

SENATE BILL 391

Introduced by Fritz, et al.

2/13	Introduced
2/13	Referred to Judiciary
2/13	First Reading
2/13	Fiscal Note Requested
2/20	Hearing
2/22	Committee Report--Bill Not Passed
2/22	Adverse Committee Report Adopted
2/22	Fiscal Note Received
2/23	Fiscal Note Printed

1 Sam BILL NO. 391  
2 INTRODUCED BY John Dave Brown  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT LOWERING THE LEGAL  
5 DRINKING AGE FROM 21 YEARS OF AGE TO 18 YEARS OF AGE; AND  
6 AMENDING SECTIONS 16-3-301, 16-6-305, 16-6-314, 45-5-623,  
7 45-5-624, AND 61-5-206, MCA."  
8

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

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

11 "16-3-301. Unlawful purchases, transfers, sales, or  
12 deliveries. (1) It is unlawful for a licensed retailer to  
13 purchase or acquire beer from anyone except a brewer or  
14 wholesaler licensed under the provisions of this code.

15 (2) It is unlawful for a licensed retailer to transport  
16 beer from one licensed premises or other facility to any  
17 other licensed premises owned by the licensee.

18 (3) It is unlawful for any licensee, his--or--her the  
19 licensee's employee or employees, or any other person to  
20 sell, deliver, or give away or cause or permit to be sold,  
21 delivered, or given away any alcoholic beverage to:

22 (a) any person under 21 18 years of age;

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

25 (4) Any person under 21 18 years of age or other person

1 who knowingly misrepresents his--or--her the person's  
2 qualifications for the purpose of obtaining an alcoholic  
3 beverage from such the licensee is equally guilty with said  
4 the licensee and, upon conviction thereof, is subject to the  
5 penalty provided in 45-5-624. However, nothing herein  
6 contained in this section may be construed as authorizing or  
7 permitting the sale of an alcoholic beverage to any person  
8 in violation of any federal law.

9 (5) It is further mandatory under the provisions of  
10 this code that all licensees display in a prominent place in  
11 their premises a placard as issued by the department stating  
12 fully the consequences for violations of the provisions of  
13 this code by persons under 21 18 years of age."

14 **Section 2.** Section 16-6-305, MCA, is amended to read:

15 "16-6-305. Age limit for sale or provision of alcoholic  
16 beverages -- liability of provider. (1) (a) Except in the  
17 case of an alcoholic beverage provided in a nonintoxicating  
18 quantity to a person under 21 18 years of age by his the  
19 person's parent or guardian, physician or dentist for  
20 medicinal purposes, a licensed pharmacist upon the  
21 prescription of a physician, or an ordained minister or  
22 priest in connection with a religious observance, a person  
23 may not sell or otherwise provide an alcoholic beverage to a  
24 person under 21 18 years of age.

25 (b) A parent, guardian, or other person may not

1 knowingly sell or otherwise provide an alcoholic beverage in  
2 an intoxicating quantity to a person under 21 18 years of  
3 age.

4 (c) For the purposes of this section, "intoxicating  
5 quantity" means a quantity of an alcoholic beverage that is  
6 sufficient to produce:

7 (i) a blood, breath, or urine alcohol concentration in  
8 excess of 0.05; or

9 (ii) substantial or visible mental or physical  
10 impairment.

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

12 (a) invites a person under the age of 21 18 years into  
13 a public place where an alcoholic beverage is sold and  
14 treats, gives, or purchases an alcoholic beverage for the  
15 person;

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

19 (c) holds out the person to be 21 18 years of age or  
20 older to the owner of the establishment or his--or--her the  
21 owner's employee or employees.

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

1 identification card.

2 (4) A person 21 18 years of age or older who violates  
3 the provisions of subsection (1)(b) is, in addition to  
4 applicable criminal penalties, subject to civil liability  
5 for damages resulting from a tortious act committed by the  
6 person to whom the intoxicating substance was sold or  
7 provided if the act is judicially determined to be the  
8 result of the intoxicated condition created by the  
9 violation."

10 **Section 3.** Section 16-6-314, MCA, is amended to read:

11 "16-6-314. Penalty for violating code -- revocation of  
12 license -- penalty for violation by underage person. (1) A  
13 person who violates a provision of this code is guilty of a  
14 misdemeanor punishable as provided in 46-18-212, except as  
15 is herein otherwise provided in this section.

16 (2) If a retail licensee is convicted of an offense  
17 under this code, his the licensee's license shall be  
18 immediately revoked or, in the discretion of the department,  
19 such any other sanction imposed as may be authorized under  
20 16-4-406.

