

HOUSE BILL NO. 425

INTRODUCED BY J. POMNICHOWSKI

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS RELATED TO THE SALE OF FORTIFIED WINE;
5 AUTHORIZING THE SALE OF FORTIFIED WINE BY A PERSON LICENSED TO SELL BEER OR WINE FOR
6 OFF-PREMISES CONSUMPTION; ALLOWING THE DIRECT PURCHASE OF FORTIFIED WINE FROM AN
7 AGENCY LIQUOR STORE BY A PERSON LICENSED TO SELL BEER OR WINE FOR OFF-PREMISES
8 CONSUMPTION; ALLOWING TABLE WINE DISTRIBUTORS TO DISTRIBUTE FORTIFIED WINE; REVISING
9 TAXES RELATED TO SALES OF FORTIFIED WINE; AND AMENDING SECTIONS 16-1-106, 16-1-201,
10 16-1-411, 16-2-101, 16-2-103, 16-2-106, 16-2-203, 16-2-301, 16-3-106, 16-3-218, 16-3-301, 16-3-402, 16-3-403,
11 16-3-404, 16-3-405, 16-3-406, 16-3-411, 16-3-415, 16-3-416, 16-3-418, 16-3-419, 16-4-107, 16-4-108, AND
12 16-4-115, MCA."

13

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

15

16 **Section 1.** Section 16-1-106, MCA, is amended to read:17 **"16-1-106. Definitions.** As used in this code, the following definitions apply:18 (1) "Agency franchise agreement" means an agreement between the department and a person appointed
19 to sell liquor, ~~and table wine,~~ or fortified wine as a commission merchant rather than as an employee.20 (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance
21 with this code for the purpose of selling liquor or fortified wine at either the posted or the retail price for
22 off-premises consumption.

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

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

26 (5) (a) "Beer" means:

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

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

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

- 1 (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from
2 malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- 3 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- 4 (6) "Beer importer" means a person other than a brewer who imports malt beverages.
- 5 (7) "Brewer" means a person who produces malt beverages.
- 6 (8) "Caffeinated or stimulant-enhanced malt beverage" means:
- 7 (a) a beverage:
- 8 (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has
9 been removed and replaced with distilled ethyl alcohol;
- 10 (ii) that contains at least 0.5% of alcohol by volume;
- 11 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
12 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 13 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
14 taurine; or
- 15 (b) a beverage:
- 16 (i) that contains at least 0.5% of alcohol by volume;
- 17 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
18 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 19 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 20 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
21 taurine;
- 22 (v) for which the producer is required to file a formula for approval with the United States alcohol and
23 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 24 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 25 (9) "Community" means:
- 26 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 27 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
28 community for census purposes; and
- 29 (c) in a consolidated local government, the area of the consolidated local government not otherwise
30 incorporated.

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

4 (11) "Fortified wine" means grape-based wine that is at least 16% alcohol by volume when bottled or
5 packaged by the manufacturer but not more than 24% alcohol by volume.

6 ~~(12)~~ "Growler" means any refillable, resealable container complying with federal law.

7 ~~(13)~~ "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
8 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of
9 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

10 ~~(14)~~ "Immediate family" means a spouse, dependent children, or dependent parents.

11 ~~(15)~~ "Import" means to transfer beer, or table wine, or fortified wine from outside the state of Montana
12 into the state of Montana.

13 ~~(16)~~ "Liquor" means an alcoholic beverage except beer, and table wine, or fortified wine. The term
14 includes a caffeinated or stimulant-enhanced malt beverage.

15 ~~(17)~~ "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
16 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts
17 or their products and with or without other malted cereals and with or without the addition of unmalted or prepared
18 cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome
19 products suitable for human food consumption.

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

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

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

27 ~~(21)~~ "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.

29 ~~(22)~~ "Retail price" means the price established by an agent for the sale of liquor or fortified wine to
30 persons who do not hold liquor licenses. The retail price may not be less than the department's posted price.

1 ~~(22)~~(23) "Rules" means rules adopted by the department or the department of justice pursuant to this
2 code.

