



AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO ADJUST PENALTIES WITHIN PENALTY RANGES BASED ON MITIGATING AND AGGRAVATING CIRCUMSTANCES ON THE PART OF A LICENSEE VIOLATING A PROVISION OF STATE ALCOHOL LAWS; AND AMENDING SECTION 16-4-406, MCA.

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

**Section 1.** Section 16-4-406, MCA, is amended to read:

**"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating circumstances.** (1) The department shall upon a written, verified complaint of a person request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, or retailer licensed under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after reviewing admissions of the licensee or receiving the results of the department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that a licensee has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

- (a) reprimand a licensee;
- (b) proceed to revoke the license of the licensee;
- (c) suspend the license for a period of not more than 3 months;
- (d) refuse to grant a renewal of the license after its expiration; or
- (e) impose a civil penalty not to exceed \$1,500.

(3) The department shall consider mitigating circumstances and may adjust penalties within penalty ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:

- (a) there have been no violations by the licensee within the past 3 years;
- (b) there have been good faith efforts by the licensee to prevent a violation;
- (c) written policies exist that govern the conduct of the licensee's employees;

(d) there has been cooperation in the investigation of the violation that shows that the licensee, employee, or agent of the licensee accepts responsibility;

(e) the investigation was not based on complaints received or on observed misconduct, but was based solely on the investigating authority creating the opportunity for a violation; or

(f) the licensee has provided responsible alcohol server training to all of their employees.

(4) The department shall consider aggravating circumstances and may adjust penalties within penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:

(a) prior warnings about compliance problems;

(b) prior violations within the past 3 years;

(c) lack of written policies governing employee conduct;

(d) multiple violations during the course of the investigation;

(e) efforts to conceal a violation;

(f) the intentional nature of the violation; or

(g) involvement of more than one patron or employee in a violation."

- END -

I hereby certify that the within bill,  
SB 0294, originated in the Senate.

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Secretary of the Senate

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2013.

SENATE BILL NO. 294

INTRODUCED BY ARNTZEN, BERRY, HUNTER

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