

HOUSE BILL NO. 340

INTRODUCED BY D. BROWN, FAGG, CHRISTIAENS,  
STRIZICH, LARSON, DAILY, GRADY, GAGE, HARP,  
KOEHNKE, FORRESTER, KENNEDY, DRISCOLL

IN THE HOUSE

JANUARY 25, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
FEBRUARY 8, 1993	COMMITTEE RECOMMEND BILL DO PASS AS AMENDED. REPORT ADOPTED.
FEBRUARY 9, 1993	PRINTING REPORT.
FEBRUARY 10, 1993	SECOND READING, DO PASS.
FEBRUARY 11, 1993	ENGROSSING REPORT.
FEBRUARY 13, 1993	THIRD READING, PASSED. AYES, 96; NOES, 2.
FEBRUARY 15, 1993	TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 16, 1993	INTRODUCED AND REFERRED TO COMMITTEE ON JUDICIARY.
	FIRST READING.
MARCH 4, 1993	COMMITTEE RECOMMEND BILL BE CONCURRED IN. REPORT ADOPTED.
MARCH 6, 1993	SECOND READING, CONCURRED IN.
MARCH 8, 1993	THIRD READING, CONCURRED IN. AYES, 41; NOES, 7.
	RETURNED TO HOUSE.

IN THE HOUSE

MARCH 16, 1993	RECEIVED FROM SENATE.
	SENT TO ENROLLING.
	REPORTED CORRECTLY ENROLLED.

1 *House* BILL NO. *340*  
 2 INTRODUCED BY *Dave Braun* *Leg. - Republican*  
 3 *Kenney* *Orin* *By HARP* *Leg. - Democrat*  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
 5 ATTEMPT TO PURCHASE AN INTOXICATING SUBSTANCE; PROVIDING A  
 6 PENALTY; AND AMENDING SECTION 45-5-624, MCA."

7  
 8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

9 **Section 1.** Section 45-5-624, MCA, is amended to read:

10 "45-5-624. Unlawful attempt to purchase or possession  
 11 of an intoxicating substance -- interference with sentence  
 12 or court order. (1) (a) A person under the age of 19 years  
 13 commits the offense of possession of an intoxicating  
 14 substance if he the person knowingly consumes or has in his  
 15 the person's possession an intoxicating substance. The  
 16 person need not be consuming or in possession of the  
 17 intoxicating substance at the time of his arrest to violate  
 18 this subsection.

19 (b) A person under the age of 21 commits the offense of  
 20 possession of an intoxicating substance if he the person  
 21 knowingly has in his the person's possession an alcoholic  
 22 beverage, except as provided in 16-6-305 and except that he  
 23 a person does not commit the offense if he the person  
 24 consumes or gains possession of the beverage because it was  
 25 lawfully supplied to him the person under 16-6-305 or when

1 in the course of his employment it is necessary to possess  
 2 alcoholic beverages.

3 (2) A person convicted of the offense of possession of  
 4 an intoxicating substance shall if the person:

5 (a) is less than 18 years of age, be fined not to  
 6 exceed \$50 and:

7 (i) have his the person's driver's license confiscated  
 8 by the court for not more than 90 days and be ordered not to  
 9 drive during that period if he the person was driving or  
 10 otherwise in actual physical control of a motor vehicle when  
 11 the offense occurred;

12 (ii) be ordered to perform community service;

13 (iii) have his the person's driver's license suspended  
 14 if convicted of a second or subsequent offense under this  
 15 section; or

16 (iv) be sentenced to any combination of the penalties  
 17 provided for in subsections (2)(a)(i) through (2)(a)(iii);  
 18 or

19 (b) is 18 years of age or older, be fined an amount not  
 20 to exceed \$50 for a first offense, \$100 for a second  
 21 offense, and \$200 for a third offense or be fined an amount  
 22 not to exceed \$300 or be imprisoned in the county jail for a  
 23 term not to exceed 6 months, or both, for a fourth or  
 24 subsequent offense and:

25 (i) be ordered to complete and pay, either directly

1 with money or indirectly through court-ordered community  
2 service, all costs of his participation in a community-based  
3 substance abuse information course;

4 (ii) have his the person's driver's license confiscated  
5 by the court for not more than 90 days and be ordered not to  
6 drive during that period if he the person was driving or  
7 otherwise in actual physical control of a motor vehicle when  
8 the offense occurred;

9 (iii) be ordered to perform community service; or

10 (iv) be sentenced to any combination of the penalties  
11 provided for in subsections (2)(b)(i) through (2)(b)(iii).

12 (3) A person under the age of 21 commits the offense of  
13 attempt to purchase an intoxicating substance if the person  
14 knowingly attempts to purchase an alcoholic beverage. A  
15 person convicted of attempt to purchase an intoxicating  
16 substance shall be fined an amount not to exceed \$50.

