

SB 318 INTRODUCED BY JACOBSON, PAVLOVICH, DAILY, ET AL.
ALLOW SALE OF LIQUOR-FILLED CANDY

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|------|---------------------------------|-------|
| 2/11 | INTRODUCED | |
| 2/11 | REFERRED TO BUSINESS & INDUSTRY | |
| 2/16 | HEARING | |
| 2/17 | COMMITTEE REPORT--BILL PASSED | |
| 2/19 | 2ND READING PASSED | 32 14 |
| 2/21 | 3RD READING PASSED | 36 13 |

| | | |
|------|--|-------|
| | TRANSMITTED TO HOUSE | |
| 2/23 | REFERRED TO BUSINESS & LABOR | |
| 3/18 | HEARING | |
| 3/18 | COMMITTEE REPORT--BILL CONCURRED | |
| 3/28 | 2ND READING NOT CONCURRED AS AMENDED | 65 30 |
| 3/28 | RETURNED TO SENATE NOT CONCURRED AS AMENDED | |

1 *Senate* BILL NO. *314*
 2 INTRODUCED BY *Jacobson Carlwil Dail*
 3 *Boyer*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE SALE OF
 5 CANDY CONTAINING UP TO 5 PERCENT OF ALCOHOL BY VOLUME;
 6 PROVIDING THAT THE STATE LIQUOR CODE DOES NOT APPLY TO CANDY
 7 CONTAINING ALCOHOL; EXEMPTING CANDY CONTAINING UP TO 5
 8 PERCENT OF ALCOHOL BY VOLUME FROM THE ADULTERATED FOOD LAW;
 9 AND AMENDING SECTIONS 16-1-106, 16-1-201, 16-1-202, AND
 10 50-31-202, MCA."

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

13 Section 1. Section 16-1-106, MCA, is amended to read:
 14 "16-1-106. Definitions. As used in this code, the
 15 following definitions apply:

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

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

21 (3) "Alcoholic beverage" means a compound produced and
 22 sold for human consumption as a drink that contains more
 23 than .5% of alcohol by volume. The term does not include
 24 candy filled with or containing up to 5% of alcohol by
 25 volume.

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

3 (5) "Beer importer" means a person other than a brewer
 4 who imports malt beverages.

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

7 (7) "Department" means the department of revenue.

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

10 (9) "Import" means to transfer beer or table wine from
 11 outside the state of Montana into the state of Montana.

12 (10) "Industrial use" means a use described as
 13 industrial use by the federal Alcohol Administration Act and
 14 the federal rules and regulations of 27 CFR.

15 (11) "Liquor" means an alcoholic beverage except beer
 16 and table wine.

17 (12) "Malt beverage" means an alcoholic beverage made
 18 by the fermentation of an infusion or decoction, or a
 19 combination of both, in potable brewing water, of malted
 20 barley with or without hops or their parts or their products
 21 and with or without other malted cereals and with or without
 22 the addition of unmalted or prepared cereals, other
 23 carbohydrates, or products prepared therefrom and with or
 24 without other wholesome products suitable for human food
 25 consumption.



-2- INTRODUCED BILL
 SB 314

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

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

6 (15) "Proof gallon" means a U.S. gallon of liquor at 60
7 degrees on the Fahrenheit scale that contains 50% of alcohol
8 by volume.

9 (16) "Public place" means a place, building, or
10 conveyance to which the public has or may be permitted to
11 have access and any place of public resort.

12 (17) "Rules" means rules published by the department
13 pursuant to this code.

14 (18) "State liquor facility" means a facility owned or
15 under control of the department for the purpose of
16 receiving, storing, transporting, or selling alcoholic
17 beverages.

18 (19) "State liquor store" means a retail store operated
19 by the department in accordance with this code for the
20 purpose of selling liquor.

21 (20) "Storage depot" means a building or structure
22 owned or operated by a brewer at any point in the state of
23 Montana off and away from the premises of a brewery, and
24 which structure is equipped with refrigeration or cooling
25 apparatus for the storage of beer and from which a brewer

1 may sell or distribute beer as permitted by this code.

2 (21) "Subwarehouse" means a building or structure owned
3 or operated by a licensed beer wholesaler or table wine
4 distributor, located at a site in Montana other than the
5 site of such beer wholesaler's or table wine distributor's
6 warehouse or principal place of business, and used for the
7 receiving, storage, and distribution of beer or table wine
8 as permitted by this code.