21 (3) A person under 21 18 years of age who violates  
22 16-3-301(4) or 16-6-305(3) is subject to the penalty  
23 provided in 45-5-624(2)."

24 **Section 4.** Section 45-5-623, MCA, is amended to read:

25 "45-5-623. Unlawful transactions with children. (1)

1 Except as provided for in 16-6-305, a person commits the  
2 offense of unlawful transactions with children if he the  
3 person knowingly:

4 (a) sells or gives explosives to a child under the age  
5 of majority except as authorized under appropriate city  
6 ordinances;

7 (b) sells or gives intoxicating substances, other--than  
8 including alcoholic beverages, to a child under the 18 years  
9 of age of majority; or

10 {c}--sells--or--gives--an-alcoholic-beverage-to-a-person  
11 under-21-years-of-age; or

12 {d}{c} being a junk dealer, pawnbroker, or secondhand  
13 dealer, receives or purchases goods from a child under the  
14 age of majority without authorization of the parent or  
15 guardian.

16 (2) A person convicted of the offense of unlawful  
17 transactions with children shall be fined not to exceed \$500  
18 or be imprisoned in the county jail for any term not to  
19 exceed 6 months, or both. A person convicted of a second  
20 offense of unlawful transactions with children shall be  
21 fined not to exceed \$1,000 or be imprisoned in the county  
22 jail for any term not to exceed 6 months, or both."

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

24 "45-5-624. Unlawful possession of an intoxicating  
25 substance alcoholic beverage -- interference with sentence

1 or court order. (1) (a) A Except as provided in subsection  
2 (1)(b), a person under the age of 19 18 years commits the  
3 offense of possession of an intoxicating-substance alcoholic  
4 beverage if he the person knowingly consumes an alcoholic  
5 beverage or has an alcoholic beverage in his the person's  
6 possession an-intoxicating-substance. The person need not be  
7 consuming or in possession of the intoxicating--substance  
8 alcoholic beverage at the time of his the person's arrest to  
9 violate this subsection.

10 (b) A person does not commit the offense of possession  
11 of an alcoholic beverage if the person consumes or gains  
12 possession of the beverage because it was lawfully supplied  
13 to the person under 16-6-305.

14 {b}--A-person-under-the-age-of-21-commits-the-offense-of  
15 possession-of-an-intoxicating-substance-if-he-knowingly--has  
16 in--his-possession-an-alcoholic-beverage,--except-as-provided  
17 in-16-6-305-and-except-that-he-does-not-commit--the--offense  
18 if--he--consumes-or-gains-possession-of-the-beverage-because  
19 it-was-lawfully-supplied-to-him-under-16-6-305--or--when--in  
20 the--course--of--his--employment--it-is-necessary-to-possess  
21 alcoholic-beverages-

22 (2) A person convicted of the offense of possession of  
23 an intoxicating--substance alcoholic beverage shall if-the  
24 person:

25 {a}--is-less-than-18-years-of-age, 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:

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

(b) 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;

(c) be ordered to perform community service;

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

(e) be sentenced to any combination of the penalties provided for in subsections (2)(a) through (2)(d); 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 driver's license confiscated by the court for not more than 90 days and be ordered not to drive during that period if he 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 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 person 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) A person commits the offense of interference with a

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

7 **Section 6.** Section 61-5-206, MCA, is amended to read:

8 "61-5-206. Authority of department to suspend license  
 9 or driving privilege or issue probationary license. (1) The  
 10 department ~~is hereby authorized to~~ may suspend the driver's  
 11 license, including the commercial vehicle operator's  
 12 endorsement, or driving privilege of a driver without  
 13 preliminary hearing upon a showing by its records or other  
 14 sufficient evidence that the licensee:

15 (a) has been involved as a driver in any accident  
 16 resulting in the death or personal injury of another or  
 17 serious property damage;

18 (b) has been convicted with such frequency of serious  
 19 offenses against traffic regulations governing the movement  
 20 of vehicles as to indicate a disrespect for traffic laws and  
 21 a disregard for the safety of other persons on the highways;

22 (c) is an habitually reckless or negligent driver of a  
 23 motor vehicle;

24 (d) is incompetent to drive a motor vehicle;

25 (e) has committed or permitted an unlawful or

1 fraudulent use of such a license as specified in 61-5-302;

2 (f) has committed an offense in another state which if  
 3 committed in this state would be grounds for suspension or  
 4 revocation;

5 (g) has falsified his the person's date of birth on his  
 6 the person's application for a driver's license;

7 (h) is under ~~21~~ 18 years of age and has altered his the  
 8 person's or another's driver's license or identification  
 9 card to obtain alcohol; or

10 (i) has authorized another to use his the person's  
 11 driver's license or identification card to obtain alcohol.

