

SENATE BILL NO. 527

INTRODUCED BY J. SMALL, E. BUTTREY

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WINERY LAWS; PROVIDING FOR A FARM WINERY LICENSE AND A MONTANA WINEGROWER LICENSE; PROVIDING REQUIREMENTS BASED ON AGRICULTURAL PRODUCTION; PROVIDING FEES; PROVIDING FOR THE DISTRIBUTION OF WINE; AND AMENDING SECTION 16-3-411, MCA."

WHEREAS, current winery laws in Montana do not focus on the entities that agriculturally grow and produce wine in this state;

WHEREAS, this act seeks to create two licenses to facilitate and promote Montana agricultural wine production in this state.

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

**NEW SECTION. Section 1. Farm winery license.** (1) A person may be licensed by the department to produce wine under a farm winery license if the person meets the requirements of this section.

(2) The licensee must own or lease a minimum of 10 acres of land in this state that is zoned as agriculture in which a minimum of 3 acres are planted and maintained as a vineyard with no fewer than 1,200 producing vines. A variance on the vine requirement may be granted by the department upon formal request of the licensee.

(3) The winery must be on the vineyard property or contiguous to the vineyard property.

(4) The maximum annual output of wine production for a farm winery license is 80,000 cases and the minimum annual output is 85 cases. The winery must produce wine by beginning with raw agricultural products. The winemaking process, beginning with fermentation, must be on-site from raw agricultural product to bottle-ready, finished wine.

(5) The bottling of the wine may take place either internally or through a bottling service that must be on-site.

1           (6)     The fruit inputs used in the production of wine may be from any location with the following  
2 limitations:

3           (a)     there is no limit on the use of Montana agricultural products in the production of the wine;

4           (b)     non-Montana grown fruits must be limited to no more than the lesser of 20% additional, by  
5 weight, of on-site vineyard production or 50 tons. A variance on the sourcing requirements may be granted by  
6 the department of agriculture upon formal request of the licensee.

7           (7)     Wine inputs may be sourced from any location, with the following limitations:

8           (a)     wine may be imported as bulk but it is limited to no more than 20% additional to the receiving  
9 winery's annual wine production calculated from total finished wine of the vintage year;

10          (b)     it must be blended with Montana grown production at a minimum of 75% Montana grown;

11          (c)     it may be shiners, imported and sold as bottled by the buyer and recognized as bottled by the  
12 seller if it is sourced from another licensed Montana farm winery and included as part of the 20% of wine import  
13 allowance. For purposes of this subsection (7), the term "shiners" means sealed, bottled, and finished wine  
14 without the label affixed.

15          (8)     Except as provided in subsection (9), all wine production may be sold and distributed by a  
16 licensed wine distributor. Wine produced by the farm winery may be:

17          (a)     delivered through a common carrier from the farm winery or any approved storage area to the  
18 licensed wine distributor;

19          (b)     delivered by the farm winery from the farm winery or approved storage area to the licensed  
20 wine distributor if the farm winery uses its own vehicles, equipment, and employees to deliver the wine; or

21          (c)     picked up by the licensed wine distributor at the winery or approved storage facility.

22          (9)     Up to the greater of either 4,500 cases or 50% of the annual production of the wine may be  
23 sold directly from the farm winery without the use of a licensed distributor as follows:

24          (a)     to agency liquor stores that is:

25           (i)     delivered through a common carrier from the farm winery or any approved storage area;

26           (ii)    delivered by the farm winery from the farm winery or approved storage area if the farm winery  
27 uses its own vehicles, equipment, and employees to deliver the wine; or

28           (iii)   picked up by the agency liquor store at the winery or approved storage facility;

1 (b) to retail licensees that is:

2 (i) delivered by common carrier from the farm winery or approved storage;

3 (ii) delivered by the farm winery from the farm winery or approved storage area if delivered by the  
4 farm winery's own vehicles, equipment, and agents; or

5 (iii) picked up by the retailer at the winery or approved storage facility; or

6 (c) directly to consumers for wine:

7 (i) that is shipped to the consumer by common carrier from the winery or any approved storage  
8 facility;

9 (ii) that is delivered by the Montana farm winery's own vehicles, equipment, and employees or the  
10 consumers pick up the wine from the Montana farm winery or approved storage facility if the wine is in sealed,  
11 labeled packaging for off-site consumption.

12 (iii) in tastings that are permitted with no more than 1.5 fluid ounces per taste of each wine per  
13 consumer per day and may be served without charge to the consumer. Food service may be limited to shelf-  
14 stable snack foods requiring no flatware or high-temperature holding capacity.