9 (22) "Table wine" means wine as defined below which
10 contains not more than 16% alcohol by volume.

11 (23) "Warehouse" means a building or structure located
12 in Montana owned or operated by a licensed beer wholesaler
13 or table wine distributor for the receiving, storage, and
14 distribution of beer or table wine as permitted by this
15 code.

16 (24) "Wine" means an alcoholic beverage made from or
17 containing the normal alcoholic fermentation of the juice of
18 sound, ripe fruit or other agricultural products without
19 addition or abstraction, except as may occur in the usual
20 cellar treatment of clarifying and aging, and that contains
21 more than 0.5% but not more than 24% of alcohol by volume.
22 Wine may be ameliorated to correct natural deficiencies,
23 sweetened, and fortified in accordance with applicable
24 federal regulations and the customs and practices of the
25 industry. Other alcoholic beverages not defined as above

1 but made in the manner of wine and labeled and sold as wine
2 in accordance with federal regulations are also wine."

3 Section 2. Section 16-1-201, MCA, is amended to read:
4 "16-1-201. Acts not covered by code. (1) Nothing in
5 this code shall prevent any brewer, distiller, or other
6 person, duly licensed under the provisions of any statute of
7 the United States of America for the manufacture of liquor,
8 from having or keeping liquor in a place and in the manner
9 authorized by or under any such statute.

10 (2) It is hereby declared to be the policy of the
11 state of Montana that the manufacture of liquor, including
12 the distillation, rectification, bottling, and processing as
13 these terms are defined under the provisions of the laws of
14 the United States, shall be authorized and permitted by any
15 brewer, distiller, rectifier, or other person duly licensed
16 under any provision of any statute of the United States of
17 America in a place and in the manner authorized by or under
18 any statute of the United States, provided the department
19 may make such rules as the department deems necessary with
20 respect thereto not inconsistent with this code or with the
21 statutes of the United States of America or regulations
22 issued under the provisions of the federal Alcohol
23 Administration Act, Title 27, United States Code, sections
24 201 through 212, inclusive, or regulations issued under the
25 provisions of the Internal Revenue Code, Title 26, United

1 States Code, sections 5001 through 5693, inclusive.

2 (3) Nothing in this code shall prevent:

3 (a) the sale of liquor by any person to the
4 department;

5 (b) the importation, sale, or purchase of candy filled
6 with or containing up to 5% of alcohol by volume; or

7 ~~(b)~~(c) the purchase, importation, and sale of liquor
8 by the department for the purposes of and in accordance with
9 this code."

10 Section 3. Section 16-1-202, MCA, is amended to read:

11 "16-1-202. Preparations not subject to code. (1)
12 Subject to the provisions of this section, nothing in this
13 code shall, by reason only that such preparation contains
14 alcohol, prevent the manufacture, sale, purchase, or
15 consumption of any:

16 (a) extract, essence, or tincture or other preparation
17 containing alcohol which is prepared according to a formula
18 of the United States Pharmacopoeia or according to a formula
19 approved of by the department; or

20 (b) candy filled with or containing up to 5% of
21 alcohol by volume; or

22 ~~(b)~~(c) proprietary or patent medicine prepared
23 according to a formula approved of by the department.

24 (2) The department, if of opinion that any such
25 proprietary or patent medicine, extract, essence, tincture,

1 or preparation which contains alcohol or any other
 2 preparation of a solid, semisolid, or liquid nature
 3 containing alcohol which, or any extract from which, can be
 4 used as a beverage or as the ingredient of any beverage, may
 5 prohibit the sale thereof by retail within the state or the
 6 possession of the same for sale by retail within the state,
 7 except by a state liquor store or by persons duly licensed
 8 by the department to keep and sell the same by retail in
 9 accordance with this code and the regulations made
 10 thereunder.

11 (3) The department shall notify the manufacturer or
 12 vendor of such proprietary or patent medicine, extract,
 13 essence, tincture, or preparation of the prohibition."

