

SENATE BILL NO. 2

1/07 Introduced
1/07 Referred to Judiciary
1/08 Fiscal Note Requested
1/14 Fiscal Note Received
1/15 Hearing
1/18 Committee Report-Bill Pass As Amended
1/22 2nd Reading Pass As Amended
1/24 3rd Reading Pass

Transmitted to House

1/26 Referred to Judiciary
3/06 Hearing
Died in Committee

1 SENATE BILL NO. 2
2 INTRODUCED BY SHAW

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE LEGAL
5 AGE FOR CONSUMING ALCOHOLIC BEVERAGES FROM 19 YEARS TO 21
6 YEARS TO IMPLEMENT A PROPOSED AMENDMENT TO THE MONTANA
7 CONSTITUTION PERMITTING THE LEGISLATURE TO ESTABLISH 21
8 YEARS AS THE LEGAL DRINKING AGE; PROVIDING THAT THIS ACT IS
9 NOT EFFECTIVE UNLESS SUCH CONSTITUTIONAL AMENDMENT IS
10 APPROVED BY THE ELECTORATE; AMENDING SECTIONS 16-3-301,
11 16-4-401, 16-6-305, 16-6-314, 45-5-623, AND 45-5-624, MCA;
12 AND PROVIDING A CONTINGENT EFFECTIVE DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15 Section 1. Section 16-3-301, MCA, is amended to read:
16 "16-3-301. Unlawful purchases, sales, or deliveries.

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

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

- 24 (a) any person under 19 21 years of age;
- 25 (b) any intoxicated person or any person actually,

1 apparently, or obviously intoxicated.

2 (3) Any person under 19 21 years of age or other
3 person who knowingly misrepresents his or her qualifications
4 for the purpose of obtaining an alcoholic beverage from such
5 licensee shall be equally guilty with said licensee and
6 shall, upon conviction thereof, be subject to the penalty
7 provided in 45-5-624; provided, however, that nothing herein
8 contained shall be construed as authorizing or permitting
9 the sale of an alcoholic beverage to any person in violation
10 of any federal law.

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

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

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

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



1 of the transfer of a license that:

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

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

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

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

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

17 (v) the applicant is not under the age of 19 21 years;

18 and

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

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

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

25 (iii) the corporation is authorized to do business in

1 Montana; and

2 (iv) in the case of a corporation not listed on a
3 national stock exchange, each owner of stock meets the
4 requirements of subsection (2)(a)(i).

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

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

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

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

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

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

1 (v) the applicant is not under the age of 19 21 years;
2 and

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

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

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

9 (iii) the corporation is authorized to do business in
10 Montana.

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

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

17 (i) the applicant has no ownership interest in any
18 establishment licensed under this chapter for retail
19 alcoholic beverages sales;

20 (ii) the applicant has not been convicted of a felony
21 or, if the applicant has been convicted of a felony, his
22 rights have been restored;

23 (iii) the applicant's past record and present status as
24 a purveyor of alcoholic beverages and as a businessman and
25 citizen demonstrate that he is likely to operate his

1 establishment in compliance with all applicable laws of the
2 state and local governments;

3 (iv) the applicant is not under the age of 19 21 years;
4 and

5 (v) an applicant for a wholesale license is neither a
6 manufacturer of an alcoholic beverage nor is owned or
7 controlled by a manufacturer of an alcoholic beverage; and

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

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

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

14 (iii) an applicant for a wholesale license is neither a
15 manufacturer of an alcoholic beverage nor is owned or
16 controlled by a manufacturer of an alcoholic beverage; and

17 (iv) the corporation is authorized to do business in
18 Montana.

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

22 (6) The provisions of subsection (2) do not apply to
23 an applicant for or holder of a license pursuant to
24 16-4-302."

