

HOUSE BILL NO. 177

INTRODUCED BY E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LAWS RELATING TO RESORT AREAS; REVISING LAWS TO PROVIDE A TIMEFRAME IN WHICH RESORT ALL-BEVERAGES LICENSES MUST BE ISSUED IN AN APPROVED RESORT AREA; REVISING LAWS RELATING TO THE ISSUANCE OF RESORT AREA ALL-BEVERAGES LICENSES; PROVIDING DEFINITIONS; REVISING ALCOHOL LAWS RELATING TO THE RESORT AREA DETERMINATION; AMENDING SECTIONS 16-1-102, 16-1-106, 16-4-212, AND 16-4-213, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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 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, must be controlled and regulated as provided under this code. Unless defined as beer in 16-1-106(5)(a)(ii)(6)(a)(ii), beer, porter, ale, stout, and malt liquors containing more than 8.75% alcohol by volume and that are defined as "liquor" 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) "Accommodation unit" means a unit that is occupied by a short-term guest as a rental. The term includes:

(a) a single-family home;

(b) a single unit of an apartment, condominium, or multiplex;

(c) a single room of a hotel or motel; and

(d) a similar living space. A space under this subsection (1)(d) must be distinctly separated from other living spaces within the building and have its own sleeping, bath, and toilet facilities.

1 ~~(1)~~(2) "Agency franchise agreement" means an agreement between the department and a person
2 appointed to sell liquor and table wine as a commission merchant rather than as an employee.

3 ~~(2)~~(3) "Agency liquor store" means a store operated under an agency franchise agreement in
4 accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises
5 consumption.

6 ~~(3)~~(4) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

7 ~~(4)~~(5) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink
8 that contains more than 0.5% of alcohol by volume.

9 ~~(5)~~(6) (a) "Beer" means:

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

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

12 (A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both,
13 in potable brewing water, of malted cereal grain; and

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

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

17 ~~(6)~~(7) "Beer importer" means a person other than a brewer who imports malt beverages.

18 ~~(7)~~(8) "Brewer" means a person who produces malt beverages.

19 ~~(8)~~(9) "Caffeinated or stimulant-enhanced malt beverage" means:

20 (a) a beverage:

21 (i) that is fermented in a manner similar to beer and from which some or all of the fermented
22 alcohol has been removed and replaced with distilled ethyl alcohol;

23 (ii) that contains at least 0.5% of alcohol by volume;

24 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
25 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

26 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
27 and taurine; or

28 (b) a beverage:

- 1 (i) that contains at least 0.5% of alcohol by volume;
- 2 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 3 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 4 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 5 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
- 6 and taurine;
- 7 (v) for which the producer is required to file a formula for approval with the United States alcohol
- 8 and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 9 (vi) that is not exempt pursuant to 27 CFR 25.55(f).

10 ~~(9)~~(10) "Community" means:

- 11 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 12 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
- 13 community for census purposes; and
- 14 (c) in a consolidated local government, the area of the consolidated local government not
- 15 otherwise incorporated.

16 ~~(40)~~(11) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

17 ~~(44)~~(12) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-
18 312.

19 ~~(42)~~(13) "Department" means the department of revenue, unless otherwise specified, and includes the
20 department of justice with respect to receiving and processing, but not granting or denying, an application under
21 a contract entered into under 16-1-302.

22 ~~(43)~~(14) "Growler" means any fillable, sealable container complying with federal law.

23 ~~(44)~~(15) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
24 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of
25 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

26 ~~(45)~~(16) "Immediate family" means a spouse, dependent children, or dependent parents.

27 ~~(46)~~(17) "Import" means to transfer beer or table wine from outside the state of Montana into the state
28 of Montana.

1 ~~(17)~~(18) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
2 caffeinated or stimulant-enhanced malt beverage.

3 ~~(18)~~(19) "Malt beverage" means:

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

9 (b) an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any
10 kind, glucose, sugar, or molasses that has not undergone distillation.