14 Section 4. Section 50-31-202, MCA, is amended to read:

15 "50-31-202. When food adulterated. A food shall be
 16 deemed to be adulterated if:

17 (1) it bears or contains any poisonous or deleterious
 18 substance which may render it injurious to health; but in
 19 case the substance is not an added substance, such food
 20 shall not be considered adulterated under this subsection if
 21 the quantity of such substance in such food does not
 22 ordinarily render it injurious to health;

23 (2) it bears or contains any added poisonous or added
 24 deleterious substance, other than one which is:

25 (a) a pesticide chemical in or on a raw agricultural

1 commodity;

2 (b) a food additive; or

3 (c) a color additive, which is unsafe within the
 4 meaning of 50-31-109;

5 (3) it is a raw agricultural commodity and it bears or
 6 contains a pesticide chemical which is unsafe within the
 7 meaning of section 408(a) of the federal act as amended;

8 (4) it is or it bears or contains any food additive
 9 which is unsafe within the meaning of section 409 of the
 10 federal act as amended; provided that where a pesticide
 11 chemical has been used in or on a raw agricultural commodity
 12 in conformity with an exemption granted or tolerance
 13 prescribed under section 408 of the federal act and such raw
 14 agricultural commodity has been subjected to processing such
 15 as canning, cooking, freezing, dehydrating, or milling, the
 16 residue of such pesticide chemical remaining in or on such
 17 processed food shall, notwithstanding the provisions of
 18 50-31-108, 50-31-109, and subsection (4) of this section,
 19 not be deemed unsafe if such residue in or on the raw
 20 agricultural commodity has been removed to the extent
 21 possible in good manufacturing practice and the
 22 concentration of such residue in the processed food when
 23 ready to eat is not greater than the tolerance prescribed
 24 for the raw agricultural commodity;

25 (5) it consists in whole or in part of a diseased,

1 contaminated, filthy, putrid, or decomposed substance or if
2 it is otherwise unfit for food;

3 (6) it has been produced, prepared, packed, or held
4 under unsanitary conditions whereby it may have become
5 contaminated with filth or whereby it may have been rendered
6 diseased, unwholesome, or injurious to health;

7 (7) it is the product of a diseased animal or an
8 animal which has died otherwise than by slaughter or that
9 has been fed upon the uncooked offal from a slaughterhouse;

10 (8) its container is composed in whole or in part of
11 any poisonous or deleterious substance which may render the
12 contents injurious to health;

13 (9) any valuable constituent has been in whole or in
14 part omitted or abstracted therefrom;

15 (10) any substance has been substituted wholly or in
16 part therefor;

17 (11) damage or inferiority has been concealed in any
18 manner;

19 (12) any substance has been added thereto or mixed or
20 packed therewith so as to increase its bulk or weight,
21 reduce its quality or strength, or make it appear better or
22 of greater value than it is;

23 (13) it is confectionery and it bears or contains any
24 ~~alcohol~~ or nonnutritive article or substance except harmless
25 coloring, harmless flavoring, harmless resinous glaze not in

1 excess of .4%, harmless natural wax not in excess of .4%, or
2 harmless natural gum and pectin; provided that this
3 paragraph shall not apply to any confectionery by reason of
4 its containing less than ~~5%~~ 5% by volume of alcohol ~~derived~~
5 ~~solely--from-the-use-of-flavoring-extracts~~ or to any chewing
6 gum by reason of its containing harmless nonnutritive
7 masticatory substances;

8 (14) it is or bears or contains any color additive
9 which is unsafe within the meaning of the federal act."

10 NEW SECTION. Section 5. Extension of authority. Any
11 existing authority of the department of revenue or
12 department of health and environmental sciences to make
13 rules on the subject of the provisions of this act is
14 extended to the provisions of this act.

-End-

APPROVED BY COMM. ON
BUSINESS & INDUSTRY

1 *Senate* BILL NO. *378*
2 INTRODUCED BY *Jackson* *Arnold* *Dahl*
3 *Boyer*

4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE SALE OF
5 CANDY CONTAINING UP TO 5 PERCENT OF ALCOHOL BY VOLUME;
6 PROVIDING THAT THE STATE LIQUOR CODE DOES NOT APPLY TO CANDY
7 CONTAINING ALCOHOL; EXEMPTING CANDY CONTAINING UP TO 5
8 PERCENT OF ALCOHOL BY VOLUME FROM THE ADULTERATED FOOD LAW;
9 AND AMENDING SECTIONS 16-1-106, 16-1-201, 16-1-202, AND
10 50-31-202, MCA."

