

SENATE BILL NO. 266

INTRODUCED BY M. ROSENDALE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO SACRAMENTAL WINE; AMENDING SECTIONS 16-1-106, 16-1-411, 16-3-218, 16-3-402, 16-4-108, AND 16-4-313, MCA; AND PROVIDING AN EFFECTIVE 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) "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) (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 malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

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

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

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:



- 1 (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has
2 been removed and replaced with distilled ethyl alcohol;
- 3 (ii) that contains at least 0.5% of alcohol by volume;
- 4 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
5 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 6 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
7 taurine; or
- 8 (b) a beverage:
- 9 (i) that contains at least 0.5% of alcohol by volume;
- 10 (ii) 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;
- 12 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 13 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
14 taurine;
- 15 (v) for which the producer is required to file a formula for approval with the United States alcohol and
16 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 17 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 18 (9) "Community" means:
- 19 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 20 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
21 community for census purposes; and
- 22 (c) in a consolidated local government, the area of the consolidated local government not otherwise
23 incorporated.
- 24 (10) "Department" means the department of revenue, unless otherwise specified, and includes the
25 department of justice with respect to receiving and processing, but not granting or denying, an application under
26 a contract entered into under 16-1-302.
- 27 (11) "Growler" means any refillable, resealable container complying with federal law.
- 28 (12) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices
29 of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of alcohol
30 by volume, including but not limited to flavored, sparkling, or carbonated cider.

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

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

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

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

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

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

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

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

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

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

24 (23) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol by
25 volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

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

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

30 (26) "Storage depot" means a building or structure owned or operated by a brewer at any point in the

1 state of Montana off and away from the premises of a brewery, which building or structure is equipped with
2 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
3 permitted by this code.

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

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

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

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

14 (31) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of
15 the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur
16 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of
17 alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in
18 accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic
19 beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in
20 accordance with federal regulations are also wine."

21

22 **Section 2.** Section 16-1-411, MCA, is amended to read:

23 **"16-1-411. Tax on wine and hard cider -- penalty and interest.** (1) (a) A tax of 27 cents per liter is
24 imposed on sacramental wine and table wine, except hard cider, imported by a table wine distributor or the
25 department.

26 (b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the
27 department.

28 (2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the
29 month following sale of the sacramental wine, table wine, or hard cider from the table wine distributor's
30 warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the table wine

1 distributor to the penalties and interest provided for in 15-1-216.

2 (3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with
3 the provisions of 17-2-124, be distributed as follows:

4 (a) 69% to the state general fund; and

5 (b) 31% to the state special revenue fund to the credit of the department of public health and human
6 services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

7 (4) The tax computed and paid in accordance with this section is the only tax imposed by the state or
8 any of its subdivisions, including cities and towns.

9 (5) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include
10 hard cider."

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12 **Section 3.** Section 16-3-218, MCA, is amended to read:

13 **"16-3-218. "Distribute" defined.** As used in 16-3-219, 16-3-220, 16-4-103, and 16-4-108, "distribute"
14 means to deliver beer or wine to a retailer's premises licensed to sell beer, ~~or table wine,~~ or sacramental wine."

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16 **Section 4.** Section 16-3-402, MCA, is amended to read:

17 **"16-3-402. Importation of wine -- records.** (1) Except as provided in 16-3-411, 16-4-313, and 16-4-901,
18 all table wine manufactured outside of Montana and shipped into Montana must be consigned to and shipped
19 to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse in Montana
20 or subwarehouse in Montana. The distributor shall distribute the table wine from the warehouse or subwarehouse.

21 (2) The distributor shall keep records at the distributor's principal place of business of all table wine,
22 including the name or kind received, on hand, sold, and distributed. The records may at all times be inspected
23 by the department.

24 (3) Table wine that has been shipped into Montana in violation of this code must be seized by any peace
25 officer or representative of the department and may be confiscated in the manner as provided for the confiscation
26 of intoxicating liquor."

27

28 **Section 5.** Section 16-4-108, MCA, is amended to read:

29 **"16-4-108. Table wine distributor's license.** (1) Any person desiring to sell and distribute table wine
30 or sacramental wine at wholesale to retailers under the provisions of this code shall apply to the department of

1 revenue for a license to do so and shall submit with the application the annual license fee of \$400. The
2 department may issue licenses to qualified applicants in accordance with the provisions of this code.

3 (2) All table wine distributors' licenses issued in any year expire on June 30 of that year at midnight.