11 ~~(19)~~(20) (a) "Original package" means the sealed container in which a manufacturer packages its
12 product for retail sale.

13 (b) The term includes but is not limited to:

14 (i) bottles;

15 (ii) cans; and

16 (iii) kegs.

17 ~~(20)~~(21) "Package" means a container or receptacle used for holding an alcoholic beverage.

18 ~~(21)~~(22) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
19 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
20 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of
21 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor
22 stores, and a 20% markup.

23 ~~(22)~~(23) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and
24 sealed with a lid, for consumption at a place other than the licensee's premises.

25 ~~(23)~~(24) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
26 contains 50% of alcohol by volume.

27 ~~(24)~~(25) "Public place" means a place, building, or conveyance to which the public has or may be
28 permitted to have access and any place of public resort.

1 ~~(25)~~(26) "Retail price" means the price established by an agent for the sale of liquor to persons who do
2 not hold liquor licenses. The retail price may not be less than the department's posted price.

3 ~~(26)~~(27) "Rules" means rules adopted by the department or the department of justice pursuant to this
4 code.

5 ~~(27)~~(28) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of
6 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious
7 purposes.

8 (29) "Short-term guest" means a person who rents an accommodation unit for fewer than 30 days.

9 ~~(28)~~(30) "Special event", as it relates to an application for a beer and wine special permit, means a
10 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

11 ~~(29)~~(31) "State liquor warehouse" means a building owned or under control of the department for the
12 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

13 ~~(30)~~(32) "Storage depot" means a building or structure owned or operated by a brewer at any point in
14 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with
15 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
16 permitted by this code.

17 ~~(31)~~(33) "Subwarehouse" means a building or structure owned or operated by a licensed beer
18 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or
19 table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and
20 distribution of beer or table wine as permitted by this code.

21 ~~(32)~~(34) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
22 cider.

23 ~~(33)~~(35) "Table wine distributor" means a person importing into or purchasing in Montana table wine or
24 sacramental wine for sale or resale to retailers licensed in Montana.

25 ~~(34)~~(36) "Warehouse" means a building or structure located in Montana that is owned or operated by a
26 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
27 wine as permitted by this code.

28 ~~(35)~~(37) "Wine" means an alcoholic beverage made from or containing the normal alcoholic

1 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
 2 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
 3 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
 4 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
 5 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
 6 wine in accordance with federal regulations are also wine."

7

8 **Section 3.** Section 16-4-212, MCA, is amended to read:

9 **"16-4-212. Resort area determination.** (1) To obtain a resort area designation, the resort area
 10 developer or landowner must submit an application with a plat setting forth the resort area boundaries and
 11 designating the ownership of the lands within the resort area. The plat must show the location and general
 12 design of the buildings and other improvements existing or to be built in the resort area. A master plan for the
 13 development of the resort area may be filed by the resort area developer in satisfaction of this section.

14 (2) (a) In addition to the other requirements of this code, at the time of application, a resort area
 15 must:

16 (i) not be located within the boundaries of a quota area as described in 16-4-201;

17 (ii) have a current actual valuation of resort or recreational facilities, including land and
 18 improvements, of not less than \$1 million, at least ~~half~~ \$500,000 of which valuation must be for a structure or
 19 structures within the resort area;

20 (iii) be under the sole ownership or control of one person or entity;

21 (iv) contain a minimum of 50 acres of land; and

22 (v) provide details of the recreational facilities that are or will be on the grounds of the resort that
 23 warrant the resort designation being granted. These recreational facilities must be completed prior to licenses
 24 being issued in 16-4-213.

25 (b) A resort area's current actual valuation under subsection (2)(a)(ii) may be determined by using
 26 an independent appraisal or the department's tax appraisals of the property.

27 ~~(b)(c)~~ For the purposes of this ~~section~~ subsection (2), "control" means land or improvements that are
 28 owned or that are held under contract, lease, option, or permit.