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

13 Section 1. Section 16-1-106, MCA, is amended to read:
14 "16-1-106. Definitions. As used in this code, the
15 following definitions apply:

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

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

21 (3) "Alcoholic beverage" means a compound produced and
22 sold for human consumption as a drink that contains more
23 than .5% of alcohol by volume. The term does not include
24 candy filled with or containing up to 5% of alcohol by
25 volume.

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

3 (5) "Beer importer" means a person other than a brewer
4 who imports malt beverages.

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

7 (7) "Department" means the department of revenue.

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

10 (9) "Import" means to transfer beer or table wine from
11 outside the state of Montana into the state of Montana.

12 (10) "Industrial use" means a use described as
13 industrial use by the federal Alcohol Administration Act and
14 the federal rules and regulations of 27 CFR.

15 (11) "Liquor" means an alcoholic beverage except beer
16 and table wine.

17 (12) "Malt beverage" means an alcoholic beverage made
18 by the fermentation of an infusion or decoction, or a
19 combination of both, in potable brewing water, of malted
20 barley with or without hops or their parts or their products
21 and with or without other malted cereals and with or without
22 the addition of unmalted or prepared cereals, other
23 carbohydrates, or products prepared therefrom and with or
24 without other wholesome products suitable for human food
25 consumption.



-2- SECOND READING
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1 (13) "Package" means a container or receptacle used for
2 holding an alcoholic beverage.

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

6 (15) "Proof gallon" means a U.S. gallon of liquor at 60
7 degrees on the Fahrenheit scale that contains 50% of alcohol
8 by volume.

9 (16) "Public place" means a place, building, or
10 conveyance to which the public has or may be permitted to
11 have access and any place of public resort.

12 (17) "Rules" means rules published by the department
13 pursuant to this code.

14 (18) "State liquor facility" means a facility owned or
15 under control of the department for the purpose of
16 receiving, storing, transporting, or selling alcoholic
17 beverages.

18 (19) "State liquor store" means a retail store operated
19 by the department in accordance with this code for the
20 purpose of selling liquor.

21 (20) "Storage depot" means a building or structure
22 owned or operated by a brewer at any point in the state of
23 Montana off and away from the premises of a brewery, and
24 which structure is equipped with refrigeration or cooling
25 apparatus for the storage of beer and from which a brewer

1 may sell or distribute beer as permitted by this code.

2 (21) "Subwarehouse" means a building or structure owned
3 or operated by a licensed beer wholesaler or table wine
4 distributor, located at a site in Montana other than the
5 site of such beer wholesaler's or table wine distributor's
6 warehouse or principal place of business, and used for the
7 receiving, storage, and distribution of beer or table wine
8 as permitted by this code.

9 (22) "Table wine" means wine as defined below which
10 contains not more than 16% alcohol by volume.

11 (23) "Warehouse" means a building or structure located
12 in Montana owned or operated by a licensed beer wholesaler
13 or table wine distributor for the receiving, storage, and
14 distribution of beer or table wine as permitted by this
15 code.

16 (24) "Wine" means an alcoholic beverage made from or
17 containing the normal alcoholic fermentation of the juice of
18 sound, ripe fruit or other agricultural products without
19 addition or abstraction, except as may occur in the usual
20 cellar treatment of clarifying and aging, and that contains
21 more than 0.5% but not more than 24% of alcohol by volume.
22 Wine may be ameliorated to correct natural deficiencies,
23 sweetened, and fortified in accordance with applicable
24 federal regulations and the customs and practices of the
25 industry. Other alcoholic beverages not defined as above

1 but made in the manner of wine and labeled and sold as wine
2 in accordance with federal regulations are also wine."

3 Section 2. Section 16-1-201, MCA, is amended to read:

4 "16-1-201. Acts not covered by code. (1) Nothing in
5 this code shall prevent any brewer, distiller, or other
6 person, duly licensed under the provisions of any statute of
7 the United States of America for the manufacture of liquor,
8 from having or keeping liquor in a place and in the manner
9 authorized by or under any such statute.