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

1 "16-6-305. Age limit for sale of alcoholic beverages.
 2 (1) Except in the case of an alcoholic beverage given to a
 3 person under 19 21 years of age by his parent or guardian
 4 for beverage or medicinal purposes or administered to him by
 5 his physician or dentist for medicinal purposes or sold to
 6 him by a vendor or druggist upon the prescription of a
 7 physician, no person shall sell, give, or otherwise supply
 8 an alcoholic beverage to any person under 19 21 years of age
 9 or permit any person under that age to consume an alcoholic
 10 beverage.

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

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

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

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

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

1 identification card."

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

3 "16-6-314. Penalty for violating code -- revocation of
 4 license. Any person violating any of the provisions of this
 5 code shall, upon conviction thereof, be deemed guilty of a
 6 misdemeanor and punishable by such fine or imprisonment, or
 7 both, as provided in 46-18-212, except as is herein
 8 otherwise provided. If any retail licensee is convicted of
 9 any offense under this code, his license shall be
 10 immediately revoked or in the discretion of the department
 11 such other sanction imposed as may be authorized under
 12 16-4-406. Further, if any person under 19 21 years of age is
 13 convicted of an offense under this code he shall be subject
 14 to a \$100 fine or 30 days in confinement."

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

16 "45-5-623. Unlawful transactions with children. (1) A
 17 person commits the offense of unlawful transactions with
 18 children if he knowingly:

19 (a) sells or gives explosives to a child under the age
 20 of majority except as authorized under appropriate city
 21 ordinances;

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

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

1 (d) being a junk dealer, pawnbroker, or secondhand
2 dealer, receives or purchases goods from a child under the
3 age of majority without authorization of the parent or
4 guardian.

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

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

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

23 (2) A person convicted of the offense of possession of
24 an intoxicating substance shall be fined not to exceed \$50
25 or be imprisoned in the county jail for any term not to

1 exceed 10 days, or both. If proceedings are held in the
2 youth court, the preceding penalty does not apply, and the
3 offender shall be treated as an alleged youth in need of
4 supervision as defined in 41-5-103(13). In such case, the
5 youth court may enter its judgment under 41-5-523."

6 NEW SECTION. Section 7. Act effective only on
7 amendment to constitution. This act is effective only if
8 Article II, section 14, of the Montana Constitution is
9 amended by the electorate as provided in [LC 100] ___ Bill
10 No. ___, permitting the legislature to establish 21 years as
11 the legal age for consuming alcoholic beverages. If the
12 amendment is approved by the electorate, this act becomes
13 effective at the same time that the amendment becomes
14 effective.

-End-

STATE OF MONTANA

FISCAL NOTE

REQUEST NO. FNN 013-85Form BD-15

In compliance with a written request received January 8, 19 85, there is hereby submitted a Fiscal Note for S.B. 2 pursuant to Title 5, Chapter 4, Part 2 of the Montana Code Annotated (MCA). Background information used in developing this Fiscal Note is available from the Office of Budget and Program Planning, to members of the Legislature upon request.

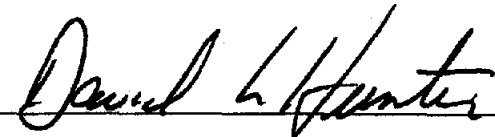
DESCRIPTION OF PROPOSED LEGISLATION

An act increasing the legal age for consuming alcoholic beverages from 19 years to 21 years to implement a proposed amendment to the Montana Constitution permitting the legislature to establish 21 years as the legal drinking age and providing a contingent effective date.