1 (3) Within 15 business days after the application is filed, the department shall schedule a public
2 hearing to be held in the proposed area to determine whether the facility proposed by the resort area developer
3 or landowner is a resort area. At least 30 days prior to the date of the hearing, the department shall publish
4 notice of the hearing in a newspaper published in the county or counties in which the resort area is located,
5 once a week for 4 consecutive weeks. The notice must include a description of the proposed resort area. The
6 resort area developer or landowner shall, at the time of filing an application, pay to the department an amount
7 sufficient to cover the costs of publication.

8 (4) A person may present, in person or in writing, a statement to the department at the hearing in
9 opposition to or in support of the application.

10 (5) Within 30 days after the hearing, the department shall approve or deny the application. If the
11 application is denied, the applicant may request a review of the decision of the department pursuant to the
12 Montana Administrative Procedure Act.

13 (6) Once a resort area has been approved by the department, the boundaries of a resort area may
14 not be changed without a new application.

15 (7) (a) Except as provided in subsection (7)(b), an approved resort area designation lapses if no
16 resort all-beverages licenses are issued pursuant to 16-4-213 within 5 years of the department's approval of the
17 resort area.

18 (b) A resort area designation that received department approval prior to January 1, 2024, lapses if
19 no resort all-beverages licenses are issued pursuant to 16-4-213 by January 1, 2029.

20 (c) A developer or landowner of a lapsed resort area may reapply to the department to obtain a
21 new resort area determination."

22

23 **Section 4.** Section 16-4-213, MCA, is amended to read:

24 "**16-4-213. Resort retail all-beverages licenses.** (1) After a resort area has been approved,
25 applications may be filed with the department for the issuance of resort retail all-beverages licenses within the
26 resort area.

27 (2) (a) Except as provided in ~~subsections~~ subsection (2)(b) and (2)(c), the department may issue
28 ~~one resort retail all-beverages license for the first 100 accommodation units and an additional license for each~~

1 additional ~~50~~ accommodation units within an approved resort area as long as the recreational facilities under
2 ~~16-4-212~~ have also been completed licenses as follows:

3 (i) up to two resort retail all-beverages licenses for a resort area with a perimeter containing no
4 more than 200 contiguous acres;

5 (ii) up to three resort retail all-beverages licenses for a resort area with 201 to 499 contiguous
6 acres;

7 (iii) up to 10 resort retail all-beverages licenses for a resort area with 500 to 2,499 contiguous
8 acres;

9 (iv) up to 15 resort retail all-beverages licenses for a resort area with 2,500 to 3,499 contiguous
10 acres;

11 (v) up to 20 resort retail all-beverages licenses for a resort area with 3,500 to 4,499 contiguous
12 acres; and

13 (vi) up to 25 resort retail all-beverages licenses for a resort area with at least 4,500 contiguous
14 acres.

15 ~~(b) For a resort area with a perimeter containing at least 1,000 contiguous acres that has a current~~
16 ~~actual valuation of completed recreational facilities, including land and improvements, of not less than \$30~~
17 ~~million, the department may issue up to 10 resort retail all-beverages licenses regardless of the number of~~
18 ~~accommodation units.~~

19 ~~(e)(b)~~ A resort area designation application to the department that received approval prior to January
20 1, 1999, is entitled to the issuance of one resort retail all-beverages license for a \$20,000 license fee. Any
21 additional resort retail all-beverages licenses issued to a resort area under this subsection ~~(2)(e)~~ ~~(2)(b)~~ must
22 meet the ~~accommodation unit acreage~~ requirement in subsection (2)(a) of this section and pay the license fee
23 and renewal fees as provided in 16-4-501.