3 ~~(23)~~(24) "Sacramental wine" means wine that is manufactured and sold exclusively for use as
4 sacramental wine or for other religious purposes.

5 ~~(24)~~(25) "Special event", as it relates to an application for a beer and wine special permit, means a short,
6 infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

7 ~~(25)~~(26) "State liquor warehouse" means a building owned or under control of the department for the
8 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

9 ~~(26)~~(27) "Storage depot" means a building or structure owned or operated by a brewer at any point in the
10 state of Montana off and away from the premises of a brewery, which building or structure is equipped with
11 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
12 permitted by this code.

13 ~~(27)~~(28) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler
14 or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine
15 distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of
16 beer, or table wine, or fortified wine as permitted by this code.

17 ~~(28)~~(29) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
18 hard cider.

19 ~~(29)~~(30) "Table wine distributor" means a person importing into or purchasing in Montana table wine for
20 sale or resale to retailers licensed in Montana or fortified wine for sale or resale to licensees as provided in
21 16-4-115.

22 ~~(30)~~(31) "Warehouse" means a building or structure located in Montana that is owned or operated by a
23 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer, or table wine,
24 or fortified wine as permitted by this code.

25 ~~(31)~~(32) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation
26 of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur
27 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of
28 alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in
29 accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic
30 beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in

1 accordance with federal regulations are also wine."

2

3 **Section 2.** Section 16-1-201, MCA, is amended to read:

4 **"16-1-201. Acts not covered by code.** (1) Nothing in this code prevents any brewer, distiller, or other
5 person, licensed under the provisions of any statute of the United States of America for the manufacture of
6 alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner authorized by or
7 under any such statute.

8 (2) It is the policy of the state of Montana that the manufacture of alcoholic beverages, including the
9 distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws of
10 the United States, is authorized and permitted by any brewer, distiller, rectifier, or other person licensed under
11 any provision of any statute of the United States of America in a place and in the manner authorized by or under
12 any statute of the United States. The department may adopt rules that the department considers necessary with
13 respect to the manufacture of alcoholic beverages. The rules may not be inconsistent with this code or with the
14 statutes of the United States of America or regulations issued under the provisions of the Federal Alcohol
15 Administration Act, 27 U.S.C. 201 through 212, inclusive, or regulations issued under the provisions of chapter
16 51 of the Internal Revenue Code.

17 (3) Nothing in this code prevents:

18 (a) the sale of liquor, ~~or~~ table wine, or fortified wine by any person to the department;

19 (b) the purchase, importation, and sale of liquor, ~~and~~ table wine, or fortified wine by the department for
20 the purposes of and in accordance with this code."

21

22 **Section 3.** Section 16-1-411, MCA, is amended to read:

23 **"16-1-411. Tax on wine, fortified wine, and hard cider -- reporting -- penalty and interest.** (1) (a)
24 A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the
25 department.

26 (b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the
27 department.

28 (c) A tax on fortified wine is imposed on a table wine distributor or the department at the tax rate and in
29 the manner provided for liquor in 16-1-401 and 16-1-402.

30 (2) The tax imposed in subsection (1) must be paid by the table wine distributor by the 15th day of the

1 month following sale of the table wine, ~~or hard cider,~~ or fortified wine from the table wine distributor's warehouse.
 2 Failure to file a tax return or failure to pay the tax required by this section subjects the table wine distributor to the
 3 penalties and interest provided for in 15-1-216.

4 (3) The tax paid by a table wine distributor in accordance with subsection (2) must, in accordance with
 5 the provisions of 17-2-124, be distributed as follows:

6 (a) 69% to the state general fund; and

7 (b) 31% to the state special revenue fund to the credit of the department of public health and human
 8 services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

9 (4) The tax computed and paid in accordance with this section is the only tax imposed by the state or
 10 any of its subdivisions, including cities and towns.

11 (5) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include
 12 hard cider."
 13

14 **Section 4.** Section 16-2-101, MCA, is amended to read:

15 **"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement --**
 16 **kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate agency
 17 liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

18 (2) (a) The department may from time to time fix the posted prices at which the various classes, varieties,
 19 and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

20 (b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various
 21 classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses
 22 and to all other persons at the retail price established by the agent.

