

SENATE BILL NO. 127
INTRODUCED BY D. WANZENRIED
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT TO REVISE LAWS RELATING TO THE SALE AND DISTRIBUTION OF WINE BY WINERIES; ALLOWING ALL LICENSED WINERIES TO MAKE LIMITED SALES TO LICENSED WINE RETAILERS; AMENDING SECTIONS 16-3-219, 16-3-301, 16-3-401, 16-3-402, 16-3-404, 16-3-411, 16-3-418, 16-4-107, 16-4-501, 16-4-906, 16-6-104, AND 16-6-314, MCA."

WHEREAS, the United States Supreme Court, in *Granholm v. Heald*, 544 US 460 (2005), held that laws governing the sale and importation of wine that allow in-state, but not out-of-state, wineries to make certain sales discriminate against interstate commerce in violation of the Commerce Clause of the United States Constitution.

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

Section 1. Section 16-3-219, MCA, is amended to read:

"16-3-219. Dock sales restricted. ~~A beer wholesaler or a table wine distributor may not deliver beer~~ Beer or wine may not be delivered to a licensed retailer at any location other than the retailer's licensed premises, except that a retailer located within the territory for which a wholesaler has been appointed to distribute a brand may personally or through ~~his~~ an employee obtain from the wholesaler's warehouse quantities of beer not exceeding three barrels in packaged or draft form. An all-beverages licensee may upon presentation of ~~his~~ the licensee's license or a photocopy of ~~his~~ the license personally obtain from any wholesaler's warehouse ~~such~~ the quantities of beer as ~~he~~ the licensee and the wholesaler may agree to buy and sell."

Section 2. Section 16-3-301, MCA, is amended to read:

"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age. (1) It is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewer, winery, or wholesaler licensed under the provisions of this code.

(2) It is unlawful for a licensed retailer to transport beer or wine from one licensed premises or other facility to any other licensed premises owned by the licensee.

(3) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery or

winery licensed or registered under the provisions of this code.

~~(3)~~(4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

- (a) any person under 21 years of age; or
- (b) any person actually, apparently, or obviously intoxicated.

~~(4)~~(5) Any person under 21 years of age or any other person who knowingly misrepresents the person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

~~(5)~~(6) It is mandatory under the provisions of this code that all licensees display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

~~(6)~~(7) For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

- (a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;
- (b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and
- (c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

Section 3. Section 16-3-401, MCA, is amended to read:

"16-3-401. Short title -- public policy -- purpose. (1) This part may be cited as the "Wine Distribution Act".

(2) The public policy of the state of Montana is to maintain a system to provide for, regulate, and control the acquisition, importation, and distribution of table wine ~~by licensed table wine distributors.~~

(3) This part governs ~~relationships between suppliers and table wine distributors~~ wineries, table wine distributors, and wine retailers, ~~and because the legislature recognizes the public interest and the interests of~~

~~suppliers and table wine distributors in the fair, efficient, and competitive distribution of table wine, this part is intended to:~~

~~—— (a) protect the table wine distributor's independence in managing the distributor's business, including the establishment of selling prices; and~~

~~—— (b) encourage table wine distributors to devote their best efforts to the sale and distribution of the table wines they sell and distribute."~~

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

"16-3-402. Importation of wine -- records. (1) ~~At~~ Except as provided in 16-3-411, all table wine manufactured outside of Montana and shipped into Montana 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~~ directly to a retailer in Montana and that has not been shipped to and ~~from a winery that is not licensed pursuant to 16-4-107 or table wine from a registered out-of-state winery that has not been~~ 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 5. Section 16-3-404, MCA, is amended to read:

"16-3-404. Monthly report of table wine distributor and retailer. (1) ~~Every~~ Each licensed table wine distributor shall, on or before the ~~fifteenth~~ 15th day of each month, make an exact return to the department of revenue ~~of reporting~~ the amount of table wine purchased or acquired by ~~him~~ the distributor during the previous month, the amount of table wine sold and delivered by ~~him~~ the distributor during the previous month, and the amount of inventory on hand in the manner and form ~~as shall be~~ prescribed by the department. The department ~~shall have~~ has the right at any time to make an examination of the table wine distributor's books and ~~of his~~ premises and otherwise check the accuracy of ~~such~~ the return or check the alcoholic content of table wine ~~which he~~ that the distributor may have on hand.

(2) Each wine retailer licensed to do business in this state shall, on or before the 15th day of each month,

in the manner and form prescribed by the department, make a return to the department reporting the amount of wine purchased directly from any out-of-state winery in the previous month."

Section 6. Section 16-3-411, MCA, is amended to read:

"16-3-411. ~~Domestic winery~~ 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 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; or
- (h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the license.

(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. A winery licensed pursuant to section 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers if the winery:~~

(i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;

(ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer;
or

(iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:

(A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or bonded warehouse;

(B) individual shipments delivered by common carrier are limited to three cases a day for each licensed retailer; and

(C) the shipments delivered by common carrier do not exceed 4,500 cases a year.

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

(i) in boxes that are marked with the words: "Wine Shipment From ~~Montana Licensee~~ Montana-Licensed Winery to Montana Licensee";

(ii) ~~made delivered~~ to the premises of a ~~Montana-licensed~~ licensed table wine distributor or licensed retailer ~~licensed by the state and~~ who is in good standing; and

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

~~(c)(d)~~ 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, on or before the 15th day of each month, in the manner and form prescribed by the department, make a return reporting the amount of wine ~~furnish monthly and other reports concerning quantities and prices of table wine that it ships shipped~~ in the state during the preceding month, names and addresses of consignees or retailers, 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 7. Section 16-3-418, MCA, is amended to read:

"16-3-418. Dual appointments -- equal support -- alternate supplier -- dock sales. (1) (a) A supplier may appoint one or more table wine distributors to distribute its table wines in a specified territory. If the supplier appoints two or more table wine distributors to sell its table wines in the same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine distributor.

