



AN ACT REVISING THE ALCOHOL CONTENT OF BEER; AND AMENDING SECTIONS 16-1-102, 16-1-106, AND 16-3-244, MCA.

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

**Section 1.** Section 16-1-102, MCA, is amended to read:

**"16-1-102. Policy as to sale of beer.** It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code, and which contains not more than 7% of alcohol by weight, shall must be controlled and regulated as provided under this code. ~~Beer~~ Unless defined as beer in 16-1-106(5)(b), beer, porter, ale, stout, and malt liquors containing more than 7% of 8.75% alcohol by weight volume and which that are defined as "liquor" ~~shall be~~ are subject to the regulations and controls provided for liquor."

**Section 2.** Section 16-1-106, MCA, is amended to read:

**"16-1-106. Definitions.** As used in this code, the following definitions apply:

- (1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.
- (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.
- (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
- (5) "Beer" means:
  - (a) a malt beverage containing not more than ~~7%~~ 8.75% alcohol by ~~weight~~ weight volume; or
  - (b) an alcoholic beverage containing not more than 14% alcohol by volume:
    - (i) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in

potable brewing water, of malted cereal grain; and

(ii) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

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

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

(8) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(9) "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(10) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% alcohol by volume and not more than 6.9% alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

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

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

(13) "Liquor" means an alcoholic beverage except beer and table wine.

(14) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption.

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

(16) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code.

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

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

(19) "Retail price" means the price established by an agent for the sale of liquor to persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

(20) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

(21) "Special event", as it relates to an application for a beer and wine special permit, means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

(22) "State liquor warehouse" means a building owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

(23) "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

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

(25) "Table wine" means wine that contains not more than 16% alcohol by volume and includes cider.

(26) "Table wine distributor" means a person importing into or purchasing in Montana table wine for sale or resale to retailers licensed in Montana.

(27) "Warehouse" means a building or structure located in Montana that is owned or operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.

(28) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in

accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."

**Section 3.** Section 16-3-244, MCA, is amended to read:

**"16-3-244. Beer advertising limitations.** It ~~shall be~~ is lawful to advertise beer containing not more than 7% of alcohol by weight, as defined and regulated, subject to the restrictions on brewers and beer importers contained in 16-3-241 of this code and subject to the following restrictions on retailers. ~~No~~ A retail licensee ~~shall~~ may not display or permit to be displayed on the exterior portion or surface of ~~such the~~ the retailer's place of business or on the exterior portion or surface of any building of which ~~said the~~ the place of business is a part or on any premises adjacent ~~thereto~~ to the place of business, whether any of ~~such the~~ the premises ~~be are~~ are owned or leased by the retailer, any sign, poster, or advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer ~~whatsoever~~, unless it is on a marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days per display period."

- END -

I hereby certify that the within bill,  
HB 0400, originated in the House.

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Chief Clerk of the House

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2009.

HOUSE BILL NO. 400

INTRODUCED BY KOTTEL, AUGARE, P. BECK, BOSS RIBS, DRISCOLL, HAMILTON, HENDRICK,  
HINER, HUNTER, JONES, MACDONALD, MORGAN, P. NOONAN, NOONEY, SESSO, TAYLOR,  
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MCCHESNEY, PHILLIPS, VANCE, VILLA, WAGNER, WANZENRIED, WILSON

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