

SENATE BILL NO. 524

INTRODUCED BY D. WANZENRIED

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATING TO THE SALE AND DISTRIBUTION OF BEER BY BREWERIES; ALLOWING ALL LICENSED BREWERIES TO MAKE LIMITED SALES TO LICENSED BEER RETAILERS; AND AMENDING SECTIONS 16-3-211, 16-3-214, 16-3-301, 16-4-906, 16-6-104, AND 16-6-314, MCA."

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

Section 1. Section 16-3-211, MCA, is amended to read:

"16-3-211. Monthly report of brewer, or beer importer, or retailer -- inspection of books and premises. (1) Every brewer and every beer importer licensed to do business in this state shall, on or before the 15th day of each month, ~~in the manner and form as shall be~~ prescribed by the department, make an exact return to the department of the amount of beer manufactured or imported by ~~him~~ the brewer or importer, and the amount sold by ~~him~~ the brewer or importer in the previous month, and ~~of his~~ the inventory of the brewer or importer. The department ~~shall have the right at any time to~~ may make an examination of any brewer's or beer importer's books and of ~~his~~ the brewer's or importer's premises and otherwise check the accuracy of any ~~such~~ return or ~~to~~ check the alcoholic content of beer manufactured or imported by ~~him~~ the brewer or importer.

(2) Every retailer licensed to do business in this state shall, on or before the 15th day of each month, as prescribed by the department, make an exact return to the department of the amount of beer purchased in the previous month directly from any brewery not located in the state of Montana."

Section 2. Section 16-3-214, MCA, is amended to read:

"16-3-214. Beer sales by brewers -- sample room exception. (1) Subject to the limitations and restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of this code and rules prescribed by the department, to:

- (a) sell and deliver beer from its storage depot or brewery ~~located in Montana~~ to:
 - (i) a wholesaler; ~~or~~

(ii) ~~any retail licensees who are entitled to purchase beer from a brewer under this code~~ licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver the beer and if:

(A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day to each licensed retailer; and

(B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a year; or

(iii) the public; ~~or~~

(b) provide its own products for consumption on its licensed premises without charge or, if it is a small brewery, provide its own products at a sample room as provided in 16-3-213; or

(c) do any one or more of the acts of sale and delivery of beer as provided in this code.

(2) A brewery may not use a common carrier for delivery of the brewery's product to the public or to licensed retailers.

(3) An additional license fee may not be imposed on a brewery providing its own products on its licensed premises for consumption on the premises.

(4) This section does not prohibit a licensed brewer ~~located outside of Montana~~ from shipping and selling beer directly to a wholesaler in this state under the provisions of 16-3-230."

Section 3. 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 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 All licensees must 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 4. 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~~ may:

(a) distribute the brewery's or winery's product through a licensed wholesale distributor;

(b) distribute through direct shipment to licensed retailers in accordance with the provisions of 16-3-411 if the winery is licensed pursuant to 16-4-107; or

(c) distribute as a brewery in accordance with the provisions of 16-3-214.

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

"16-6-104. Unlawful alcoholic beverage -- seizure -- forfeiture. (1) ~~Any~~ An investigator or peace officer who finds an alcoholic beverage ~~which he and who~~ and who has reasonable cause to believe ~~is had that the alcoholic beverage was obtained~~ 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~~ same shall alcoholic beverages are, in addition to any other penalty prescribed by this code, ~~ipso facto be~~ ipso facto be forfeited to the state of Montana.

(2) Any beer or wine ~~which that~~ that has been shipped into Montana ~~and has not been shipped to and distributed from a warehouse of a licensed wholesaler shall~~ in violation of this code 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 6. 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 purposely, knowingly, or negligently 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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