ASSUMPTIONS:

1. 19 and 20 year old age group approximately 5% of the legal drinking population (Census data - July 1, 1983).
2. Same per capita consumption of all types of alcohol across age groups of the drinking population. The effect of this proposed constitutional amendment assumes that these age groups have the same consumption pattern as the rest of the drinking population and that no additional alcohol is consumed illegally.
3. Revenues will decrease 5%.
4. Effective date - January 1, 1987 (SB3) - will affect 1/2 of FY 87.
5. OBPP Revenue estimates:

Beer License Tax	3.280M
Wine Tax	1.175M
Liquor Excise Tax	7.470M
Liquor License Tax	4.669M
Liquor Profits	6.544M
Total	23.138M



BUDGET DIRECTOR
Office of Budget and Program Planning

Date: Jan 14, 1985

EFFECT OF REVENUE:

	<u>Under</u> <u>Current Law</u>	<u>FY. 86</u> <u>Under</u> <u>Proposed Law</u>	<u>Estimated</u> <u>(Decrease)</u>	<u>Under</u> <u>Current Law</u>	<u>FY 87</u> <u>Under</u> <u>Proposed Law</u>	<u>Estimated</u> <u>(Decrease)</u>
Beer License Tax				\$ 1.640 M	\$ 1.558 M	(.082M)
Wine Tax				.588 M	0.558 M	(.030 M)
Liquor Excise Tax				3.735 M	3.548 M	(.187 M)
Liquor License Tax		(NO EFFECT)		2.334 M	2.218 M	(.116 M)
Liquor Profits				3.272 M	3.109 M	(.163 M)
TOTAL				\$ 11.569 M	\$10.991 M	(.578 M)

Fund Information

General Fund				\$ 8.092 M	\$ 7.688 M	(.404 M)
Earmarked Revenue Fund						
Dept. of Institutions						
Alcoholism Acct.				1.978 M	1.879 M	(.099 M)
Other		(NO EFFECT)				
Counties				.845 M	.802 M	(.043 M)
Cities & Towns				.654 M	.622 M	(.032 M)

APPROVED BY COMMITTEE
ON JUDICIARY

SENATE BILL NO. 2

INTRODUCED BY SHAW, O'HARA, HARP, NATHE, CAMPBELL,
SPAETH, HANNAH, THOMAS, DEVLIN, SWITZER, NELSON,
KITSELMAN, GAGE, HIMSL, SEVERSON, SWIFT, KEATING,
GALT, GOODOVER, CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE LEGAL
AGE FOR CONSUMING, PURCHASING, OR POSSESSING ALCOHOLIC
BEVERAGES FROM 19 YEARS TO 21 YEARS TO IMPLEMENT A PROPOSED
AMENDMENT TO THE MONTANA CONSTITUTION PERMITTING THE
LEGISLATURE TO ESTABLISH 21 YEARS AS THE LEGAL DRINKING AGE;
PROVIDING THAT THIS ACT IS NOT EFFECTIVE UNLESS SUCH
CONSTITUTIONAL AMENDMENT IS APPROVED BY THE ELECTORATE;
AMENDING SECTIONS 16-3-301, 16-4-401, 16-6-305, 16-6-314,
45-5-623, AND 45-5-624, MCA; AND PROVIDING A CONTINGENT
EFFECTIVE DATE."

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

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

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

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

(2) It shall be unlawful for any licensee, his or her
employee or employees, or any other person to sell, deliver,

or give away or cause or permit to be sold, delivered, or
given away any alcoholic beverage to:

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

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

(3) Any person under 19 21 years of age or other
person who knowingly misrepresents his or her qualifications
for the purpose of obtaining an alcoholic beverage from such
licensee shall be equally guilty with said licensee and
shall, upon conviction thereof, be subject to the penalty
provided in 45-5-624; provided, however, that nothing herein
contained shall be construed as authorizing or permitting
the sale of an alcoholic beverage to any person in violation
of any federal law.

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

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

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

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

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

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

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

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

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

21 (v) the applicant is not under the age of 19 21 years;
22 and

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

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

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

4 (iii) the corporation is authorized to do business in
5 Montana; and

6 (iv) in the case of a corporation not listed on a
7 national stock exchange, each owner of stock meets the
8 requirements of subsection (2)(a)(i).