17 ~~(3)~~(4) A defendant who fails to comply with a sentence  
18 and is under 21 years of age and was under 18 years of age  
19 when he the defendant failed to comply must be transferred  
20 to the youth court. If proceedings for violation of  
21 subsection (1) are held in the youth court, the penalties in  
22 subsection (2) do not apply. If proceedings for violation of  
23 subsection (1) or for failure to comply with a sentence are  
24 held in the youth court, the offender shall be treated as an  
25 alleged youth in need of supervision as defined in 41-5-103.

1 The youth court may enter its judgment under 41-5-523.

2 ~~(4)~~(5) A person commits the offense of interference  
3 with a sentence or court order if he the person purposely or  
4 knowingly causes his a child or ward to fail to comply with  
5 a sentence imposed under this section or a youth court  
6 disposition order for a youth found to have violated this  
7 section and upon conviction shall be fined \$100 or  
8 imprisoned in the county jail for 10 days, or both."

9 NEW SECTION. Section 2. Presumption of legal age. For  
10 purposes of this title and 45-5-624, the establishment of  
11 the following facts by a person making a sale of alcoholic  
12 beverages to a person under the legal age constitutes prima  
13 facie evidence of innocence and a defense to a prosecution  
14 for sale of alcoholic beverages to a person under the legal  
15 age:

16 (1) The purchaser falsely represented and supported  
17 with documentary evidence that the purchaser was of legal  
18 age to purchase alcoholic beverages.

19 (2) The appearance of the purchaser was such that an  
20 ordinary and prudent person would believe the purchaser to  
21 be of legal age to purchase alcoholic beverages.

22 (3) The sale was made in good faith and in reliance  
23 upon the representation and appearance of the purchaser that  
24 the purchaser was of legal age to purchase alcoholic  
25 beverages.

LC 0874/01

1        NEW SECTION.    **Section 3.**   Codification       instruction.  
2        [Section 2] is intended to be codified as an integral part  
3        of Title 16, chapter 3, part 3, and the provisions of Title  
4        16, chapter 3, part 3, apply to [section 2].

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for HB0340, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

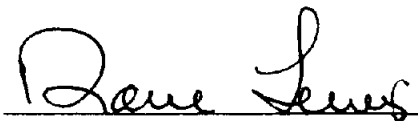
An act creating the offense of attempt to purchase an intoxicating substance; providing a penalty.

ASSUMPTIONS:

1. According to 1991 statewide statistics compiled by the Montana Board of Crime Control, there were 3,292 liquor law offenses reported or known by the police. Of these offenses 2,632 were cleared by arrest, 2,136 of which were for youths under the age of 18. The additional number of arrests that may occur under this bill is not subject to reasonable estimate.
2. The bill provides for a fine not to exceed \$50 for a person under the age of 21 who is convicted of attempt to purchase an intoxicating substance. The additional fine revenue, if any, resulting from this bill is not subject to reasonable estimate.

FISCAL IMPACT:

Not subject to reasonable estimate.

 1-29-93

DAVE LEWIS, BUDGET DIRECTOR                      DATE  
Office of Budget and Program Planning

 1-30-93

DAVE BROWN, PRIMARY SPONSOR                      DATE

Fiscal Note for HB0340, as introduced

HB 340

APPROVED BY COMMITTEE  
ON JUDICIARY

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A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE OFFENSE OF  
ATTEMPT TO PURCHASE AN INTOXICATING SUBSTANCE; PROVIDING A  
PENALTY; AND AMENDING SECTION 45-5-624, MCA."

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

**Section 1.** Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful attempt to purchase or possession  
of an intoxicating substance -- interference with sentence  
or court order. (1) (a) A person under the age of 19 years  
commits the offense of possession of an intoxicating  
substance if he the person knowingly consumes or has in his  
the person's possession an intoxicating substance. The  
person need not be consuming or in possession of the  
intoxicating substance at the time of his arrest to violate  
this subsection.

(b) A person under the age of 21 commits the offense of  
possession of an intoxicating substance if he the person  
knowingly has in his the person's possession an alcoholic  
beverage, except as provided in 16-6-305 and except that he  
a person does not commit the offense if he the person

consumes or gains possession of the beverage because it was  
lawfully supplied to him the person under 16-6-305 or when  
in the course of his employment it is necessary to possess  
alcoholic beverages.

(2) A person convicted of the offense of possession of  
an intoxicating substance shall if the person:

(a) is less than 18 years of age, be fined not to  
exceed \$50 and:

(i) have his the person's driver's license confiscated  
by the court for not more than 90 days and be ordered not to  
drive during that period if he the person was driving or  
otherwise in actual physical control of a motor vehicle when  
the offense occurred;

(ii) be ordered to perform community service;

(iii) have his the person's driver's license suspended  
if convicted of a second or subsequent offense under this  
section; or

(iv) be sentenced to any combination of the penalties  
provided for in subsections (2)(a)(i) through (2)(a)(iii);  
or

(b) is 18 years of age or older, be fined an amount not  
to exceed \$50 for a first offense, \$100 for a second  
offense, and \$200 for a third offense or be fined an amount  
not to exceed \$300 or be imprisoned in the county jail for a  
term not to exceed 6 months, or both, for a fourth or

subsequent offense and:

(i) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of his participation in a community-based substance abuse information course;

(ii) have ~~his~~ the person's driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if ~~he~~ the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to perform community service; or

(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through (2)(b)(iii).