23 (ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may
 24 place a liquor order with the department at its state liquor warehouse in the manner to be established by the
 25 department.

26 (B) The agency liquor store's purchase price is the department's posted price less the agency liquor
 27 store's commission rate and less the agency liquor store's weighted average discount ratio. For purposes of this
 28 subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on
 29 June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the
 30 employee-operated state liquor store's full case discount sales divided by the agency liquor store's or

1 employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state
2 discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales
3 in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted
4 average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The
5 weighted average discount ratio must be computed on the store's first 12 months of operation.

6 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within
7 60 days of the date on which the department invoices the liquor to the agency liquor store.

8 (c) An agency liquor store may sell table wine at retail for off-premises consumption or fortified wine at
9 retail for off-premises consumption as provided in 16-4-115.

10 (3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with
11 populations over 3,000.

12 (4) (a) Agency liquor stores must receive commissions payable as follows:

13 (i) (A) a 10% commission for agencies in communities with less than 3,000 in population, unless
14 adjusted pursuant to subsection (6); or

15 (B) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for
16 agencies in communities with 3,000 or more in population; plus

17 (ii) for agency liquor stores operating under a renewed franchise agreement or that have been operated
18 for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar
19 volume of sales in the previous fiscal year, as follows:

20 (A) for agency liquor stores with a volume of sales of \$560,000 or more, 0.875% beginning July 1, 2009;

21 (B) for agency liquor stores with a volume of sales of less than \$560,000, 1.5% beginning July 1, 2009;

22 or

23 (C) for a city with more than one agency liquor store, in lieu of the addition to a commission increase
24 provided in subsection (4)(a)(ii)(A) or (4)(a)(ii)(B), for each agency liquor store in the city, an addition to its
25 commission rate equal to the increase granted the agency liquor store with the lowest commission rate.

26 (b) The department shall by April 1 of each year determine the dollar values of sales volumes in
27 subsections (4)(a)(ii)(A) and (4)(a)(ii)(B) by using an inflation factor based on the change in the cost of liquor to
28 agency liquor stores during the prior calendar year. The department shall establish the method of determining
29 the inflation factor by rule using a liquor-specific base such as the annual change in the cost per case of the 25
30 items with the highest sales volume for a calendar year or another appropriate method of measuring the change

1 in liquor prices.

2 (5) An agency franchise agreement must:

3 (a) be effective for a 10-year period and must be renewed at the existing commission rate for additional
4 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

5 (b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance
6 throughout the term of the agency franchise agreement in an amount established by the department of
7 administration. The insurance policy must:

8 (i) declare the department as an additional insured; and

9 (ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from
10 or in connection with the agent's negligent acts or activities in the execution and performance of the agency
11 franchise agreement.

12 (c) provide that upon termination by the department for cause or upon mutual termination, the agent is
13 liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the
14 department may immediately repossess all liquor inventory, wherever located.

15 (d) specify the reasonable service and space requirements that the agent will provide throughout the
16 term of the agency franchise agreement.

17 (6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be
18 reviewed every 3 years at the request of either party. If the agent concurs, the department may adjust the
19 commission percentage to be paid during the remaining term of the agency franchise agreement or until the next
20 time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement,
21 to a commission percentage that is equal to the average commission percentage being paid agents with similar
22 sales volumes if:

23 (i) the agent's commission percentage is less than the average; and

24 (ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

25 (b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the
26 average commission paid agents with similar sales volume:

27 (i) if the agent demonstrates that:

28 (A) the agent has experienced cost increases that are beyond the agent's control, including but not
29 limited to increases in the federally established minimum wage or escalation in prevailing rent; and

30 (B) the average commission percentage is insufficient to yield net income commensurate with net income

1 experienced before the cost increases occurred; and

2 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified
3 in the agent's franchise agreement that will eliminate the impact of cost increases.