9 (3) In the case of a license that permits only
10 off-premises consumption, the department must find in every
11 case in which it makes an order for the issuance of a new
12 license or for the approval of the transfer of a license
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16 interest in more than one establishment licensed under this
17 chapter for all-beverages sales;

18 (ii) the applicant or any member of his immediate
19 family is without financing from or any affiliation to a
20 manufacturer, bottler, or distributor of beer, wine, or
21 liquor;

22 (iii) the applicant has not been convicted of a felony
23 or, if the applicant has been convicted of a felony, his
24 rights have been restored;

25 (iv) the applicant's past record and present status as

1 a purveyor of alcoholic beverages and as a businessman and
 2 citizen demonstrate that he is likely to operate his
 3 establishment in compliance with all applicable laws of the
 4 state and local governments; and

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 9 stock meet the requirements of subsection (3)(a)(iii);

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 11 meets the requirements for an individual listed in
 12 subsection (3)(a) of this section; and

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 14 Montana.

15 (4) In the case of a license that permits the
 16 manufacture or wholesaling of an alcoholic beverage, the
 17 department must find in every case in which it makes an
 18 order for the issuance of a new license or for the approval
 19 of the transfer of a license that:

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21 (i) the applicant has no ownership interest in any
 22 establishment licensed under this chapter for retail
 23 alcoholic beverages sales;

24 (ii) the applicant has not been convicted of a felony
 25 or, if the applicant has been convicted of a felony, his

1 rights have been restored;

2 (iii) the applicant's past record and present status as
 3 a purveyor of alcoholic beverages and as a businessman and
 4 citizen demonstrate that he is likely to operate his
 5 establishment in compliance with all applicable laws of the
 6 state and local governments;

7 (iv) the applicant is not under the age of 19 21 years;
 8 and

9 (v) an applicant for a wholesale license is neither a
 10 manufacturer of an alcoholic beverage nor is owned or
 11 controlled by a manufacturer of an alcoholic beverage; and

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

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

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

18 (iii) an applicant for a wholesale license is neither a
 19 manufacturer of an alcoholic beverage nor is owned or
 20 controlled by a manufacturer of an alcoholic beverage; and

21 (iv) the corporation is authorized to do business in
 22 Montana.

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

1 (6) The provisions of subsection (2) do not apply to
2 an applicant for or holder of a license pursuant to
3 16-4-302."

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

5 "16-6-305. Age limit for sale of alcoholic beverages.

6 (1) Except in the case of an alcoholic beverage given to a
7 person under 19 21 years of age by his parent or guardian
8 for beverage or medicinal purposes or administered to him by
9 his physician or dentist for medicinal purposes or sold to
10 him by a vendor or druggist upon the prescription of a
11 physician, no person shall sell, give, or otherwise supply
12 an alcoholic beverage to any person under 19 21 years of age
13 or permit any person under that age to consume an alcoholic
14 beverage.

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

16 (a) invites a person under the age of 19 21 years into
17 a public place where an alcoholic beverage is sold and
18 treats, gives, or purchases an alcoholic beverage for such
19 person;

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

23 (c) holds out such person to be 19 21 years of age or
24 older to the owner of the establishment or his or her
25 employee or employees.

1 (3) It is unlawful for any person to fraudulently
2 misrepresent his or her age to any dispenser of alcoholic
3 beverages or to falsely procure any identification card or
4 to alter any of the statements contained in any
5 identification card."

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

7 "16-6-314. Penalty for violating code -- revocation of
8 license. Any person violating any of the provisions of this
9 code shall, upon conviction thereof, be deemed guilty of a
10 misdemeanor and punishable by such fine or imprisonment, or
11 both, as provided in 46-18-212, except as is herein
12 otherwise provided. If any retail licensee is convicted of
13 any offense under this code, his license shall be
14 immediately revoked or in the discretion of the department
15 such other sanction imposed as may be authorized under
16 16-4-406. Further, if any person under 19 21 years of age is
17 convicted of an offense under this code he shall be subject
18 to a \$100 fine or 30 days in confinement."

