

SENATE BILL NO. 40

INTRODUCED BY MAZUREK

BY REQUEST OF THE DEPARTMENT OF REVENUE
AND THE REVENUE OVERSIGHT COMMITTEE

IN THE SENATE

January 7, 1985	Introduced and referred to Committee on Business and Industry.
January 11, 1985	Committee recommend bill do pass. Report adopted.
January 14, 1985	Bill printed and placed on members' desks.
January 15, 1985	Second reading, do pass.
January 16, 1985	Considered correctly engrossed.
January 17, 1985	Third reading, passed. Ayes, 47; Noes, 0.
	Transmitted to House.

IN THE HOUSE

January 18, 1985	Introduced and referred to Committee on Business and Labor.
March 8, 1985	Committee recommend bill be concurred in. Report adopted.
March 9, 1985	Second reading, concurred in.
March 12, 1985	Third reading, concurred in. Returned to Senate.

IN THE SENATE

March 13, 1985

Received from House.

Sent to enrolling.

Reported correctly enrolled.

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 6 A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE FORFEITURE
 7 OF SEIZED RESALABLE ALCOHOLIC BEVERAGES THROUGH
 8 ADMINISTRATIVE PROCEDURES; REQUIRING THE DEPARTMENT OF
 9 REVENUE TO DESTROY SEIZED ALCOHOLIC BEVERAGES UNSUITABLE FOR
 10 RESALE; AMENDING SECTIONS 16-6-106 AND 16-6-107, MCA."

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

13 Section 1. Section 16-6-106, MCA, is amended to read:
 14 "16-6-106. When force may be used in seizure of
 15 alcoholic beverages -- forfeiture -- hearing. (1) Where
 16 alcoholic beverage is found by any investigator or peace
 17 officer on any premises or in any place in such quantities
 18 as to satisfy the investigator or peace officer that such
 19 alcoholic beverage is being had or kept contrary to any of
 20 the provisions of this code, it shall be lawful for the
 21 investigator or peace officer to forthwith seize and remove,
 22 by force if necessary, any alcoholic beverage found and the
 23 packages in which the alcoholic beverage was had or kept and
 24 immediately turn said the alcoholic beverage over to the
 25 department.

1 ~~(2) The department shall commence an action in the~~
 2 ~~district court of the county in which the alcoholic beverage~~
 3 ~~is found and seized against said alcoholic beverage and the~~
 4 ~~person or persons actually or apparently in possession or~~
 5 ~~control thereof if any such person be present at the time of~~
 6 ~~the seizure. The alcoholic beverage shall be named as one~~
 7 ~~of the defendants to said action.~~

8 (2) The department shall determine if the seized
 9 alcoholic beverage is suitable for resale. When the
 10 department has determined that the seized alcoholic beverage
 11 is suitable for resale, the department shall commence an
 12 administrative action against the owner of the alcoholic
 13 beverage. All seized alcoholic beverages found to be
 14 unsuitable for sale must be destroyed by the department.

15 (3) A notice and opportunity for hearing must be given
 16 in accordance with the Montana Administrative Procedure Act,
 17 except that the notice must be published in the county where
 18 the alcoholic beverage was seized if a newspaper is
 19 published in the county.

20 ~~(3)~~(4) The complaint shall notice must show the date
 21 and place of seizure, the name of the person or persons
 22 actually or apparently in possession or control thereof of
 23 the alcoholic beverage if any such person be was present at
 24 the time of the seizure, and the reasons the department
 25 claims the right to the possession of the alcoholic



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1 beverage, and shall The notice must also demand that all
 2 persons who claim any right to the possession of the
 3 alcoholic beverage shall show the nature of their claim or
 4 claims, and that the court hearing examiner declare the
 5 alcoholic beverage contraband, and that the court hearing
 6 examiner order the alcoholic beverage be forfeited to the
 7 state of Montana.

8 ~~(4)--A summons shall be issued, served, or published as~~
 9 ~~in other civil actions provided by Title 25, except that the~~
 10 ~~summons shall be published in the county where the alcoholic~~
 11 ~~beverage was seized if a newspaper is published in said~~
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13 ~~(5)--In all actions brought under this code, proof of~~
 14 ~~the absence of the official seal of the department upon the~~
 15 ~~bottle, jug, package, container, or containers of an~~
 16 ~~alcoholic beverage on which a seal is required shall be~~
 17 ~~prima facie evidence that the alcoholic beverage is~~
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 19 ~~possession thereof in the defendants and each of them and in~~
 20 ~~all other persons excepting the department. The court shall~~
 21 ~~order all such alcoholic beverage contraband and forfeited~~
 22 ~~to the state of Montana."~~

23 Section 2. Section 16-6-107, MCA, is amended to read:

24 "16-6-107. Disposal of forfeited alcoholic beverages
 25 -- report. (1) In every case in which a court or hearing

1 examiner makes any order for the forfeiture of alcoholic
 2 beverages under any of the provisions of this code and in
 3 every case in which any claimant to an alcoholic beverage
 4 under the provisions of 16-6-105 or 16-6-106 fails to
 5 establish his claim and right thereto, the alcoholic
 6 beverage in question and the packages in which the alcoholic
 7 beverage is kept shall ~~forthwith~~ be delivered to the
 8 department. The department shall ~~thereupon~~ determine the
 9 market value of each forfeited alcoholic beverage which is
 10 found to be suitable for sale in the state liquor stores and
 11 shall pay the amount so determined to the state treasurer
 12 after deducting therefrom the expenses necessarily incurred
 13 by the department for transporting the forfeited alcoholic
 14 beverage to the state liquor warehouses. The alcoholic
 15 beverage suitable for sale shall be taken into stock by the
 16 department and sold under the provisions of this code. Each
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 18 be unsuitable for sale in state liquor stores shall be
 19 destroyed ~~under competent supervision as may from time to~~
 20 ~~time be directed~~ by the department.

21 (2) In every case in which an alcoholic beverage is
 22 seized by a peace officer, it shall be his duty to ~~forthwith~~
 23 make or cause to be made to the department a report in
 24 writing of the particulars of such seizure."

25 NEW SECTION. Section 3. Extension of authority. Any

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1 existing authority of the department of revenue to make
2 rules on the subject of the provisions of this act is
3 extended to the provisions of this act.

-End-

APPROVED BY COMM. ON BUSINESS AND LABOR

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19 alcoholic beverage is being had or kept contrary to any of
20 the provisions of this code, it shall be lawful for the
21 investigator or peace officer to forthwith seize and remove,
22 by force if necessary, any alcoholic beverage found and the
23 packages in which the alcoholic beverage was had or kept and
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15 (3) A notice and opportunity for hearing must be given
16 in accordance with the Montana Administrative Procedure Act,
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18 the alcoholic beverage was seized if a newspaper is
19 published in the county.

20 ~~(3)(4) The complaint shall~~ notice must show the date
21 and place of seizure, the name of the person or persons
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