4 (7) The liability insurance requirement may be reviewed every 3 years at the request of either the agent
5 or the department. If the agent concurs, the department may adjust the requirements to be effective during the
6 remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks
7 associated with the agent's negligent acts or activities in the execution and performance of the agency franchise
8 agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the
9 department of administration.

10 (8) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily
11 performed the requirements of the agency franchise agreement because the agent:

12 (i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons
13 who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount
14 provided for in 16-2-201 to persons who hold liquor licenses;

15 (ii) fails to maintain sufficient liability insurance;

16 (iii) has not maintained a quantity and variety of product available for sale commensurate with demand,
17 delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase
18 special orders;

19 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated
20 the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making
21 purchases of liquor; or

22 (v) fails to comply with the express terms of the agency franchise agreement.

23 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise
24 agreement for cause and specify the unmet requirements. The agent may contest the termination and request
25 a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its
26 termination order until after a final decision has been made pursuant to the Montana Administrative Procedure
27 Act.

28 (c) In the case of failure to make timely payments to the department for liquor purchased, the department
29 may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the
30 possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination

1 and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall
2 remain closed until a final decision has been reached following a hearing held pursuant to the Montana
3 Administrative Procedure Act.

4 (9) An agency franchise agreement may be terminated upon mutual agreement by the agent and the
5 department.

6 (10) An agent may assign an agency franchise agreement to a person who, upon approval of the
7 department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities
8 of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the
9 department of an intent to assign the agency franchise agreement 60 days before the intended effective date of
10 the assignment. The department may not unreasonably withhold approval of an assignment request.

11 (11) A person or entity may not hold an ownership interest in more than one agency liquor store.

12 (12) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly
13 service level of at least 97%."

14

15 **Section 5.** Section 16-2-103, MCA, is amended to read:

16 **"16-2-103. Duplicate invoices of sales required.** (1) An agency liquor store shall, upon each sale of
17 liquor, ~~or~~ table wine, or fortified wine to any licensee, issue a duplicate invoice of the liquor, ~~or~~ table wine, or
18 fortified wine purchased, as provided by the department, a copy of which must be delivered to the licensee and
19 one copy retained at the store.

20 (2) The invoice must show the date of purchase, the name of the employee making the sale, the quantity
21 of each kind of liquor, ~~or~~ table wine, or fortified wine purchased, the price paid for the liquor, ~~or~~ table wine, or
22 fortified wine, the name of the licensee, and the number of the license, with any other information that may be
23 required by the department.

24 (3) The licensee shall keep and retain the duplicate invoice of all purchases made from an agency liquor
25 store, which must at all times be subject to inspection by the duly authorized officers, agents, and employees of
26 the department."

27

28 **Section 6.** Section 16-2-106, MCA, is amended to read:

29 **"16-2-106. Sales by agent.** A liquor store agent may sell to any person any liquor, ~~and~~ table wine, or
30 fortified wine that the person is entitled to purchase in conformity with the provisions of this code and the rules

1 implementing this code. An agent may, under the terms and conditions that the agent establishes, deliver liquor,
2 and table wine, or fortified wine purchased from the agent's agency liquor store."

3

4 **Section 7.** Section 16-2-203, MCA, is amended to read:

5 **"16-2-203. Sales to licensees.** Agency liquor stores may sell to licensees licensed under this code all
6 kinds of liquor and table wine at the posted price. An agency liquor store may sell fortified wine at the posted price
7 to a retail licensee only as provided in 16-4-115. All sales must be made on a cash basis."

8

9 **Section 8.** Section 16-2-301, MCA, is amended to read:

10 **"16-2-301. Retail selling price on table wine -- tax on certain table wine.** (1) The retail selling price
11 at which table wine or fortified wine is sold at an agency liquor store is as determined by the agent.

12 (2) In addition to the tax on wine assessed under 16-1-411, there is a tax of 1 cent a liter on table wine
13 or fortified wine sold by a table wine distributor to an agent as described in subsection (1). This additional tax
14 must be paid to the department by the distributor in the same manner as the tax under 16-1-411 is paid. The
15 department shall deposit the tax paid under this section in the general fund.