15 (iv) in a farm winery tasting room. The tasting room requires an additional endorsement to the farm  
16 winery license that is subject to local regulations for farm businesses. The farm winery tasting room must be  
17 located on-site or contiguous to the farm winery. Tastings are permitted with no more than 1.5 fluid ounces per  
18 taste of each wine per consumer per day and may be served without charge to the consumer. Wine may be  
19 consumed on-site or provided in sealed packaging to be consumed off-site. Food service may be limited to  
20 shelf-stable snack foods requiring no flatware or high-temperature holding capacity or may be full-service in  
21 accordance with local regulations.

22 (v) in a farm winery satellite tasting room. A farm winery is allowed up to three satellite tasting  
23 rooms. An additional license endorsement is required for each satellite tasting room. The satellite tasting room  
24 must be approved by local regulations. A satellite tasting room must have an approved storage facility. Wine  
25 may be consumed on-site but is limited to a total of 18 fluid ounces per consumer per day and between the  
26 hours of 8 a.m. and 8 p.m. A satellite tasting room may sell wine in sealed packaging to be consumed off-  
27 premises. Wine tastings are limited to no more than 1.5 fluid ounces per taste of each wine per consumer per  
28 day and may be served without charge to the consumer and are not included in the 18-fluid-ounce limit for each

1 consumer. The extent of food service must be approved by local regulations.

2 (vi) provided at a farmers' market, public, or private event through a permit obtained through the  
3 department of revenue. A farm winery may obtain up to 25 permits a year from the department of revenue.  
4 Each permit has a fee of \$30 paid to the department of revenue. Each permit use, and form of service as for  
5 on-premises or off-premises consumption, must be approved by the department of revenue and the county  
6 sheriff. Any one or combination of the following criteria may be approved:

- 7 (A) wine is consumed on-site;
- 8 (B) wine is in sealed packaging to be consumed off-site;
- 9 (C) tastings are permitted with no more than 1.5 fluid ounces per taste per wine per consumer per  
10 day and may be served without charge to the consumer.

11 (10) A farm winery may enter any agreement for a catering endorsement under Title 16 with  
12 approval by the department of revenue.

13 (11) A Montana farm winery license in Montana is allowed landlord position for tenant agreements  
14 for wine production purposes as a custom crush or alternating proprietorship facility under the following  
15 conditions:

- 16 (a) tenants must be operating with a Montana winegrower license;
- 17 (b) no more than two tenants may enter into an agreement to operate concurrently; and
- 18 (c) all production, distribution, and sales rights and obligations of each licensed entity apply only to  
19 that respective entity.

20 (12) The department of revenue may establish reasonable fees commensurate with costs for the  
21 administration of this section.

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23 NEW SECTION. **Section 2. Winegrower license.** (1) A person may be licensed by the department to  
24 produce wine under a Montana winegrower license if the person meets the requirements of this section.

25 (2) The licensee must own or lease property in Montana that has no fewer than 200 producing  
26 grape vines. A variance on the vine requirement may be granted by the department upon formal request of the  
27 licensee.

28 (3) The winery must be on the vineyard property or contiguous to the vineyard property except for

1 a winegrower license conducting wine production under a tenant agreement with any Montana winery, including  
2 a winery licensed under Title 16 or a Montana farm winery under [section 1] or a winegrower license under this  
3 section if there is a licensed storage facility on the vineyard property or is contiguous to the winegrower  
4 vineyard property.

5 (4) The maximum annual output of wine production for a Montana winegrower license is 1,260  
6 cases and the minimum annual output is 55 cases. The winegrower must produce wine by beginning with raw  
7 agricultural products. The winemaking process, beginning with fermentation, must be on-site from raw  
8 agricultural product to bottle-ready, finished wine, except when using a tenant agreement.

9 (5) The bottling of the wine may take place either internally or through a bottling service that must  
10 be on-site except when using a tenant agreement.

11 (6) The fruit inputs used in the production of wine may be from any location, grown within Montana,  
12 with the following limitations:

13 (a) there is no limit on the use of agricultural products grown on the winegrower's property in the  
14 production of the wine;

15 (b) non-Montana grown fruits are prohibited;

16 (c) Montana grown fruit not grown on the winegrower's property is limited to no more than the  
17 lesser of 20% additional, by weight, of on-site vineyard production or 4 tons. A variance for the fruit import  
18 requirement may be available upon request to the department of agriculture.

19 (d) any wine inputs are prohibited.

20 (7) All wine production must be sold directly to consumers for wine:

21 (a) that is shipped to the consumer by common carrier from the winegrower's approved storage  
22 facility;

23 (b) that is delivered by the Montana winegrower's own vehicles, equipment, and employees or the  
24 consumers pick up the wine from the Montana winegrower if the wine is in sealed, labeled packaging for off-site  
25 consumption.

