

HOUSE BILL NO. 606
INTRODUCED BY R. STOKER

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING DIRECT SHIPMENT OF TABLE WINE TO A PERSON IN MONTANA FOR PERSONAL CONSUMPTION AND NOT FOR RESALE; REQUIRING AN OUT-OF-STATE SHIPPER LICENSE; ALLOWING A SMALL WINERY TO DIRECTLY SHIP WINE TO LICENSED ENTITIES NOT WITHIN THE STATE AND TO ADULTS; ALLOWING DOMESTIC WINERIES TO SELL TABLE WINE AT TRADE SHOWS, CONVENTIONS, AND SPECIAL EVENTS FOR OFF-PREMISES CONSUMPTION; AMENDING SECTIONS 16-3-101, 16-3-402, 16-3-411, AND 16-6-301, MCA; AND REPEALING SECTIONS 16-4-901, 16-4-902, 16-4-903, 16-4-906, AND 16-4-910, MCA."

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

NEW SECTION. Section 1. Direct wine shipment for personal use. (1) A person licensed as a winery in this state or as an alcoholic beverage producer, supplier, importer, distributor, or retailer in another state and who holds an out-of-state shipper license, as provided in subsection (2), may ship table wine directly to consumers who are at least 21 years of age for the person's personal use and not for resale.

(2) (a) The department shall issue out-of-state shipper licenses to all applicants who provide proof of licensure as a domestic winery or a wine or alcoholic beverage producer, supplier, importer, distributor, or retailer in another state and who have not had an out-of-state shipper license revoked or suspended in this state or in another state that provides out-of-state shipper licenses substantially similar to the license provided for in this section. The application must be accompanied by a fee in an amount set by the department. The license must be renewed annually upon proof of continued licensure as a domestic winery or a wine or alcoholic beverage producer, supplier, or importer in another state. A renewal application must be accompanied by a fee in an amount set by the department.

(b) The department may revoke or suspend for a specified period an out-of-state license upon proof that the licensee violated the provisions of this section or this code. A suspension must be conducted as a contested hearing under the provisions of Title 2, chapter 4.

(3) Licensees may not sell table wine to persons under 21 years of age. The licensee shall make reasonable inquiry into the age of all purchasers prior to making a sale. The licensee shall notify each customer that proof of age is required to make a delivery of table wine. Cartons used to ship table wine to customers must

be conspicuously labeled "CONTAINS WINE -- signature of person 21 years of age or older required for delivery." The carton must contain a return address. The delivery must be signed for by a person at least 21 years of age.

(4) On forms and at the time specified by the department, all out-of-state licensees shall report each year to the department the total amount of table wine directly shipped to residents of Montana during the prior year. At the time of the submission of the report, the licensee shall pay table wine taxes imposed in the amount specified in 16-1-411(1) on table wine shipped directly to residents of Montana during the prior year. The proceeds are to be distributed as provided in 16-1-411(3).

(5) For the purposes of this section, "table wine" does not include hard cider.

Section 2. Section 16-3-101, MCA, is amended to read:

"16-3-101. Alcoholic beverage transactions -- only in accordance with code. (1) A person who manufactures, imports, distributes, or sells alcoholic beverages or the person's agent may not give or sell to any person within the state any alcoholic beverage except as may be permitted by and in accordance with the provisions of this code.

(2) (a) Except as otherwise provided by this code and [section 1], a person or the person's agent may not ship, transport, or consign or cause to be shipped, transported, or consigned:

(i) any alcoholic beverage to any person in this state ~~who does not hold a valid wholesaler's license or connoisseur's license issued by the department;~~ or

(ii) any liquor except to the state liquor warehouse.

(b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by telephone, computer, or other device, ~~except by persons holding a valid connoisseur's license provided for in 16-4-901 as provided in [section 1].~~

(3) Except as provided in [section 1] or otherwise provided by this code, alcoholic beverages shipped, transported, or consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer."

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

"16-3-402. Importation of wine -- records. (1) All table wine manufactured outside of Montana and shipped into Montana for resale must be consigned to and shipped to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse in Montana or subwarehouse in Montana. The distributor shall distribute the table wine from the warehouse or subwarehouse.

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

(3) Table wine that has been shipped into Montana for resale and that has not been shipped to and distributed from a warehouse of a licensed table wine distributor must be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 4. Section 16-3-411, MCA, is amended to read:

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

- (a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;
- (b) sell wine it produces at wholesale to wine distributors;
- (c) sell wine it produces at retail at the winery, trade shows, conventions, and special events directly to the consumer for consumption on or off the premises;
- (d) provide, without charge, wine it produces for consumption at the winery;
- (e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;
- (f) obtain a special event permit under 16-4-301; or
- (g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury.

(2) (a) A winery that is located in Montana and licensed pursuant to 16-4-107 and that has an annual production of 25,000 gallons or less of wine may sell wine to retail licensees that are licensed to sell wine ~~under this code~~ in this state or another state and directly to persons in another state for personal consumption and not for resale. A winery making direct sales or sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.

(b) The winery may use a common carrier for delivery of the wine to ~~licensed wine distributors and retailers~~ purchasers. A shipment by common carrier is subject to the provisions of 16-3-106 and must be:

- (i) in boxes that are marked with the words: "Wine Shipment From Montana Licensee to ~~Montana~~ Alcohol Beverage Licensee" or, for sale to a direct sale purchaser, with the label required in [section 1];
- (ii) made to the premises of a ~~Montana-licensed~~ wine distributor or retailer licensed by ~~the~~ this state or another state and who is in good standing or to a direct sale purchaser under the conditions required for

out-of-state shippers to Montana purchasers; and

(iii) signed for by the wine distributor or retailer or its employee or agent or, if the sale is a direct sale, by a person at least 21 years of age.

(c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine ~~within the state~~ under this subsection (2) shall maintain records of all sales and shipments. The winery shall furnish ~~monthly and other~~ reports concerning quantities and prices of table wine that it ships ~~in the state~~, names and addresses of consignees, and other information that the department may determine to be necessary to ensure that distribution of table wines ~~within this state~~ conforms to the requirements of this code."

Section 5. Section 16-6-301, MCA, is amended to read:

"16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful. (1) Except as provided by this code, a person or the person's agents or employees may not:

- (a) expose or keep an alcoholic beverage for sale;
- (b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or
- (c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This code does not prohibit:

- (a) a person entering this state from another state or foreign country from having in the person's actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country;
- (b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;
- (c) possession of beer or wine purchased from an out-of-state brewery or winery ~~if the person possessing the beer or wine holds a connoisseur's license as provided for in 16-4-901~~ for personal consumption;
- (d) possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;
- (e) possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations

if the possession is authorized by this code; or

(f) possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, a person or the person's agents or employees may not:

(a) attempt to purchase any alcoholic beverage;

(b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

(c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage."

NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, and the provisions of Title 16 apply to [section 1].

NEW SECTION. **Section 7. Repealer.** Sections 16-4-901, 16-4-902, 16-4-903, 16-4-906, and 16-4-910, MCA, are repealed.

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