10 (2) It is hereby declared to be the policy of the
11 state of Montana that the manufacture of liquor, including
12 the distillation, rectification, bottling, and processing as
13 these terms are defined under the provisions of the laws of
14 the United States, shall be authorized and permitted by any
15 brewer, distiller, rectifier, or other person duly licensed
16 under any provision of any statute of the United States of
17 America in a place and in the manner authorized by or under
18 any statute of the United States, provided the department
19 may make such rules as the department deems necessary with
20 respect thereto not inconsistent with this code or with the
21 statutes of the United States of America or regulations
22 issued under the provisions of the federal Alcohol
23 Administration Act, Title 27, United States Code, sections
24 201 through 212, inclusive, or regulations issued under the
25 provisions of the Internal Revenue Code, Title 26, United

1 States Code, sections 5001 through 5693, inclusive.

2 (3) Nothing in this code shall prevent:

3 (a) the sale of liquor by any person to the
4 department;

5 (b) the importation, sale, or purchase of candy filled
6 with or containing up to 5% of alcohol by volume; or

7 ~~(b)(c)~~ the purchase, importation, and sale of liquor
8 by the department for the purposes of and in accordance with
9 this code."

10 Section 3. Section 16-1-202, MCA, is amended to read:

11 "16-1-202. Preparations not subject to code. (1)
12 Subject to the provisions of this section, nothing in this
13 code shall, by reason only that such preparation contains
14 alcohol, prevent the manufacture, sale, purchase, or
15 consumption of any:

16 (a) extract, essence, or tincture or other preparation
17 containing alcohol which is prepared according to a formula
18 of the United States Pharmacopoeia or according to a formula
19 approved of by the department; or

20 (b) candy filled with or containing up to 5% of
21 alcohol by volume; or

22 ~~(b)(c)~~ proprietary or patent medicine prepared
23 according to a formula approved of by the department.

24 (2) The department, if of opinion that any such
25 proprietary or patent medicine, extract, essence, tincture,

1 or preparation which contains alcohol or any other
 2 preparation of a solid, semisolid, or liquid nature
 3 containing alcohol which, or any extract from which, can be
 4 used as a beverage or as the ingredient of any beverage, may
 5 prohibit the sale thereof by retail within the state or the
 6 possession of the same for sale by retail within the state,
 7 except by a state liquor store or by persons duly licensed
 8 by the department to keep and sell the same by retail in
 9 accordance with this code and the regulations made
 10 thereunder.

11 (3) The department shall notify the manufacturer or
 12 vendor of such proprietary or patent medicine, extract,
 13 essence, tincture, or preparation of the prohibition."

14 Section 4. Section 50-31-202, MCA, is amended to read:

15 "50-31-202. When food adulterated. A food shall be
 16 deemed to be adulterated if:

17 (1) it bears or contains any poisonous or deleterious
 18 substance which may render it injurious to health; but in
 19 case the substance is not an added substance, such food
 20 shall not be considered adulterated under this subsection if
 21 the quantity of such substance in such food does not
 22 ordinarily render it injurious to health;

23 (2) it bears or contains any added poisonous or added
 24 deleterious substance, other than one which is:

25 (a) a pesticide chemical in or on a raw agricultural

1 commodity;

2 (b) a food additive; or

3 (c) a color additive, which is unsafe within the
 4 meaning of 50-31-109;

5 (3) it is a raw agricultural commodity which it bears or
 6 contains a pesticide chemical which is unsafe within the
 7 meaning of section 408(a) of the federal act as amended;

8 (4) it is or it bears or contains any food additive
 9 which is unsafe within the meaning of section 409 of the
 10 federal act as amended; provided that where a pesticide
 11 chemical has been used in or on a raw agricultural commodity
 12 in conformity with an exemption granted or tolerance
 13 prescribed under section 408 of the federal act and such raw
 14 agricultural commodity has been subjected to processing such
 15 as canning, cooking, freezing, dehydrating, or milling, the
 16 residue of such pesticide chemical remaining in or on such
 17 processed food shall, notwithstanding the provisions of
 18 50-31-108, 50-31-109, and subsection (4) of this section,
 19 not be deemed unsafe if such residue in or on the raw
 20 agricultural commodity has been removed to the extent
 21 possible in good manufacturing practice and the
 22 concentration of such residue in the processed food when
 23 ready to eat is not greater than the tolerance prescribed
 24 for the raw agricultural commodity;

25 (5) it consists in whole or in part of a diseased,

1 contaminated, filthy, putrid, or decomposed substance or if
2 it is otherwise unfit for food;

3 (6) it has been produced, prepared, packed, or held
4 under unsanitary conditions whereby it may have become
5 contaminated with filth or whereby it may have been rendered
6 diseased, unwholesome, or injurious to health;