4 (3) A license fee may not be imposed upon table wine distributors by a municipality or any other political
5 subdivision of the state.

6 (4) The license must be at all times prominently displayed in the place of business of the table wine
7 distributor.

8 (5) An applicant must have a fixed place of business, sufficient capital, the facilities, storehouse, and
9 receiving house or warehouse for the receiving, storage, handling, and moving of table wine in large and jobbing
10 quantities for distribution and sale in original packages to other licensed table wine distributors or licensed
11 retailers. Each table wine distributor is entitled to only one wholesale table wine license, which must be issued
12 for the distributor's principal place of business in Montana. A duplicate license may be issued for one
13 subwarehouse only in Montana for each table wine distributor's license. The duplicate license must at all times
14 be prominently displayed at the subwarehouse. A table wine distributor may also hold a license to sell beer at
15 wholesale but may not hold or have any interest, direct or indirect, in any license to sell beer, table wine, or liquor
16 at retail.

17 (6) If the applicant is a foreign corporation, the corporation must be authorized to do business in
18 Montana.

19 (7) As used in subsection (1), "distribute" has the meaning provided in 16-3-218."
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21 **Section 6.** Section 16-4-313, MCA, is amended to read:

22 **"16-4-313. Sacramental wine license.** (1) The department may issue a sacramental wine license to
23 an establishment whether located in or outside Montana that sells church supplies, including sacramental wine,
24 at retail to rabbis, priests, pastors, ministers, or other officials of churches or other established religious
25 organizations exclusively for ~~their off-premises~~ use as sacramental wine or for other religious purposes. Sales
26 of sacramental wine may not be made to the public.

27 (2) An application for a license under this section must be accompanied by a fee of ~~\$200~~ \$100, which
28 constitutes the first annual license fee. The annual license renewal fee is ~~\$100~~ \$50.

29 (3) Unless the sacramental wine is purchased onsite ~~at the premises of the licensed retailer~~, an
30 establishment selling sacramental wine for religious purposes ~~shall~~ may sell and deliver directly to the religious

1 organization's premises by:

2 (a) using the establishment's own employees and equipment;

3 (b) contracting with a licensed table wine distributor; or

4 (c) contracting with a common carrier, which maintains an alcohol shipment program, to ship and deliver
 5 the wine. If the wine is shipped and delivered by the common carrier, the shipment must be in boxes marked with
 6 the words "Wine Shipment From Sacramental Wine Licensee for Religious Purposes Only" and the boxes must
 7 also be conspicuously labeled with the words "Contains Alcohol: Signature of Person 21 Years of Age or Older
 8 Required for Delivery".

9 (4) A sacramental wine licensee shall maintain records of all wine sales made during the preceding 2
 10 years and shall allow the department access to the records when requested so that the department can ascertain
 11 whether the limitations of subsection (1) are being complied with. The required record must include the addresses
 12 to which the sacramental wine is delivered and the printed name of the official of the church or other religious
 13 organization who signed for delivery.

14 (5) A sacramental wine licensee located out of state making sales under the provisions of this section
 15 is considered a table wine distributor for the purposes of 16-1-411.

16 ~~(5)(6)~~ Upon receipt of a completed application for a license under this section, the department ~~may~~
 17 ~~request that the department of justice make a background investigation of all matters relating to the application.~~

18 ~~——(6) Based on the results of the investigation or shall, in exercising its sound discretion, the department~~
 19 ~~shall determine whether:~~

20 (a) the applicant is qualified under this section to receive a license;

21 (b) the applicant's premises are suitable for the carrying on of the business; and

22 (c) the requirements of this code and the rules promulgated by the department are being met and
 23 complied with.

24 (7) License applications submitted under this section are not subject to the provisions of 16-3-402,
 25 16-4-203, and 16-4-207.

26 ~~——(8) If the premises proposed for licensing under this section are a new or remodeled structure, the~~
 27 ~~department may issue a conditional license prior to completion of the premises upon reasonable evidence that~~
 28 ~~the premises will be suitable for the carrying on of business as a bona fide establishment for selling sacramental~~
 29 ~~wine.~~

30 (8) A person licensed under subsection (1) may transport sacramental wine from the licensee's premises

1 to the religious organization's premises in any quantity for religious purposes.

2 (9) A sacramental wine licensee is not subject to the provisions of 16-4-1005 requiring licensees to
3 ensure training."

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5 NEW SECTION. Section 7. Effective date. [This act] is effective July 1, 2013.

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