

HOUSE BILL NO. 540

INTRODUCED BY J. O'NEIL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING PROVISIONS ON THE ADMINISTRATION OF ALCOHOL LAWS; INCREASING THE ALCOHOL LIMIT ALLOWABLE FOR CONFECTIONERIES; DEFINING FINANCIAL INTEREST; PROVIDING CHANGES RELATING TO THE RELATIONSHIP BETWEEN STATE AGENCY LIQUOR STORES AND THE DEPARTMENT OF REVENUE; AMENDING SECTIONS 16-1-106, 16-1-301, 16-2-106, AND 50-31-202, MCA; REPEALING SECTION 16-2-203, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

Section 1. 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) (a) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(b) The term does not include:

(i) confectioneries containing less than 5% alcohol by volume; or

(ii) flavoring extracts.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) 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

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from

- 1 malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- 2 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- 3 (6) "Beer importer" means a person other than a brewer who imports malt beverages.
- 4 (7) "Brewer" means a person who produces malt beverages.
- 5 (8) "Caffeinated or stimulant-enhanced malt beverage" means:
- 6 (a) a beverage:
- 7 (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has
- 8 been removed and replaced with distilled ethyl alcohol;
- 9 (ii) that contains at least 0.5% of alcohol by volume;
- 10 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 11 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 12 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
- 13 taurine; or
- 14 (b) a beverage:
- 15 (i) that contains at least 0.5% of alcohol by volume;
- 16 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 17 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 18 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 19 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
- 20 taurine;
- 21 (v) for which the producer is required to file a formula for approval with the United States alcohol and
- 22 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 23 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 24 (9) "Community" means:
- 25 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 26 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
- 27 community for census purposes; and
- 28 (c) in a consolidated local government, the area of the consolidated local government not otherwise
- 29 incorporated.
- 30 (10) "Department" means the department of revenue, unless otherwise specified, and includes the

1 department of justice with respect to receiving and processing, but not granting or denying, an application under
2 a contract entered into under 16-1-302.

3 (11) "Financial interest" means having or possessing a share, control, right, or title in or over a
4 state-issued alcoholic beverage license and a direct financial involvement in the operation of the business
5 associated with the license with the expectation of receiving a financial benefit or holding the license as security
6 for a loan. A financial interest exists only when there is active managerial or financial participation, influence,
7 control, or ownership or potential future ownership over the license. A financial interest does not exist between
8 a licensee and its vendors, supplier, employees, landlords, or others who do not manage, control, or possess
9 decisionmaking authority in the operations or finances of the licensed business.

10 ~~(11)~~(12) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
11 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of
12 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

13 ~~(12)~~(13) "Immediate family" means a spouse, dependent children, or dependent parents.

14 ~~(13)~~(14) "Import" means to transfer beer or table wine from outside the state of Montana into the state
15 of Montana.

16 ~~(14)~~(15) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
17 caffeinated or stimulant-enhanced malt beverage.

18 ~~(15)~~(16) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
19 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts
20 or their products and with or without other malted cereals and with or without the addition of unmalted or prepared
21 cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome
22 products suitable for human food consumption.

23 ~~(16)~~(17) "Package" means a container or receptacle used for holding an alcoholic beverage.

24 ~~(17)~~(18) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
25 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
26 In the case of sacramental wine, the wholesale price may not exceed the sum of the department's cost to acquire
27 the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

28 ~~(18)~~(19) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains
29 50% of alcohol by volume.

30 ~~(19)~~(20) "Public place" means a place, building, or conveyance to which the public has or may be

1 permitted to have access and any place of public resort.

2 ~~(20)~~(21) "Retail price" means the price established by an agent for the sale of liquor to persons who do
3 not hold liquor licenses. The retail price may not be less than the department's posted price.

4 ~~(24)~~(22) "Rules" means rules adopted by the department or the department of justice pursuant to this
5 code.

6 ~~(22)~~(23) "Sacramental wine" means wine that is manufactured and sold exclusively for use as
7 sacramental wine or for other religious purposes.

8 ~~(23)~~(24) "Special event", as it relates to an application for a beer and wine special permit, means a short,
9 infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

10 ~~(24)~~(25) "State liquor warehouse" means a building owned or under control of the department for the
11 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

12 ~~(25)~~(26) "Storage depot" means a building or structure owned or operated by a brewer at any point in the
13 state of Montana off and away from the premises of a brewery, which building or structure is equipped with
14 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
15 permitted by this code.

16 ~~(26)~~(27) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler
17 or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine
18 distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer
19 or table wine as permitted by this code.

20 ~~(27)~~(28) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
21 cider.

22 ~~(28)~~(29) "Table wine distributor" means a person importing into or purchasing in Montana table wine for
23 sale or resale to retailers licensed in Montana.

24 ~~(29)~~(30) "Warehouse" means a building or structure located in Montana that is owned or operated by a
25 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine
26 as permitted by this code.