(3) A person under the age of 21 commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50.

~~(3)(4)~~ (4) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when ~~he~~ the defendant failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are

held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

~~(4)(5)~~ (5) A person commits the offense of interference with a sentence or court order if ~~he~~ the person purposely or knowingly causes ~~his~~ a child or ward to fail to comply with a sentence imposed under this section or a youth court disposition order for a youth found to have violated this section and upon conviction shall be fined \$100 or imprisoned in the county jail for 10 days, or both."

NEW SECTION. Section 2. Presumption of legal age. For purposes of this title and ~~45-5-624~~ 45-5-623, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(1) The THE purchaser falsely represented and supported with documentary evidence THAT AN ORDINARY AND PRUDENT PERSON WOULD ACCEPT that the purchaser was of legal age to purchase alcoholic beverages;

(2) The THE appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; AND

(3) The THE sale was made in good faith and in

1 REASONABLE reliance upon the representation and appearance  
2 of the purchaser that the purchaser was of legal age to  
3 purchase alcoholic beverages.

4 NEW SECTION. **Section 3.** Codification instruction.  
5 [Section 2] is intended to be codified as an integral part  
6 of Title 16, chapter 3, part 3, and the provisions of Title  
7 16, chapter 3, part 3, apply to [section 2].

-End-



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ATTEMPT TO PURCHASE AN INTOXICATING SUBSTANCE; PROVIDING A  
PENALTY; AND AMENDING SECTION 45-5-624, MCA."

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

Section 1. Section 45-5-624, MCA, is amended to read:

"45-5-624. Unlawful attempt to purchase or possession  
of an intoxicating substance -- interference with sentence  
or court order. (1) (a) A person under the age of 19 years  
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substance if he the person knowingly consumes or has in his  
the person's possession an intoxicating substance. The  
person need not be consuming or in possession of the  
intoxicating substance at the time of his arrest to violate  
this subsection.

(b) A person under the age of 21 commits the offense of  
possession of an intoxicating substance if he the person  
knowingly has in his the person's possession an alcoholic  
beverage, except as provided in 16-6-305 and except that he  
a person does not commit the offense if he the person

consumes or gains possession of the beverage because it was  
lawfully supplied to him the person under 16-6-305 or when  
in the course of his employment it is necessary to possess  
alcoholic beverages.

(2) A person convicted of the offense of possession of  
an intoxicating substance shall if the person:

(a) is less than 18 years of age, be fined not to  
exceed \$50 and:

(i) have his the person's driver's license confiscated  
by the court for not more than 90 days and be ordered not to  
drive during that period if he the person was driving or  
otherwise in actual physical control of a motor vehicle when  
the offense occurred;

(ii) be ordered to perform community service;

(iii) have his the person's driver's license suspended  
if convicted of a second or subsequent offense under this  
section; or

(iv) be sentenced to any combination of the penalties  
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(b) is 18 years of age or older, be fined an amount not  
to exceed \$50 for a first offense, \$100 for a second  
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not to exceed \$300 or be imprisoned in the county jail for a  
term not to exceed 6 months, or both, for a fourth or

subsequent offense and:

(i) be ordered to complete and pay, either directly with money or indirectly through court-ordered community service, all costs of his participation in a community-based substance abuse information course;

(ii) have his the person's driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he the person was driving or otherwise in actual physical control of a motor vehicle when the offense occurred;

(iii) be ordered to perform community service; or

(iv) be sentenced to any combination of the penalties provided for in subsections (2)(b)(i) through (2)(b)(iii).

(3) A person under the age of 21 commits the offense of attempt to purchase an intoxicating substance if the person knowingly attempts to purchase an alcoholic beverage. A person convicted of attempt to purchase an intoxicating substance shall be fined an amount not to exceed \$50.

(3)(4) A defendant who fails to comply with a sentence and is under 21 years of age and was under 18 years of age when he the defendant failed to comply must be transferred to the youth court. If proceedings for violation of subsection (1) are held in the youth court, the penalties in subsection (2) do not apply. If proceedings for violation of subsection (1) or for failure to comply with a sentence are

held in the youth court, the offender shall be treated as an alleged youth in need of supervision as defined in 41-5-103. The youth court may enter its judgment under 41-5-523.

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(2) The THE appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; AND

(3) The THE sale was made in good faith and in

1 REASONABLE reliance upon the representation and appearance  
2 of the purchaser that the purchaser was of legal age to  
3 purchase alcoholic beverages.

4 NEW SECTION. Section 3. Codification instruction.  
5 [Section 2] is intended to be codified as an integral part  
6 of Title 16, chapter 3, part 3, and the provisions of Title  
7 16, chapter 3, part 3, apply to [section 2].

-End-

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an intoxicating substance shall if the person:

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