12 (2) However, the department may, in its discretion and  
 13 in lieu of such the suspension of license or driving  
 14 privilege, issue a probationary license to a driver, without  
 15 preliminary hearing, upon a showing by its records or other  
 16 sufficient evidence that the licensee's driving record is  
 17 such as would authorize suspension as provided in subsection  
 18 (1) ~~hereof~~. Upon issuance of a probationary license, the  
 19 licensee ~~shall--be~~ is subject to the restrictions set forth  
 20 thereon on the license. The licensee's driving privilege may  
 21 be suspended upon conviction or forfeiture of bail not  
 22 vacated of any traffic violation during the period of such  
 23 probation. The licensee shall surrender to the department  
 24 all driver licenses ~~theretofore~~ previously issued to him the  
 25 licensee before such the probationary license ~~shall~~ may be

1 issued. ~~His~~ The licensee's refusal or neglect to surrender  
2 ~~such the~~ licenses upon demand ~~shall-be-ground~~ is grounds for  
3 suspending all ~~such~~ licenses of the licensee. Probationary  
4 licenses may be issued for a period not to exceed 12 months.

5 (3) Upon suspending the license of any person or upon  
6 placing ~~such the~~ person on probation, as ~~hereinbefore~~  
7 authorized in this section ~~authorized~~, the department shall  
8 immediately notify the licensee in writing and upon ~~his~~ the  
9 licensee's request shall afford ~~him~~ the licensee an  
10 opportunity for a hearing as early as practical within not  
11 to exceed 20 days after receipt of ~~such the~~ request in the  
12 county ~~wherein~~ in which the licensee resides unless the  
13 department and the licensee agree that ~~such the~~ hearing may  
14 be held in some other county. Upon ~~such the~~ hearing, the  
15 department through its duly authorized agent may administer  
16 oaths and may issue subpoenas for the attendance of  
17 witnesses and the production of relevant books and papers  
18 and may require a reexamination of the licensee. Upon ~~such~~  
19 the hearing, the department shall either rescind its order  
20 of suspension or probation, or, for good cause ~~appearing~~  
21 ~~therefor~~, may affirm, reduce, or extend the period of  
22 probation or suspension of ~~such the~~ license."

-End-

## STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0391, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act lowering the legal drinking age from 21 years of age to 18 years of age.

ASSUMPTIONS:

1. Title 23, Section 158, United States Code, requires the withholding of 5% of federal-aid highway funds apportioned to a state in the first year and 10% for any fiscal year thereafter in which the purchase or public possession of any alcoholic beverage by a person who is less than twenty one (21) years of age is lawful.
2. The following categories of funding will be sanctioned based on the Federal Highway Administration (FHWA) interpretation of congressional intent related to Section 158: National Highway System Funding, Surface Transportation Program Funding, and Interstate Maintenance Funding.
3. FY93 apportionments are the basis of the estimates. Annual apportionments are expected to stay at this level through FY97:
  - (a) National Highway System apportionment - \$37 million.
  - (b) Surface Transportation Program apportionment - \$48 million.
  - (c) Interstate Maintenance Program apportionment - \$44 million.
4. The Department of Justice assumes that there would be some increase in the number of Driving Under the Influence (DUI) arrests as a result of this bill. However, the number and potential fiscal impact is not subject to reasonable estimate.

FISCAL IMPACT:

	FY '94			FY '95		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<u>Revenues:</u>						
Federal Special Revenue:						
National Highway System	37,000,000	35,150,000	(1,850,000)	37,000,000	33,300,000	(3,700,000)
Surface Transportation Program	48,000,000	45,600,000	(2,400,000)	48,000,000	43,200,000	(4,800,000)
Interstate Maintenance Program	<u>44,000,000</u>	<u>41,800,000</u>	<u>(2,200,000)</u>	<u>44,000,000</u>	<u>39,600,000</u>	<u>(4,400,000)</u>
Total	129,000,000	122,550,000	(6,450,000)	129,000,000	116,100,000	(12,900,000)

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

There may be some local impact due to the possible increase in DUI arrests.

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

A similar 10% penalty would continue to be assessed against Montana's federal apportionment until the drinking age was again raised to 21 or until the federal law was changed. The loss of federal funds would result in a reduction of the construction program by a proportionate amount.

*Dave Lewis* 2-20-93  
 DAVE LEWIS, BUDGET DIRECTOR DATE  
 Office of Budget and Program Planning

*H. Fritz* 2/23/93  
 HARRY FRITZ, PRIMARY SPONSOR DATE

Fiscal Note for SB0391, as introduced

**SB 391**