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

20 "45-5-623. Unlawful transactions with children. (1) A
21 person commits the offense of unlawful transactions with
22 children if he knowingly:

23 (a) sells or gives explosives to a child under the age
24 of majority except as authorized under appropriate city
25 ordinances;

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

3 (c) sells or gives alcoholic beverages to a person
4 under ~~19~~ 21 years of age, EXCEPT AS PROVIDED IN 16-6-305; or

5 (d) being a junk dealer, pawnbroker, or secondhand
6 dealer, receives or purchases goods from a child under the
7 age of majority without authorization of the parent or
8 guardian.

9 (2) A person convicted of the offense of unlawful
10 transactions with children shall be fined not to exceed \$500
11 or be imprisoned in the county jail for any term not to
12 exceed 6 months, or both. A person convicted of a second
13 offense of unlawful transactions with children shall be
14 fined not to exceed \$1,000 or be imprisoned in the county
15 jail for any term not to exceed 6 months, or both."

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

17 "45-5-624. Unlawful possession of an intoxicating
18 substance ~~by children~~. (1) A person under the age of 18
19 years commits the offense of possession of an intoxicating
20 substance if he knowingly has in his possession an
21 intoxicating substance other than an alcoholic beverage. A
22 person under the age of ~~19~~ 21 commits the offense of
23 possession of an intoxicating substance if he knowingly has
24 in his possession an alcoholic beverage, except that he does
25 not commit the offense when in the course of his employment

1 it is necessary to possess alcoholic beverages.

2 (2) A person convicted of the offense of possession of
3 an intoxicating substance shall be fined not to exceed \$50
4 or be imprisoned in the county jail for any term not to
5 exceed 10 days, or both. If proceedings are held in the
6 youth court, the preceding penalty does not apply, and the
7 offender shall be treated as an alleged youth in need of
8 supervision as defined in 41-5-103(13). In such case, the
9 youth court may enter its judgment under 41-5-523."

10 NEW SECTION. Section 7. Act effective only on
11 amendment to constitution. This act is effective only if
12 Article II, section 14, of the Montana Constitution is
13 amended by the electorate as provided in ~~{5E--100}~~ SENATE
14 Bill No. 3, permitting the legislature to establish 21 years
15 as the legal age for consuming alcoholic beverages. If the
16 amendment is approved by the electorate, this act becomes
17 effective at the same time that the amendment becomes
18 effective.

-End-

SENATE BILL NO. 2

INTRODUCED BY SHAW, O'HARA, HARP, NATHE, CAMPBELL, SPAETH, HANNAH, THOMAS, DEVLIN, SWITZER, NELSON, KITSELMAN, GAGE, HIMSL, SEVERSON, SWIFT, KEATING, GALT, GOODOVER, CRIPPEN

A BILL FOR AN ACT ENTITLED: "AN ACT INCREASING THE LEGAL AGE FOR CONSUMING, PURCHASING, OR POSSESSING ALCOHOLIC BEVERAGES FROM 19 YEARS TO 21 YEARS TO IMPLEMENT A PROPOSED AMENDMENT TO THE MONTANA CONSTITUTION PERMITTING THE LEGISLATURE TO ESTABLISH 21 YEARS AS THE LEGAL DRINKING AGE; PROVIDING THAT THIS ACT IS NOT EFFECTIVE UNLESS SUCH CONSTITUTIONAL AMENDMENT IS APPROVED BY THE ELECTORATE AND THE FEDERAL LEGISLATION THREATENING THE STATE WITH LOSS OF HIGHWAY FUNDS IS UPHELD; AMENDING SECTIONS 16-3-301, 16-4-401, 16-6-305, 16-6-314, 45-5-623, AND 45-5-624, MCA; AND PROVIDING A CONTINGENT EFFECTIVE DATE."