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

17

18 **Section 9.** Section 16-3-106, MCA, is amended to read:

19 **"16-3-106. Conveyance of liquors, table wines, and beer -- opening alcoholic beverages during**
20 **transit forbidden.** (1) It is lawful to carry or convey liquor, ~~or~~ table wine, or fortified wine to any agency liquor
21 store and to and from the state liquor warehouse or any depot established by the department for the purposes
22 of this code, and when permitted to do so by this code and the rules promulgated under this code, it is lawful for
23 any common carrier or other person to carry or convey liquor, ~~or~~ table wine, or fortified wine sold by a vendor from
24 an agency liquor store or to carry or convey beer, when lawfully sold by a brewer, from the premises where the
25 beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which the
26 liquor, table wine, fortified wine, or beer may be lawfully delivered under this code and the rules promulgated
27 under this code.

28 (2) A common carrier or any other person may not open, break, or allow to be opened or broken any
29 package or vessel containing an alcoholic beverage or drink or use or allow to be drunk or used any alcoholic
30 beverage while being carried or conveyed."

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30

Section 10. Section 16-3-218, MCA, is amended to read:

"16-3-218. "Distribute" defined. As used in 16-3-219, 16-3-220, 16-4-103, and 16-4-108, "distribute" means to deliver beer, ~~or table wine,~~ or fortified wine to a retailer's premises licensed to sell beer, ~~or table wine,~~ or fortified wine."

Section 11. Section 16-3-301, MCA, is amended to read:

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

(b) A person holding a retail license for off-premises consumption of beer, table wine, or both under 16-4-115 may purchase fortified wine from an agency liquor store or a table wine distributor but only if 50% or more of the licensee's revenue is from the sale of table wine.

(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, winery, or wholesaler licensed or registered under this code.

(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.

(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 not be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.

(6) 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.

(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

1 a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

2 (a) the purchaser falsely represented and supported with documentary evidence that an ordinary and
3 prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

4 (b) the appearance of the purchaser was such that an ordinary and prudent person would believe the
5 purchaser to be of legal age to purchase alcoholic beverages; and

6 (c) the sale was made in good faith and in reasonable reliance upon the representation and appearance
7 of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments
8 for contingent termination of certain text.)"

9

10 **Section 12.** Section 16-3-402, MCA, is amended to read:

11 **"16-3-402. Importation of wine -- records.** (1) Except as provided in 16-3-411 and 16-4-901, all table
12 wine or fortified wine manufactured outside of Montana and shipped into Montana must be consigned to and
13 shipped to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse
14 in Montana or subwarehouse in Montana. The distributor shall distribute the table wine or fortified wine from the
15 warehouse or subwarehouse.

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

19 (3) Table wine or fortified wine that has been shipped into Montana in violation of this code must be
20 seized by any peace officer or representative of the department and may be confiscated in the manner as
21 provided for the confiscation of intoxicating liquor."

22

23 **Section 13.** Section 16-3-403, MCA, is amended to read:

24 **"16-3-403. To whom table wine distributor may sell.** (1) A table wine distributor may sell and deliver
25 table wine or fortified wine purchased or acquired by the distributor to:

26 (a) another table wine distributor, retailer, or common carrier that holds a license issued by the
27 department of revenue; and

28 (b) an agency liquor store.

29 (2) It is unlawful for any table wine distributor to sell, deliver, or give away any table wine or fortified wine
30 to be consumed on the distributor's premises or to give, sell, deliver, or distribute any table wine or fortified wine

1 purchased or acquired by the distributor to the public."
 2

3 **Section 14.** Section 16-3-404, MCA, is amended to read:

4 **"16-3-404. Monthly report of table wine distributor and retailer.** (1) Each licensed table wine
 5 distributor shall, on or before the 15th day of each month, make an exact return to the department of revenue
 6 reporting the amount of table wine or fortified wine purchased or acquired by the distributor during the previous
 7 month, the amount of table wine or fortified wine sold and delivered by the distributor during the previous month,
 8 and the amount of inventory on hand in the manner and form prescribed by the department. The department has
 9 the right at any time to make an examination of the table wine distributor's books and premises and otherwise
 10 check the accuracy of the return or check the alcoholic content of table wine or fortified wine that the distributor
 11 may have on hand.