7 (7) it is the product of a diseased animal or an
8 animal which has died otherwise than by slaughter or that
9 has been fed upon the uncooked offal from a slaughterhouse;

10 (8) its container is composed in whole or in part of
11 any poisonous or deleterious substance which may render the
12 contents injurious to health;

13 (9) any valuable constituent has been in whole or in
14 part omitted or abstracted therefrom;

15 (10) any substance has been substituted wholly or in
16 part therefor;

17 (11) damage or inferiority has been concealed in any
18 manner;

19 (12) any substance has been added thereto or mixed or
20 packed therewith so as to increase its bulk or weight,
21 reduce its quality or strength, or make it appear better or
22 of greater value than it is;

23 (13) it is confectionery and it bears or contains any
24 alcohol or nonnutritive article or substance except harmless
25 coloring, harmless flavoring, harmless resinous glaze not in

1 excess of .4%, harmless natural wax not in excess of .4%, or
2 harmless natural gum and pectin; provided that this
3 paragraph shall not apply to any confectionery by reason of
4 its containing less than ~~5%~~ 5% by volume of alcohol derived
5 ~~solely--from-the-use-of-flavoring-extracts~~ or to any chewing
6 gum by reason of its containing harmless nonnutritive
7 masticatory substances;

8 (14) it is or bears or contains any color additive
9 which is unsafe within the meaning of the federal act."

10 NEW SECTION. Section 5. Extension of authority. Any
11 existing authority of the department of revenue or
12 department of health and environmental sciences to make
13 rules on the subject of the provisions of this act is
14 extended to the provisions of this act.

-End-

1 *Senate* BILL NO. *318*
 2 INTRODUCED BY *Arthur D. White*
 3 *Boyer*
 4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE SALE OF
 5 CANDY CONTAINING UP TO 5 PERCENT OF ALCOHOL BY VOLUME;
 6 PROVIDING THAT THE STATE LIQUOR CODE DOES NOT APPLY TO CANDY
 7 CONTAINING ALCOHOL; EXEMPTING CANDY CONTAINING UP TO 5
 8 PERCENT OF ALCOHOL BY VOLUME FROM THE ADULTERATED FOOD LAW;
 9 AND AMENDING SECTIONS 16-1-106, 16-1-201, 16-1-202, AND
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12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
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 15 following definitions apply:
 16 (1) "Agency agreement" means an agreement between the
 17 department and a person appointed to sell liquor as a
 18 commission merchant rather than as an employee.
 19 (2) "Alcohol" means ethyl alcohol, also called
 20 ethanol, or the hydrated oxide of ethyl.
 21 (3) "Alcoholic beverage" means a compound produced and
 22 sold for human consumption as a drink that contains more
 23 than .5% of alcohol by volume. The term does not include
 24 candy filled with or containing up to 5% of alcohol by
 25 volume.

1 (4) "Beer" means a malt beverage containing not more
 2 than 7% of alcohol by weight.
 3 (5) "Beer importer" means a person other than a brewer
 4 who imports malt beverages.
 5 (6) "Brewer" means a person who produces malt
 6 beverages.
 7 (7) "Department" means the department of revenue.
 8 (8) "Immediate family" means a spouse, dependent
 9 children, or dependent parents.
 10 (9) "Import" means to transfer beer or table wine from
 11 outside the state of Montana into the state of Montana.
 12 (10) "Industrial use" means a use described as
 13 industrial use by the federal Alcohol Administration Act and
 14 the federal rules and regulations of 27 CFR.
 15 (11) "Liquor" means an alcoholic beverage except beer
 16 and table wine.
 17 (12) "Malt beverage" means an alcoholic beverage made
 18 by the fermentation of an infusion or decoction, or a
 19 combination of both, in potable brewing water, of malted
 20 barley with or without hops or their parts or their products
 21 and with or without other malted cereals and with or without
 22 the addition of unmalted or prepared cereals, other
 23 carbohydrates, or products prepared therefrom and with or
 24 without other wholesome products suitable for human food
 25 consumption.

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

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

6 (15) "Proof gallon" means a U.S. gallon of liquor at 60
7 degrees on the Fahrenheit scale that contains 50% of alcohol
8 by volume.

9 (16) "Public place" means a place, building, or
10 conveyance to which the public has or may be permitted to
11 have access and any place of public resort.

