

1 SENATE BILL NO. 471  
2 INTRODUCED BY J. TREBAS, L. BREWSTER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE CRIMINAL OFFENSE OF UNLAWFUL  
5 TRANSACTIONS WITH CHILDREN; PROVIDING THAT A PERSON WHO IS AT LEAST 18 YEARS OF AGE  
6 BUT UNDER THE AGE OF 21 MAY POSSESS AND CONSUME BEER AND WINE WHILE WITH CERTAIN  
7 PEOPLE; PROVIDING PENALTIES FOR FALSELY CLAIMING CERTAIN RELATIONSHIPS; PROHIBITING  
8 SELLING OR GIVING TO CHILDREN A PRODUCT CONTAINING ANY INTOXICATING HEMP-DERIVED  
9 CANNABINOID; PROHIBITING SELLING OR GIVING TO CHILDREN A PRODUCT CONTAINING KRATOM;  
10 AMENDING SECTION SECTIONS 16-3-301, 16-4-1002, 16-4-1006, 16-6-305, AND 45-5-623, MCA; AND  
11 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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15 **NEW SECTION. Section 1. Possession of beer or wine for minors -- over age 18 but less than**  
16 **age 21 -- parental consent -- spouses.** A person who is at least 18 years of age but under the age of 21 may  
17 possess and consume beer or wine with the consent of and in the presence of the person's parent, legal  
18 guardian, or spouse who is 21 years of age old or older. The consumption of beer or wine may be on private  
19 property or at a location licensed for on-premises consumption, if permitted by the licensee. It is not unlawful for  
20 the person's parent, legal guardian, or spouse or a licensee to furnish beer or wine to the person who is at least  
21 18 years of age.

22  
23 **Section 2.** Section 16-3-301, MCA, is amended to read:  
24 **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1) It  
25 is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewery, winery, or  
26 wholesaler licensed under the provisions of this code except as allowed in 16-4-213(8).  
27 (2) It is unlawful for a licensed retailer to transport beer or wine from one licensed premises or  
28 other facility to any other licensed premises owned by the licensee except as allowed in 16-4-213(8).

1 (3) It is unlawful for a licensed retailer to purchase or acquire liquor from anyone except an agency  
2 liquor store except as allowed in 16-4-213(8).

3 (4) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery,  
4 winery, or wholesaler licensed or registered under this code.

5 (5) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or  
6 give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

7 (a) except as provided in [section 1], any person under 21 years of age; or

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

9 (6) Any person under 21 years of age or any other person who knowingly misrepresents the  
10 person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with  
11 the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this  
12 section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in  
13 violation of any federal law.

14 (7) All licensees shall display in a prominent place in their premises a placard, issued by the  
15 department, stating fully the consequences for violations of the provisions of this code by persons under 21  
16 years of age.

17 (8) For purposes of 45-5-623 and this title, the establishment of the following facts by a person  
18 making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of  
19 innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

20 (a) the purchaser falsely represented and supported with documentary evidence that an ordinary  
21 and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

22 (b) the appearance of the purchaser was such that an ordinary and prudent person would believe  
23 the purchaser to be of legal age to purchase alcoholic beverages; and

24 (c) the sale was made in good faith and in reasonable reliance upon the representation and  
25 appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See  
26 compiler's comments for contingent termination of certain text.)"

27

28 **Section 3.** Section 16-4-1002, MCA, is amended to read:

1           **"16-4-1002. Legislative intent.** It is the intent of this part that retail establishments and manufacturers  
 2 licensed to sell or serve alcoholic beverages to the public ensure that all licensees and their employees that sell  
 3 or serve alcoholic beverages are appropriately trained to comply with state law prohibiting the sale or service of  
 4 alcoholic beverages to persons under 21 years of age, to persons under [section 1], and to persons who are  
 5 intoxicated. This part does not apply to special permits issued under 16-4-301."  
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7           **Section 4.** Section 16-4-1006, MCA, is amended to read:  
 8           **"16-4-1006. Responsible server and sales training program.** (1) The department shall certify all  
 9 server and sales training programs that include the following:  
 10           (a) effects of alcohol on the human body;  
 11           (b) information, including criminal, civil, and administrative penalties, related to 27-1-710 and this  
 12 code;  
 13           (c) procedures for checking identification, including compliance with [section 1];  
 14           (d) procedures for gathering proper documentation that may affect the licensee's liability;  
 15           (e) training for skills to handle difficult situations and to learn evaluation techniques regarding  
 16 intoxicated persons or others that pose potential liability;  
 17           (f) a final test; and  
 18           (g) a certificate of completion, which must be provided to participants who pass the final test.  
 19           (2) The department may not provide a responsible server and sales training program."  
 20

