

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMITTING AND LICENSING OF BREWERS AND
5 BREWERIES; REVISING THE RETAIL SALE OF BEER BY A BREWER OR BREWERY; ALLOWING HOLDERS
6 OF A RETAIL BEER LICENSE OR AN ALL-BEVERAGES LICENSE TO ALSO HOLD A BREWER'S LICENSE;
7 AND AMENDING SECTIONS 16-3-213, 16-3-214, 16-3-241, 16-3-242, 16-3-301, 16-3-406, 16-4-104, AND
8 16-4-201, MCA."

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

11
12 **Section 1.** Section 16-3-213, MCA, is amended to read:

13 **"16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.** (1) Except as
14 provided for ~~small breweries in subsection (2)~~ in subsections (2) and (3), it is unlawful for any brewer or breweries
15 or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the intention of this
16 section to prohibit ~~brewers and beer importers from~~ and to limit brewers when engaging in the retail sale of beer.
17 This section does not prohibit breweries from selling and delivering beer manufactured by them, in original
18 packages, at either wholesale or retail.

19 (2) (a) ~~For~~ Except as provided in subsection (3)(b), for the purposes of this section, a "small brewery"
20 is a brewery that has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels
21 and does not hold a license issued under 16-4-104 or 16-4-201.

22 (b) ~~A~~ Except as provided in subsection (3), a small brewery may, at one location for each brewery
23 license, provide samples of beer that were brewed and fermented on the premises in a sample room located on
24 the licensed premises. The samples may be provided with or without charge between the hours of 10 a.m. and
25 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual customer during a
26 business day.

27 (3) (a) A brewer or small brewery may purchase or hold a license issued pursuant to either 16-4-104 or
28 16-4-201, but may not purchase or hold licenses issued pursuant to both 16-4-104 and 16-4-201.

29 (b) A brewer or small brewery that holds a license issued pursuant to 16-4-104 or 16-4-201 is not a small
30 brewery for the purposes of subsection (2)(b)."



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 2 **Section 2.** Section 16-3-214, MCA, is amended to read:
 3 **"16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and
 4 restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon
 5 payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the
 6 department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of
 7 this code and rules prescribed by the department, to:

8 (a) sell and deliver beer from its storage depot or brewery to:

9 (i) a wholesaler;

10 (ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver
 11 the beer and if:

12 (A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day
 13 to each licensed retailer; and

14 (B) the total amount of beer sold or delivered directly to all retailers, other than the brewer itself if the
 15 brewer is operating with a retail license pursuant to 16-3-213(3), does not exceed 10,000 barrels a year; or

16 (iii) the public;

17 (b) provide its own products for consumption on its licensed premises without charge or, if it is a small
 18 brewery, provide its own products at a sample room as provided in 16-3-213(2); ~~or~~

19 (c) provide its own products or other products that it is licensed to provide pursuant to 16-3-213(3); or

20 ~~(c)(d)~~ do any one or more of the acts of sale and delivery of beer as provided in this code.

21 (2) A brewery may not use a common carrier for delivery of the brewery's product to the public or to
 22 licensed retailers.

23 (3) A brewery may import or purchase, upon terms and conditions the department may require,
 24 necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing purposes.

25 (4) ~~(a) An~~ Except as provided in subsection (4)(b), an additional license fee may not be imposed on a
 26 brewery providing its own products on its licensed premises for consumption on the premises.

27 **(b) A brewer or brewery licensed to provide beer pursuant to 16-3-213(3) is subject to all applicable fees**
 28 **provided for in 16-4-501 and 16-4-503.**

29 (5) This section does not prohibit a licensed brewer from shipping and selling beer directly to a
 30 wholesaler in this state under the provisions of 16-3-230."

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Section 3. Section 16-3-241, MCA, is amended to read:

"16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer importers, and wholesalers unlawful -- exceptions. (1) (a) Except as provided in subsection (3), it is unlawful for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, or any other advertising matter or any other property to a retail licensee, used or to be used in the dispensation of beer in and about the interior of the place of business of the licensed retailer, or to furnish, give, or pay for any repairs, improvements, or painting on or within the premises.

(b) It is lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

(i) bottle openers, can openers, trays, tap handles, menus, apparel, coasters, glassware, cups, napkins, or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any one retail establishment for display use within the interior of the retail establishment;

(ii) not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each brand of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place of business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name, trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture. Any beer advertised must be available for sale on the retailer's premises at the time the displays are used unless the displays are the property of the retailer or, if supplied by a brewer, beer importer, or wholesaler, a display has been in the retailer's possession for more than 9 months.

(iii) permanent or temporary advertising matter of a decorative nature, excluding items described in subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and

(iv) maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

(2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of beer to a special permittee or a retailer for use:

(a) in catering an event that is off the permittee's or retailer's regular premises; or

(b) up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours.

(3) The unlawful acts described in subsection (1) are not unlawful if the acts are conducted between a brewer and a retail licensee that are the same person."

1 **Section 4.** Section 16-3-242, MCA, is amended to read:

2 **"16-3-242. Financial interest in retailers prohibited.** (1) ~~A~~ Except as provided in subsection (3), a
3 brewer, beer importer, or wholesaler may not:

4 ~~(a)~~ (a) advance or loan money to, or furnish money for, or pay for or on behalf of any retailer any license
5 or tax that may be required to be paid for any by the retailer. ~~A brewer, beer importer, or wholesaler may not; or~~

6 ~~(b)~~ (b) be financially interested, either directly or indirectly, in the conduct or operation of the business of a
7 retailer.