27 ~~(30)~~(31) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation
28 of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur
29 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of
30 alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in

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

4

5 **Section 2.** Section 16-1-301, MCA, is amended to read:

6 **"16-1-301. Administration of code.** The department shall ~~have the powers and duties to administer~~
 7 the Montana Alcoholic Beverage Code, ~~including the general control, management, and supervision of all agency~~
 8 ~~liquor stores.~~"

9

10 **Section 3.** Section 16-2-106, MCA, is amended to read:

11 **"16-2-106. Sales by agent -- sales to licensees.** (1) A liquor store agent may sell to any person any
 12 liquor and table wine that the person is entitled to purchase in conformity with the provisions of this code and the
 13 rules implementing this code. An agent may, under the terms and conditions that the agent establishes, deliver
 14 liquor and table wine purchased from the agent's agency liquor store.

15 (2) A liquor store agent may sell to any licensee any liquor and table wine that the licensee is entitled
 16 to purchase in conformity with the provisions of this code and the rules implementing this code. An agent may
 17 sell and deliver to a licensee, under payment terms and conditions that the agent establishes, liquor and table
 18 wine purchased from the agent's agency liquor store. The payment terms must include payment within 30 days
 19 of sale."

20

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

22 **"50-31-202. When food adulterated.** A food is considered to be adulterated if:

23 (1) it bears or contains any poisonous or deleterious substance that may render it injurious to health. If
 24 the poisonous or deleterious substance is not an added substance, the food may not be considered adulterated
 25 under this subsection if the quantity of the substance in that food does not ordinarily render it injurious to health.

26 (2) it bears or contains any added poisonous or added deleterious substance, other than one that is:

27 (a) a pesticide chemical in or on a raw agricultural commodity;

28 (b) a food additive; or

29 (c) a color additive that is unsafe within the meaning of 50-31-109;

30 (3) it is a raw agricultural commodity and it bears or contains a pesticide chemical that is unsafe within

1 the meaning of section 408(a) of the federal act (21 U.S.C. 346a(a)), as amended;

2 (4) it is or it bears or contains any food additive that is unsafe within the meaning of section 409 of the
3 federal act (21 U.S.C. 348) as amended. However, if a pesticide chemical has been used in or on a raw
4 agricultural commodity in conformity with an exemption granted or tolerance prescribed under section 408 of the
5 federal act (21 U.S.C. 346) and the raw agricultural commodity has been subjected to processing, such as
6 canning, cooking, freezing, dehydrating, or milling, the residue of the pesticide chemical remaining in or on the
7 processed food may, notwithstanding the provisions of 50-31-108, 50-31-109, and subsection (4) of this section,
8 not be determined unsafe if the residue in or on the raw agricultural commodity has been removed to the extent
9 possible in good manufacturing practice and the concentration of the residue in the processed food when ready
10 to eat is not greater than the tolerance prescribed for the raw agricultural commodity.

11 (5) it consists in whole or in part of a diseased, contaminated, filthy, putrid, or decomposed substance
12 or if it is otherwise unfit for food;

13 (6) it has been produced, prepared, packed, or held under unsanitary conditions under which it may have
14 become contaminated with filth or under which it may have been rendered diseased, unwholesome, or injurious
15 to health;

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

18 (8) its container is composed in whole or in part of any poisonous or deleterious substance that may
19 render the contents injurious to health;

20 (9) any valuable constituent has been in whole or in part omitted or abstracted from the food;

21 (10) any substance has been substituted wholly or in part for the food;

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

23 (12) any substance has been added to the food or mixed or packed with the food so as to increase its
24 bulk or weight, reduce its quality or strength, or make it appear better or of greater value than it is;

25 (13) it is confectionery and it bears or contains any ~~alcohol~~ or nonnutritive article or substance except:

26 (a) harmless coloring;

27 (b) harmless flavoring;

28 (c) harmless resinous glaze not in excess of 0.4%;

29 (d) harmless natural wax not in excess of 0.4% ~~or~~

30 (e) harmless natural gum and pectin;

1 ~~(f) However, this paragraph does not apply to any confectionery by reason of its containing less than~~
2 ~~alcohol, if not in excess of 0.5% 5% by volume of alcohol derived solely from the use of flavoring extracts; or~~

3 ~~(g) to any chewing gum by reason of its containing harmless nonnutritive masticatory substances if~~
4 ~~contained in chewing gum-;~~

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

6

7 **NEW SECTION. Section 5. Repealer.** The following section of the Montana Code Annotated is
8 repealed:

9 16-2-203. Department sales to licensees.

10

11 **NEW SECTION. Section 6. Effective date.** [This act] is effective on passage and approval.

12

13 **NEW SECTION. Section 7. Retroactive applicability.** [This act] applies retroactively, within the
14 meaning of 1-2-109, to all district court and administrative law proceedings that are pending on [the effective date
15 of this act].

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