(b) A supplier may not appoint more than one table wine distributor to distribute its hard cider in a specified territory.

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

(2) (a) The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of the license or a photocopy of the license, personally obtain from any distributor's warehouse a quantity of table wine that the licensee may agree to buy and that the distributor may agree to sell.

(b) The holder of a license that permits on-premises consumption of alcoholic beverages under 16-4-401(2) may, upon presentation of the license or a photocopy of the license, personally or through an employee, obtain from ~~any a winery, described as provided in 16-3-411(2)(a)~~ 16-3-411(1)(h), a quantity of table wine that the licensee may agree to buy and that the winery may agree to sell."

Section 8. Section 16-4-107, MCA, is amended to read:

"16-4-107. ~~Domestic winery~~ Winery license -- winery and importer registration. (1) (a) Wine, other than for personal consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be manufactured or directly distributed to retailers within the state only by a licensed ~~domestic~~ winery. An application for a ~~domestic~~ winery license must be accompanied by a fee of \$400, which constitutes the first annual license fee, and a licensee shall in each succeeding year pay an annual fee as provided in 16-4-501. ~~Domestic winery~~ Winery licensees located in Montana shall must hold the appropriate basic permit required by the United States department of the treasury and be qualified for a license in accordance with the provisions of 16-4-401(4). Winery licensees located in another state must hold the appropriate basic permit required by the United States department of the treasury and the appropriate license to manufacture wine from the state in which the winery is located and shall provide all other information required by the department.

(b) A ~~domestic~~ winery located in Montana that is licensed to do business in the state shall, each quarter and in the manner and form prescribed by the department, report to the department the amount of wine manufactured or imported by the winery in the previous quarter and the winery's inventory. The department may at any time examine a winery's books.

(2) A winery that is not located in the state or an importer of table wines that holds the appropriate license from the United States ~~of America~~ department of the treasury and that desires to distribute its table wines within this state through licensed table wine distributors only shall apply to the department of revenue for registration on forms to be prepared and furnished by the department. Each winery ~~will~~ shall furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require the winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine that it ships into the state, names and addresses of consignees, and any other information that the department may determine to be necessary to ensure that importation and distribution of table wines within this state conform to the requirements of this code. A winery or importer of table wines may not ship table wines into this state until the registration is granted by the department. The registration may be canceled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its

registration."

Section 9. Section 16-4-501, MCA, is amended to read:

"16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only; or both beer and table wine; under the provisions of this code; shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500;

(ii) for each storage depot, \$400;

(b) (i) each beer wholesaler, \$400; ~~each domestic winery producing more than 25,000 gallons of wine, \$400; each domestic winery producing 25,000 gallons or less of wine, \$200;~~ each table wine distributor, \$400;

(ii) for each subwarehouse, \$400;

(c) each beer retailer, \$200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;

(e) any unit of a nationally chartered veterans' organization, \$50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) \$1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of \$300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is \$200.

(6) The annual renewal fee for:

(a) a brewer producing 20,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and

(b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.

(7) ~~Each~~ Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

(a) ~~except as provided in this section,~~ for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

(b) ~~except as provided in this section,~~ for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) ~~except as provided in this section,~~ for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of an original license to be located in areas described in subsections (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal of a license issued prior to July 1, 1974. ~~All~~ However, all licenses, ~~however,~~ are subject to the specified annual renewal fees.

- (8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.
- (9) The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.
- (10) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is \$250.
- (11) The annual fee for a distillery is \$600.
- (12) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.
- (13) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.
- (14) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

Section 10. Section 16-4-906, MCA, is amended to read:

"16-4-906. Out-of-state brewery or winery registration -- limitation on shipping -- penalty. (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

- (a) 1,440 bottles or 60 cases of beer for breweries; and
- (b) 720 bottles or 60 cases of wine for wineries.

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery shall distribute the brewery's or winery's product through a licensed wholesale distributor or for a winery properly licensed pursuant to 16-4-107 through direct shipment to licensed retailers in accordance with the provisions of 16-3-411.

(4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302."

Section 11. Section 16-6-104, MCA, is amended to read:

"16-6-104. Unlawful alcoholic beverage -- seizure -- forfeiture. (1) Any investigator or peace officer who finds an alcoholic beverage ~~which he~~ and who has reasonable cause to believe ~~is had~~ that the alcoholic

beverage was obtained or kept by any person in violation of the provisions of this code may ~~forthwith~~ seize and remove the ~~same~~ alcoholic beverage and the packages in which the alcoholic beverage is kept, and upon conviction of the person, the alcoholic beverage and all packages containing the ~~same shall~~ alcoholic beverages are, in addition to any other penalty prescribed by this code, ~~ipso facto be~~ forfeited to the state of Montana.

(2) Any beer or wine ~~which that~~ has been shipped into Montana and that has not been shipped to and distributed from a warehouse of a licensed wholesaler or from a winery or brewery licensed under the provisions of this code ~~shall~~ 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 alcoholic beverages."

Section 12. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

(2) If a retail licensee is convicted of an offense under this code, the licensee's license must be immediately revoked or, in the discretion of the department, ~~such other~~ another sanction must be imposed as ~~may be authorized~~ provided under 16-4-406.

(3) A person under 21 years of age who violates ~~16-3-301(4)~~ 16-3-301(5) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

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