8 ~~(2)~~ (2) A brewer, beer importer, or wholesaler is considered to have a financial interest within the meaning
9 of this section if:

10 ~~(1)(a)~~ (a) the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against
11 the retailer or the retailer's premises;

12 ~~(2)(b)~~ (b) the brewer, beer importer, or wholesaler is under any contract with a retailer concerning future
13 purchases or the sale of merchandise by one from or to the other; or

14 ~~(3)(c)~~ (c) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler.

15 ~~(3)~~ (3) The prohibited acts described in subsection (1) are not prohibited if the acts are conducted between
16 a brewer and a retail licensee that are the same person."

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18 **Section 5.** Section 16-3-301, MCA, is amended to read:

19 **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1) ~~It~~
20 Except as provided in subsection (8), it is unlawful for a licensed retailer to purchase or acquire beer or wine from
21 anyone except a brewery, winery, or wholesaler licensed under the provisions of this code.

22 ~~(2)~~ (2) It Except as provided in subsection (8), it is unlawful for a licensed retailer to transport beer or wine
23 from one licensed premises or other facility to any other licensed premises owned by the licensee.

24 ~~(3)~~ (3) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery,
25 winery, or wholesaler licensed or registered under this code.

26 ~~(4)~~ (4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away
27 or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

28 ~~(a)~~ (a) any person under 21 years of age; or

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

30 ~~(5)~~ (5) Any person under 21 years of age or any other person who knowingly misrepresents the person's

1 qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the
 2 licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section
 3 may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any
 4 federal law.

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

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

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

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

14 (c) the sale was made in good faith and in reasonable reliance upon the representation and appearance
 15 of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

16 (8) The unlawful acts described in subsections (1) and (2) are not unlawful if the acts are conducted
 17 between a brewer and a retail licensee that are the same person. (See compiler's comments for contingent
 18 termination of certain text.)"

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20 **Section 6.** Section 16-3-406, MCA, is amended to read:

21 **"16-3-406. Financial interest in retailers prohibited.** (1) A Except as provided in subsection (3), a
 22 winery or table wine distributor may not:

23 (a) advance or loan money to, or furnish money for, or pay for or on behalf of any retailer any license
 24 or tax that may be required to be paid by any the retailer, and a winery or table wine distributor may not; or

25 (b) be financially interested, either directly or indirectly, in the conduct or operation of the business of a
 26 retailer.

27 (2) A winery or table wine distributor is considered to have a financial interest if:

28 (a) the winery or table wine distributor owns or holds any interest in or a lien or mortgage against the
 29 retailer or the retailer's premises; or

30 (b) the winery or table wine distributor is under any contract with a retailer concerning future purchases

1 or the sale of merchandise by one from or to the other; or

2 (c) the table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail
3 licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

4 (d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine
5 distributor.

6 (3) The prohibited acts described in subsection (1) are not prohibited if the acts are conducted between
7 a brewer and a retail licensee that are the same person."

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9 **Section 7.** Section 16-4-104, MCA, is amended to read:

10 **"16-4-104. Beer retailer's license -- application and issuance -- check of alcoholic content by**
11 **department.** (1) Any person desiring to possess and have beer for the purpose of retail sale under the provisions
12 of this code shall first apply to the department for a permit to do so and submit with the application the license
13 fee.

14 (2) Upon being satisfied, from the application or otherwise, that the applicant is qualified, the department
15 shall issue a license to the person. The license must at all times be prominently displayed in the place of business
16 of the person.

17 (3) If the department finds that the applicant is not qualified, a license may not be granted and the license
18 fee must be returned by the department.

19 (4) The department may, at any time, examine the books of account and the premises of any licensed
20 retailer and otherwise check the retailer's methods of conducting business and the alcoholic content of the beer
21 kept for sale.

22 (5) A person may not sell beer at retail without a valid license issued under this code.

23 (6) A person licensed to sell beer at retail under this section may also be licensed as a brewer."

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25 **Section 8.** Section 16-4-201, MCA, is amended to read:

26 **"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell
27 liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and
28 the rules of the department, may be issued to any person who is approved by the department as a fit and proper
29 person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may
30 issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from

1 the corporate limits of those cities and towns must be determined on the basis of population prescribed in
2 16-4-502 as follows:

3 (a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate
4 limits of the towns, not more than two retail licenses;

5 (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000
6 inhabitants and within a distance of 5 miles from the corporate limits of the cities and towns, three retail licenses
7 for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

8 (c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate
9 limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500
10 inhabitants.

11 (2) The number of the inhabitants in cities and towns, exclusive of the number of inhabitants residing
12 within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail licenses
13 that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits
14 of the cities or towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each
15 other, the total number of retail licenses that may be issued for use in both of the municipalities and within a
16 distance of 5 miles from their respective corporate limits must be determined on the basis of the combined
17 populations of both of the municipalities and may not exceed the limitations in subsection (1) or this subsection.
18 The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured
19 in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate
20 boundary of the city or town.

21 (3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under
22 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may not
23 be issued in violation of the limitations.

24 (4) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and
25 nonassignable, as to ownership only, retail license to an enlisted personnel, noncommissioned officers', or
26 officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally
27 chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or
28 fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

29 (5) The number of retail all-beverages licenses that the department may issue for use at premises
30 situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles

1 from the corporate limits of a city or town may not be more than one license for each 750 population of the county
2 after excluding the population of incorporated cities and incorporated towns in the county.

3 (6) An all-beverages license issued under subsection (5) that becomes located within 5 miles of an
4 incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location
5 within the city quota area for 5 years from the date of annexation.

6 (7) A person issued an all-beverages license under this section, except under subsection (4), may also
7 be licensed as a brewer."

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9 NEW SECTION. Section 9. Saving clause. [This act] does not affect rights and duties that matured,
10 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

11 - END -