24 ~~(d) (i) For purposes of this code, "accommodation unit" means a unit that is available for short-term~~
25 ~~guest rental and includes:~~

26 ~~(A) a single family home;~~

27 ~~(B) a single unit of an apartment, condominium, or multiplex;~~

28 ~~(C) a single room of a hotel or motel; or~~

1 ~~(D) similar living space. A space under this subsection (2)(d)(i)(D) must be distinctly separated from~~
2 ~~other living spaces within the building and have its own sleeping, bath, and toilet facilities.~~

3 ~~(ii) In order to qualify toward the required total for the purposes of subsection (2)(a), accommodation~~
4 ~~units may not be located within the boundaries of a quota area as provided in 16-4-201(1) or (2) as of the date~~
5 ~~of submission for a resort retail all-beverages license.~~

6 (3) Regardless of how many resort area all-beverages licenses are issued in a resort area, no
7 more than 20 gambling machine permits may be issued for the resort area.

8 (4) A resort retail all-beverages license within the resort area:

9 (a) is subject to all other requirements of an all-beverages license in this code, except:

10 (i) for the purposes of premises suitability under 16-3-311, a licensed retailer may use a part of
11 the building as a licensed premises for the consumption of alcoholic beverages on the premises. The premises
12 must be separated from the rest of the building by permanent walls but may have inside access to the rest of
13 the building at all times even if the businesses or uses in the other part of the building are unrelated to the
14 operation of the premises in which alcoholic beverages are served. If the premises are located in a portion of a
15 building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to
16 prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other
17 security features such as rolling gates, locking cabinets, tap locks, or key card access;

18 (ii) the interior portion of the licensed premises must be a continuous area that is under the control
19 of the licensee and not interrupted by any area in which the licensee does not have adequate control, and
20 includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in
21 order to allow patrons to access other tenant businesses or private dwellings in the same building, including but
22 not limited to entryways, hallways, stairwells, and elevators; and

23 (iii) the premises may include one or more exterior patios or decks as long as sufficient physical
24 safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional
25 perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and
26 impedes foot traffic.

27 (b) is not subject to the quota limitations set forth in 16-4-201; and

28 (c) is transferable to another location within the boundaries of the resort area or to another owner

1 to be used at a location within the boundaries of the resort area.

2 (5) For licenses issued under this section, a licensee may apply to the department to allow for the
3 delivery of alcohol to guests of accommodation units and the prestocking of alcoholic beverages in
4 accommodation units within the designated resort area property as long as the purchaser's age is verified. The
5 application fee is \$100.

6 (6) Employees of the resort licensee who sell, serve, or deliver alcohol must be trained as provided
7 in 16-4-1005.

8 (7) A resort retail all-beverages licensee whose premises is located outside of a quota area as
9 defined in 16-4-201(1) or (2) may enter into a maximum of one concession agreement per license with an
10 unlicensed entity to serve alcoholic beverages. Except for 16-4-418(1), the provisions of 16-4-418 apply.

11 (8) If a resort area has two or more resort retail all-beverage licenses or retail all-beverages
12 licenses within the boundaries of the resort, the licensees may also apply to use a resort alternate alcoholic
13 beverage storage facility to be located within the resort area. The application fee is \$100. The alternate storage
14 facility will be considered part of each licensee's existing licensed premises, though it does not need to be
15 contiguous to qualify for approval. The licensees using the alternate storage facility must meet all requirements
16 to ensure the secure storage of alcoholic beverages and prevent on-site consumption of alcoholic beverages.
17 Alcoholic beverages in sealed containers belonging to multiple licensees within the resort area may be stored in
18 the same storage facility. A resort retail licensee or retail licensee who is approved to use the alternate storage
19 facility may accept delivery of alcoholic beverages at the alternate storage facility and may transfer alcoholic
20 beverages to another licensee approved to use the alternate storage facility. Any transfer of alcoholic
21 beverages between approved licensees must be properly accounted for. Approval to use the alternate storage
22 facility must be documented on the face of each license within the resort area that applies to use the alternate
23 storage facility.

24 (9) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in
25 original packaging, prepared servings, or growlers."

26

27 **NEW SECTION. Section 5. Effective date.** [This act] is effective on passage and approval.

28

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