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

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

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

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

(2) It shall be unlawful for any licensee, his or her

employee or employees, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

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

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

(3) Any person under 19 21 years of age or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in 45-5-624; provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

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

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

"16-4-401. License as privilege -- criteria for decision on application. (1) A license under this code is a privilege which the state may grant to an applicant and is

1 not a right to which any applicant is entitled.

2 (2) Except as provided in subsection (6), in the case
3 of a license that permits on-premises consumption, the
4 department must find in every case in which it makes an
5 order for the issuance of a new license or for the approval
6 of the transfer of a license 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 is a resident of the state and is
16 qualified to vote in a state election;

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

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

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

25 (i) the owners of at least 51% of the outstanding

1 stock meet the requirements of subsection (2)(a)(iii);

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

5 (iii) the corporation is authorized to do business in
6 Montana; and

7 (iv) in the case of a corporation not listed on a
8 national stock exchange, each owner of stock meets the
9 requirements of subsection (2)(a)(i).

10 (3) In the case of a license that permits only
11 off-premises consumption, the department must find in every
12 case in which it makes an order for the issuance of a new
13 license or for the approval of the transfer of a license
14 that:

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

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

19 (ii) the applicant or any member of his immediate
20 family is without financing from or any affiliation to a
21 manufacturer, bottler, or distributor of beer, wine, or
22 liquor;

23 (iii) the applicant has not been convicted of a felony
24 or, if the applicant has been convicted of a felony, his
25 rights have been restored;

1 (iv) the applicant's past record and present status as
2 a purveyor of alcoholic beverages and as a businessman and
3 citizen demonstrate that he is likely to operate his
4 establishment in compliance with all applicable laws of the
5 state and local governments; and

6 (v) the applicant is not under the age of 19 21 years;
7 and

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

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

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

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

16 (4) In the case of a license that permits the
17 manufacture or wholesaling of an alcoholic beverage, the
18 department must find in every case in which it makes an
19 order for the issuance of a new license or for the approval
20 of the transfer of a license that:

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

22 (i) the applicant has no ownership interest in any
23 establishment licensed under this chapter for retail
24 alcoholic beverages sales;

25 (ii) the applicant has not been convicted of a felony

1 or, if the applicant has been convicted of a felony, his
2 rights have been restored;

3 (iii) the applicant's past record and present status as
4 a purveyor of alcoholic beverages and as a businessman and
5 citizen demonstrate that he is likely to operate his
6 establishment in compliance with all applicable laws of the
7 state and local governments;

8 (iv) the applicant is not under the age of 19 21 years;
9 and

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

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

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

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

19 (iii) an applicant for a wholesale license is neither a
20 manufacturer of an alcoholic beverage nor is owned or
21 controlled by a manufacturer of an alcoholic beverage; and

22 (iv) the corporation is authorized to do business in
23 Montana.

24 (5) In the case of a corporate applicant, the
25 requirements of subsections (2)(b), (3)(b), and (4)(b) apply

1 separately to each class of stock.

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

5 Section 3. Section 16-6-305, MCA, is amended to read:
6 "16-6-305. Age limit for sale of alcoholic beverages.

7 (1) Except in the case of an alcoholic beverage given to a
8 person under 19 21 years of age by his parent or guardian
9 for beverage or medicinal purposes or administered to him by
10 his physician or dentist for medicinal purposes or sold to
11 him by a vendor or druggist upon the prescription of a
12 physician, no person shall sell, give, or otherwise supply
13 an alcoholic beverage to any person under 19 21 years of age
14 or permit any person under that age to consume an alcoholic
15 beverage.

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

17 (a) invites a person under the age of 19 21 years into
18 a public place where an alcoholic beverage is sold and
19 treats, gives, or purchases an alcoholic beverage for such
20 person;

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

24 (c) holds out such person to be 19 21 years of age or
25 older to the owner of the establishment or his or her

1 employee or employees.

2 (3) It is unlawful for any person to fraudulently
3 misrepresent his or her age to any dispenser of alcoholic
4 beverages or to falsely procure any identification card or
5 to alter any of the statements contained in any
6 identification card."