21           **Section 5.** Section 16-6-305, MCA, is amended to read:  
 22           **"16-6-305. Age limit for sale or provision of alcoholic beverages -- liability of provider.** (1) (a)  
 23 Except as provided in [section 1], and in the case of an alcoholic beverage provided in a nonintoxicating  
 24 quantity to a person under 21 years of age by the person's ~~parent or guardian~~, physician or dentist for medicinal  
 25 purposes, a licensed pharmacist upon the prescription of a physician, or an ordained minister or priest in  
 26 connection with a religious observance, a person may not sell or otherwise provide an alcoholic beverage to a  
 27 person under 21 years of age.  
 28           (b) ~~A parent, guardian, or other~~ Except as provided in [section 1], a person may not knowingly sell

1 or otherwise provide an alcoholic beverage in an intoxicating quantity to a person under 21 years of age.

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

- 4 (i) a blood, breath, or urine alcohol concentration in excess of 0.05; or
- 5 (ii) substantial or visible mental or physical impairment.

6 (2) A-Except as provided in [section 1], a person is guilty of a misdemeanor who:

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

9 (b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or  
10 purchase alcoholic beverages for the person; ~~or~~

11 (c) holds out the person to be 21 years of age or older to the owner of the establishment or to the  
12 owner's employee; or

13 (d) falsely holds out the person meets the requirements of [section 1].

14 (3) It is unlawful for any person to fraudulently misrepresent the person's age to any dispenser of  
15 alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in  
16 any identification card, including a tribal identification card.

17 (4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition  
18 to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by  
19 the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the  
20 result of the intoxicated condition created by the violation. (See compiler's comments for contingent termination  
21 of certain text.)"

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23 **Section 6.** Section 45-5-623, MCA, is amended to read:

24 **"45-5-623. Unlawful transactions with children.** (1) Except as provided for in 16-6-305, a person  
25 commits the offense of unlawful transactions with children if the person knowingly:

- 26 (a) sells or gives explosives to a child except as authorized under appropriate city ordinances;
- 27 (b) sells or gives intoxicating substances other than alcoholic beverages to a child;
- 28 (c) sells or gives an alcoholic beverage to a person under 21 years of age that is not in compliance

1 with [section 1];

2 (d) sells or gives to a child a tobacco product, alternative nicotine product, or vapor product, as  
3 defined in 16-11-302;

4 (e) sells or gives to a child a product containing any intoxicating hemp-derived cannabinoid,  
5 including but not limited to delta-8, delta-9, or delta-10 tetrahydrocannabinol and isomers of delta-8, delta-9, or  
6 delta-10 tetrahydrocannabinol;

7 (f) sells or gives to a child a product containing any quantity of kratom or any parts of the plant  
8 Mitragyna speciosa, whether growing or not, and any compound, manufacture, salt, derivative, mixture, or  
9 preparation of that plant, including but not limited to mitragynine and 7-hydroxymitragynine;

10 (e)(g) being a junk dealer, pawnbroker, or secondhand dealer, receives or purchases goods from a  
11 child without authorization of the parent or guardian; or

12 (f)(h) tattoos or provides a body piercing on a child without the explicit in-person consent of the  
13 child's parent or guardian. For purposes of this subsection (1)(f) (h), "tattoo" and "body piercing" have the  
14 meaning provided in 50-48-102. Failure to adequately verify the identity of a parent or guardian is not an  
15 excuse for violation of this subsection (1)(f) (h).

16 (2) A person convicted of the offense of unlawful transactions with children shall be fined an  
17 amount not to exceed \$500 or be imprisoned in the county jail for any term not to exceed 6 months, or both. A  
18 person convicted of a second offense of unlawful transactions with children shall be fined an amount not to  
19 exceed \$1,000 or be imprisoned in the county jail for any term not to exceed 6 months, or both. (See compiler's  
20 comments for contingent termination of certain text.)"

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22 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an  
23 integral part of Title 16, and the provisions of Title 16 apply to [section 1].

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25 **NEW SECTION. Section 8. Effective date.** [This act] is effective on passage and approval.

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