12 (2) Each wine retailer licensed to do business in this state shall, on or before the 15th day of each month,
 13 in the manner and form prescribed by the department, make a return to the department reporting the amount of
 14 table wine or fortified wine purchased directly from any out-of-state winery in the previous month."
 15

16 **Section 15.** Section 16-3-405, MCA, is amended to read:

17 **"16-3-405. Carriers' reports of table wine transported.** Every railroad, motor carrier, and airline
 18 transporting table wine or fortified wine manufactured out of this state from points outside this state and delivering
 19 to points within this state shall, if requested by the department, on or before the ~~fifteenth~~ 15th day of each month,
 20 make an exact return to the department of revenue of the amount of ~~such~~ table wine ~~so~~ or fortified wine
 21 transported and delivered by ~~such~~ the railroad, motor carrier, or airline during the previous month; and shall state
 22 in ~~such return~~ the report to the department of revenue the name and address of the consignor and consignee,
 23 the date of delivery, and the amount delivered. A carrier shall retain for 30 months all pertinent and relevant
 24 records necessary for the preparation of this report and any other information the department may require."
 25

26 **Section 16.** Section 16-3-406, MCA, is amended to read:

27 **"16-3-406. Financial interest in retailers prohibited.** (1) A winery or table wine distributor may not
 28 advance or loan money to, or furnish money for, or pay for or on behalf of any retailer any license or tax that may
 29 be required to be paid by any retailer, and a winery or table wine distributor may not be financially interested,
 30 either directly or indirectly, in the conduct or operation of the business of a retailer.

- 1 (2) A winery or table wine distributor is considered to have a financial interest if:
- 2 (a) the winery or table wine distributor owns or holds any interest in or a lien or mortgage against the
- 3 retailer or the retailer's premises; or
- 4 (b) the winery or table wine distributor is under any contract with a retailer concerning future purchases
- 5 or the sale of merchandise by one from or to the other; or
- 6 (c) the table wine distributor extends more than 7 days' credit to a retail licensee or furnishes to any retail
- 7 licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine or fortified wine;
- 8 or
- 9 (d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine
- 10 distributor."

- 11
- 12 **Section 17.** Section 16-3-411, MCA, is amended to read:
- 13 **"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:
- 14 (a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;
- 15 (b) sell wine it produces at wholesale to wine distributors;
- 16 (c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the
- 17 premises;
- 18 (d) provide, without charge, wine it produces for consumption at the winery;
- 19 (e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it
- 20 produces;
- 21 (f) obtain a special event permit under 16-4-301;
- 22 (g) perform those operations and cellar treatments that are permitted for bonded winery premises under
- 23 applicable regulations of the United States department of the treasury; or
- 24 (h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the
- 25 license.
- 26 (2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly
- 27 to licensed retailers if the winery:
- 28 (i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered
- 29 pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;
- 30 (ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer; or

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

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

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

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

7 (b) A winery making sales to retail licensees under the provisions of this subsection (2) is considered
8 a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.

9 (c) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and
10 retailers, the shipment must be:

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

13 (ii) delivered to the premises of a licensed table wine distributor or licensed retailer who is in good
14 standing; and

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

16 (d) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine
17 within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, on
18 or before the 15th day of each month, in the manner and form prescribed by the department, make a return
19 reporting the amount of wine that it shipped in the state during the preceding month, names and addresses of
20 consignees or retailers, and other information that the department may determine to be necessary to ensure that
21 distribution of table wines within this state conforms to the requirements of this code.

22 (3) As used in this section, the term "wine" includes fortified wine.

23

24 **Section 18.** Section 16-3-415, MCA, is amended to read:

25 **"16-3-415. Definitions.** As used in this part, unless the context requires otherwise, the following
26 definitions apply:

27 (1) "Agreement of distributorship" means a contract, agreement, commercial relationship, license, or
28 other arrangement for a definite or an indefinite period of time between a supplier and a table wine distributor that
29 provides for the sale of table wine or fortified wine by the supplier to the table wine distributor.