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

8 "16-6-314. Penalty for violating code -- revocation of
9 license. Any person violating any of the provisions of this
10 code shall, upon conviction thereof, be deemed guilty of a
11 misdemeanor and punishable by such fine or imprisonment, or
12 both, as provided in 46-18-212, except as is herein
13 otherwise provided. If any retail licensee is convicted of
14 any offense under this code, his license shall be
15 immediately revoked or in the discretion of the department
16 such other sanction imposed as may be authorized under
17 16-4-406. Further, if any person under 19 21 years of age is
18 convicted of an offense under this code he shall be subject
19 to a \$100 fine or 30 days in confinement."

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

21 "45-5-623. Unlawful transactions with children. (1) A
22 person commits the offense of unlawful transactions with
23 children if he knowingly:

24 (a) sells or gives explosives to a child under the age
25 of majority except as authorized under appropriate city

1 ordinances;

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

4 (c) sells or gives alcoholic beverages to a person
5 under ~~19~~ 21 years of age, EXCEPT AS PROVIDED IN 16-6-305; or

6 (d) being a junk dealer, pawnbroker, or secondhand
7 dealer, receives or purchases goods from a child under the
8 age of majority without authorization of the parent or
9 guardian.

10 (2) A person convicted of the offense of unlawful
11 transactions with children shall be fined not to exceed \$500
12 or be imprisoned in the county jail for any term not to
13 exceed 6 months, or both. A person convicted of a second
14 offense of unlawful transactions with children shall be
15 fined not to exceed \$1,000 or be imprisoned in the county
16 jail for any term not to exceed 6 months, or both."

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

18 "45-5-624. Unlawful possession of an intoxicating
19 substance by--children. (1) A person under the age of 18
20 years commits the offense of possession of an intoxicating
21 substance if he knowingly has in his possession an
22 intoxicating substance other than an alcoholic beverage. A
23 person under the age of ~~19~~ 21 commits the offense of
24 possession of an intoxicating substance if he knowingly has
25 in his possession an alcoholic beverage, except that he does

1 not commit the offense when in the course of his employment
2 it is necessary to possess alcoholic beverages.

3 (2) A person convicted of the offense of possession of
4 an intoxicating substance shall be fined not to exceed \$50
5 or be imprisoned in the county jail for any term not to
6 exceed 10 days, or both. If proceedings are held in the
7 youth court, the preceding penalty does not apply, and the
8 offender shall be treated as an alleged youth in need of
9 supervision as defined in 41-5-103(13). In such case, the
10 youth court may enter its judgment under 41-5-523."

11 NEW SECTION. Section 7. Act effective only on
12 amendment to constitution. This act is effective only if
13 Article II, section 14, of the Montana Constitution is
14 amended by the electorate as provided in ~~{5E-100}~~ SENATE
15 Bill No. 3, permitting the legislature to establish 21 years
16 as the legal age for consuming, PURCHASING, OR POSSESSING
17 alcoholic beverages. If the amendment is approved by the
18 electorate, this act ~~becomes-effective-at-the-same-time-that~~
19 ~~the-amendment-becomes-effective-~~ SHALL REMAIN IN EFFECT ONLY
20 AS LONG AS SECTION 6(A) OF PUBLIC LAW 98-363 (23 U.S.C. 158)
21 REQUIRING THE SECRETARY OF TRANSPORTATION TO WITHHOLD
22 HIGHWAY FUNDS FROM STATES ALLOWING THE PURCHASE OR PUBLIC
23 POSSESSION OF ANY ALCOHOLIC BEVERAGE BY A PERSON WHO IS LESS
24 THAN 21 YEARS OF AGE REMAINS IN EFFECT OR UNTIL SUCH FEDERAL
25 STATUTE IS ULTIMATELY DECLARED UNCONSTITUTIONAL.