age or
 17 older to the owner of the establishment or his or her
 18 employee or employees.

19 (3) It is unlawful for any person to fraudulently
 20 misrepresent his or her age to any dispenser of alcoholic
 21 beverages or to falsely procure any identification card or
 22 to alter any of the statements contained in any
 23 identification card."

24 Section 4. Section 16-6-314, MCA, is amended to read:

25 "16-6-314. Penalty for violating code -- revocation of

1 license. Any person violating any of the provisions of this
 2 code shall, upon conviction thereof, be deemed guilty of a
 3 misdemeanor and punishable by such fine or imprisonment, or
 4 both, as provided in 46-18-212, except as is herein
 5 otherwise provided. If any retail licensee is convicted of
 6 any offense under this code, his license shall be
 7 immediately revoked or in the discretion of the department
 8 such other sanction imposed as may be authorized under
 9 16-4-406. Further, if any person under ~~19~~ 21 years of age is
 10 convicted of an offense under this code he shall be subject
 11 to a \$100 fine or 30 days in confinement."

12 Section 5. Section 45-5-623, MCA, is amended to read:

13 "45-5-623. Unlawful transactions with children. (1) A
 14 person commits the offense of unlawful transactions with
 15 children if he knowingly:

16 (a) sells or gives explosives to a child under the age
 17 of majority except as authorized under appropriate city
 18 ordinances;

19 (b) sells or gives intoxicating substances other than
 20 alcoholic beverages to a child under the age of majority;

21 (c) sells or gives alcoholic beverages to a person
 22 under ~~19~~ 21 years of age; or

23 (d) being a junk dealer, pawnbroker, or secondhand
 24 dealer, receives or purchases goods from a child under the
 25 age of majority without authorization of the parent or

1 guardian.

2 (2) A person convicted of the offense of unlawful
3 transactions with children shall be fined not to exceed \$500
4 or be imprisoned in the county jail for any term not to
5 exceed 6 months, or both. A person convicted of a second
6 offense of unlawful transactions with children shall be
7 fined not to exceed \$1,000 or be imprisoned in the county
8 jail for any term not to exceed 6 months, or both."

9 Section 6. Section 45-5-624, MCA, is amended to read:

10 "45-5-624. Unlawful possession of an intoxicating
11 substance ~~by--children~~. (1) A person under the age of 18
12 years commits the offense of possession of an intoxicating
13 substance if he knowingly has in his possession an
14 intoxicating substance other than an alcoholic beverage. A
15 person under the age of ~~19~~ 21 commits the offense of
16 possession of an intoxicating substance if he knowingly has
17 in his possession an alcoholic beverage, except that he does
18 not commit the offense when in the course of his employment
19 it is necessary to possess alcoholic beverages.

20 (2) A person convicted of the offense of possession of
21 an intoxicating substance shall be fined not to exceed \$50
22 or be imprisoned in the county jail for any term not to
23 exceed 10 days, or both. If proceedings are held in the
24 youth court, the preceding penalty does not apply, and the
25 offender shall be treated as an alleged youth in need of

1 supervision as defined in 41-5-103(13). In such case, the
2 youth court may enter its judgment under 41-5-523."

3 NEW SECTION. Section 7. Act effective only on
4 amendment to constitution. This act is effective only if
5 Article II, section 14, of the Montana Constitution is
6 amended by the electorate at the general election held in
7 November 1986, permitting the legislature to establish 21
8 years as the legal age for consuming alcoholic beverages. If
9 the amendment is approved by the electorate, this act
10 becomes effective at the same time that the amendment
11 becomes effective.

-End-