12 (17) "Rules" means rules published by the department
13 pursuant to this code.

14 (18) "State liquor facility" means a facility owned or
15 under control of the department for the purpose of
16 receiving, storing, transporting, or selling alcoholic
17 beverages.

18 (19) "State liquor store" means a retail store operated
19 by the department in accordance with this code for the
20 purpose of selling liquor.

21 (20) "Storage depot" means a building or structure
22 owned or operated by a brewer at any point in the state of
23 Montana off and away from the premises of a brewery, and
24 which structure is equipped with refrigeration or cooling
25 apparatus for the storage of beer and from which a brewer

1 may sell or distribute beer as permitted by this code.

2 (21) "Subwarehouse" means a building or structure owned
3 or operated by a licensed beer wholesaler or table wine
4 distributor, located at a site in Montana other than the
5 site of such beer wholesaler's or table wine distributor's
6 warehouse or principal place of business, and used for the
7 receiving, storage, and distribution of beer or table wine
8 as permitted by this code.

9 (22) "Table wine" means wine as defined below which
10 contains not more than 16% alcohol by volume.

11 (23) "Warehouse" means a building or structure located
12 in Montana owned or operated by a licensed beer wholesaler
13 or table wine distributor for the receiving, storage, and
14 distribution of beer or table wine as permitted by this
15 code.

16 (24) "Wine" means an alcoholic beverage made from or
17 containing the normal alcoholic fermentation of the juice of
18 sound, ripe fruit or other agricultural products without
19 addition or abstraction, except as may occur in the usual
20 cellar treatment of clarifying and aging, and that contains
21 more than 0.5% but not more than 24% of alcohol by volume.
22 Wine may be ameliorated to correct natural deficiencies,
23 sweetened, and fortified in accordance with applicable
24 federal regulations and the customs and practices of the
25 industry. Other alcoholic beverages not defined as above

1 but made in the manner of wine and labeled and sold as wine
2 in accordance with federal regulations are also wine."

3 Section 2. Section 16-1-201, MCA, is amended to read:

4 "16-1-201. Acts not covered by code. (1) Nothing in
5 this code shall prevent any brewer, distiller, or other
6 person, duly licensed under the provisions of any statute of
7 the United States of America for the manufacture of liquor,
8 from having or keeping liquor in a place and in the manner
9 authorized by or under any such statute.

10 (2) It is hereby declared to be the policy of the
11 state of Montana that the manufacture of liquor, including
12 the distillation, rectification, bottling, and processing as
13 these terms are defined under the provisions of the laws of
14 the United States, shall be authorized and permitted by any
15 brewer, distiller, rectifier, or other person duly licensed
16 under any provision of any statute of the United States of
17 America in a place and in the manner authorized by or under
18 any statute of the United States, provided the department
19 may make such rules as the department deems necessary with
20 respect thereto not inconsistent with this code or with the
21 statutes of the United States of America or regulations
22 issued under the provisions of the federal Alcohol
23 Administration Act, Title 27, United States Code, sections
24 201 through 212, inclusive, or regulations issued under the
25 provisions of the Internal Revenue Code, Title 26, United

1 States Code, sections 5001 through 5693, inclusive.

2 (3) Nothing in this code shall prevent:

3 (a) the sale of liquor by any person to the
4 department;

5 (b) the importation, sale, or purchase of candy filled
6 with or containing up to 5% of alcohol by volume; or

7 ~~(b)~~(c) the purchase, importation, and sale of liquor
8 by the department for the purposes of and in accordance with
9 this code."

10 Section 3. Section 16-1-202, MCA, is amended to read:

11 "16-1-202. Preparations not subject to code. (1)
12 Subject to the provisions of this section, nothing in this
13 code shall, by reason only that such preparation contains
14 alcohol, prevent the manufacture, sale, purchase, or
15 consumption of any:

16 (a) extract, essence, or tincture or other preparation
17 containing alcohol which is prepared according to a formula
18 of the United States Pharmacopoeia or according to a formula
19 approved of by the department; or

20 (b) candy filled with or containing up to 5% of
21 alcohol by volume; or

22 ~~(b)~~(c) proprietary or patent medicine prepared
23 according to a formula approved of by the department.