26 (c) in tastings that are permitted with no more than 1.5 fluid ounces per taste of each wine per  
27 consumer per day and may be served without charge to the consumer. Food service must be limited to shelf-  
28 stable snack foods requiring no flatware or high-temperature holding capacity.

1 (d) provided at a farmers' market, public, or private event through a permit obtained through the  
2 department of revenue. A Montana winegrower may obtain up to 25 permits a year from the department of  
3 revenue. Each permit has a fee of \$20 to be paid to the department of revenue. Each permit use, and form of  
4 service as for on-premises or off-premises consumption, must be approved by the department of revenue and  
5 the applicable county sheriff. Any one or combination of the following criteria may be approved:

- 6 (i) wine is consumed on-site;  
7 (ii) wine is in sealed packaging to be consumed off-site;  
8 (iii) tastings are permitted with no more than 1.5 fluid ounces per taste per wine per consumer per  
9 day and may be served without charge to the consumer.

10 (8) Ancillary revenue to a Montana winegrower license may not exceed 49% of the wine revenue  
11 in any calendar year.

12 (9) A Montana winegrower license in Montana is allowed landlord position for tenant agreements  
13 for wine production purposes as a custom crush or alternating proprietorship facility under the following  
14 conditions:

- 15 (a) tenants must be operating with a Montana winegrower license;  
16 (b) no more than two tenants may enter into an agreement to operate concurrently; and  
17 (c) all production, distribution, and sales rights and obligations of each licensed entity apply only to  
18 that respective entity.

19 (10) The department of revenue may establish fees commensurate with costs for the administration  
20 of this section.

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22 **Section 3.** Section 16-3-411, MCA, is amended to read:

23 **"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

- 24 (a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;  
25 (b) sell wine it produces at wholesale to wine distributors;  
26 (c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off  
27 the premises;  
28 (d) provide, without charge, wine it produces for consumption at the winery;

- 1           (e)     purchase from the department or its licensees brandy or other distilled spirits for fortifying wine  
2 it produces;
- 3           (f)     obtain a special event permit under 16-4-301;
- 4           (g)     perform those operations and cellar treatments that are permitted for bonded winery premises  
5 under applicable regulations of the United States department of the treasury;
- 6           (h)     sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy  
7 of the license;
- 8           (i)     obtain a direct shipment endorsement to ship table wine as provided in Title 16, chapter 4, part  
9 11, directly to an individual in Montana who is at least 21 years of age; or
- 10          (j)     offer wine in its original packaging, prepared servings, or growlers for curbside pickup between  
11 8 a.m. and 2 a.m.
- 12          (2)     (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery  
13 directly to licensed retailers if the winery:
- 14           (i)     uses the winery's own equipment, trucks, and employees to deliver the wine and the wine  
15 delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;
- 16           (ii)    contracts with a licensed table wine distributor to ship and deliver the winery's wine to the  
17 retailer; or
- 18           (iii)   contracts with a common carrier to ship and deliver the winery's wine to the retailer and:
- 19           (A)     the wine shipped and delivered by common carrier is shipped directly from the producer's  
20 winery or bonded warehouse;
- 21           (B)     individual shipments delivered by common carrier are limited to three cases a day for each  
22 licensed retailer; and
- 23           (C)     the shipments delivered by common carrier do not exceed 4,500 cases a year.
- 24          (b)     If a winery uses a common carrier for delivery of the wine to licensed table wine distributors  
25 and retailers, the shipment must be:
- 26           (i)     in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to  
27 Montana Licensee";
- 28           (ii)    delivered to the premises of a licensed table wine distributor or licensed retailer who is in good

1 standing; and

2 (iii) signed for by the wine distributor or retailer or its employee or agent.

3 (c) In addition to any records required to be maintained under 16-4-107, a winery that distributes  
4 wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery  
5 shall, pursuant to 16-1-411, electronically file a report in the manner and form prescribed by the department,  
6 reporting the amount of wine or hard cider, or both, that it shipped in the state during the preceding period,  
7 including the names and addresses of consignees or retailers, and other information that the department may  
8 determine to be necessary to ensure that distribution of wine or hard cider, or both, within this state conforms to  
9 the requirements of this code.

10 (3) A person may not be licensed under this section and hold a farm winery license under [section  
11 1] or a winegrower license under [section 2]."

12

13 NEW SECTION. Section 4. Codification instruction. [Sections 1 and 2] are intended to be codified  
14 as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 and 2].

15 - END -