24 (2) The department, if of opinion that any such
25 proprietary or patent medicine, extract, essence, tincture,

1 or preparation which contains alcohol or any other
 2 preparation of a solid, semisolid, or liquid nature
 3 containing alcohol which, or any extract fr which, can be
 4 used as a beverage or as the ingredient of any beverage, may
 5 prohibit the sale thereof by retail within the state or the
 6 possession of the same for sale by retail within the state,
 7 except by a state liquor store or by persons duly licensed
 8 by the department to keep and sell the same by retail in
 9 accordance with this code and the regulations made
 10 thereunder.

11 (3) The department shall notify the manufacturer or
 12 vendor of such proprietary or patent medicine, extract,
 13 essence, tincture, or preparation of the prohibition."

14 Section 4. Section 50-31-202, MCA, is amended to read:

15 "50-31-202. When food adulterated. A food shall be
 16 deemed to be adulterated if:

17 (1) it bears or contains any poisonous or deleterious
 18 substance which may render it injurious to health; but in
 19 case the substance is not an added substance, such food
 20 shall not be considered adulterated under this subsection if
 21 the quantity of such substance in such food does not
 22 ordinarily render it injurious to health;

23 (2) it bears or contains any added poisonous or added
 24 deleterious substance, other than one which is:

25 (a) a pesticide chemical in or on a raw agricultural

1 commodity;

2 (b) a food additive; or

3 (c) a color additive, which is unsafe within the
 4 meaning of 50-31-109;

5 (3) it is a raw agricultural commodity and it bears or
 6 contains a pesticide chemical which is unsafe within the
 7 meaning of section 408(a) of the federal act as amended;

8 (4) it is or it bears or contains any food additive
 9 which is unsafe within the meaning of section 409 of the
 10 federal act as amended; provided that where a pesticide
 11 chemical has been used in or on a raw agricultural commodity
 12 in conformity with an exemption granted or tolerance
 13 prescribed under section 408 of the federal act and such raw
 14 agricultural commodity has been subjected to processing such
 15 as canning, cooking, freezing, dehydrating, or milling, the
 16 residue of such pesticide chemical remaining in or on such
 17 processed food shall, notwithstanding the provisions of
 18 50-31-108, 50-31-109, and subsection (4) of this section,
 19 not be deemed unsafe if such residue in or on the raw
 20 agricultural commodity has been removed to the extent
 21 possible in good manufacturing practice and the
 22 concentration of such residue in the processed food when
 23 ready to eat is not greater than the tolerance prescribed
 24 for the raw agricultural commodity;

25 (5) it consists in whole or in part of a diseased,

1 contaminated, filthy, putrid, or decomposed substance or if
2 it is otherwise unfit for food;

3 (6) it has been produced, prepared, packed, or held
4 under unsanitary conditions whereby it may have become
5 contaminated with filth or whereby it may have been rendered
6 diseased, unwholesome, or injurious to health;

7 (7) it is the product of a diseased animal or an
8 animal which has died otherwise than by slaughter or that
9 has been fed upon the uncooked offal from a slaughterhouse;

10 (8) its container is composed in whole or in part of
11 any poisonous or deleterious substance which may render the
12 contents injurious to health;

13 (9) any valuable constituent has been in whole or in
14 part omitted or abstracted therefrom;

15 (10) any substance has been substituted wholly or in
16 part therefor;

17 (11) damage or inferiority has been concealed in any
18 manner;

19 (12) any substance has been added thereto or mixed or
20 packed therewith so as to increase its bulk or weight,
21 reduce its quality or strength, or make it appear better or
22 of greater value than it is;

23 (13) it is confectionery and it bears or contains any
24 ~~alcohol~~ or nonnutritive article or substance except harmless
25 coloring, harmless flavoring, harmless resinous glaze not in

1 excess of .4%, harmless natural wax not in excess of .4%, or
2 harmless natural gum and pectin; provided that this
3 paragraph shall not apply to any confectionery by reason of
4 its containing less than ~~±5%~~ 5% by volume of alcohol derived
5 ~~solely--from-the-use-of-flavoring-extracts~~ or to any chewing
6 gum by reason of its containing harmless nonnutritive
7 masticatory substances;

8 (14) it is or bears or contains any color additive
9 which is unsafe within the meaning of the federal act."

10 NEW SECTION. Section 5. Extension of authority. Any
11 existing authority of the department of revenue or
12 department of health and environmental sciences to make
13 rules on the subject of the provisions of this act is
14 extended to the provisions of this act.

-End-