30 (2) "Good cause" means failure by a table wine distributor to comply with reasonable business

1 requirements imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship
2 if the requirements are imposed on other similarly situated distributors either by the terms of their agreements
3 or in the manner of their enforcement by the supplier.

4 (3) "Person" means a natural person, corporation, partnership, trust, agency, or other entity and includes
5 individual officers, directors, or other persons in active control of the activities of the entity.

6 (4) "Supplier" means a winery or an importer of table wines or fortified wine that enters into or is a party
7 to an agreement of distributorship with a table wine distributor."

8

9 **Section 19.** Section 16-3-416, MCA, is amended to read:

10 **"16-3-416. Table wine distributor provisions.** (1) A supplier or table wine distributor must have a
11 written agreement of distributorship that provides for purchase of the supplier's products from the supplier by the
12 table wine distributor.

13 (2) An agreement of distributorship must provide that:

14 (a) a supplier shall notify a table wine distributor in writing at least 60 days prior to termination of an
15 agreement of distributorship unless a termination without notice is permitted as provided in 16-3-417. The written
16 notice must state the reasons for termination. Notice of termination is void if within 60 days of the notice, the table
17 wine distributor rectifies the deficiency stated as the reason for termination and if the deficiency was not stated
18 as reason for termination in a notice previously voided under the provisions of this subsection.

19 (b) a supplier may not unreasonably withhold or delay approval of a sale or transfer of the ownership,
20 management, or control of a table wine distributorship. However, a table wine distributor shall give a supplier no
21 less than 60 days' prior written notice of any material change in ownership, management, or control.

22 (3) Within 60 days after entering into an agreement of distributorship, the supplier shall advise the
23 department of the agreement by filing a copy of the agreement that must include the sales area or areas
24 designated for the table wine distributor.

25 (4) If a supplier terminates an agreement of distributorship under the provisions of subsection (2)(a), the
26 table wine distributor subject to the termination is entitled to compensation for the laid-in cost of inventory. In the
27 event of any termination of the agreement by the supplier other than termination for good cause or for any reason
28 set forth in 16-3-417(3), the distributor is entitled to compensation for the laid-in cost of inventory and to liquidated
29 damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the
30 supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated

1 damages must be determined by an arbitrator appointed under subsection (5) of this section.

2 (5) If undertaken in good faith by a supplier, a supplier may terminate an agreement of distributorship
3 for a legitimate business reason not within the definition of good cause if an arbitrator appointed by the
4 department finds, after hearing the supplier and the table wine distributor, that the termination is in the best
5 interest of the table wine or fortified wine brand concerned. Arbitration under this section must be conducted
6 under the provisions of Title 27, chapter 5.

7 (6) All agreements of distributorship are interpreted and governed by the laws of Montana.

8 (7) In any dispute resulting in litigation between a supplier and a distributor, the litigation must occur in
9 a Montana court, federal or state, unless that forum would create an unreasonable burden on any party, as
10 determined by the court in which the litigation is commenced.

11 (8) Agreements between a supplier and a distributor must recognize the constitutional right to a jury trial
12 as set forth in Article II, section 26, of the Montana constitution.

13 (9) A provision in an agreement of distributorship that is inconsistent with the requirements of this section
14 is void."
15

16 **Section 20.** Section 16-3-418, MCA, is amended to read:

17 **"16-3-418. Dual appointments -- equal support -- alternate supplier -- dock sales.** (1) (a) A supplier
18 may appoint one or more table wine distributors to distribute its table wines or fortified wines in a specified
19 territory. If the supplier appoints two or more table wine distributors to sell its table wines or fortified wines in the
20 same or overlapping territories, the supplier shall offer the same prices, delivery, terms, and promotional support
21 to each table wine distributor.

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

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

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

29 (b) The holder of a license that permits on-premises consumption of alcoholic beverages under
30 16-4-401(2) may, upon presentation of the license or a photocopy of the license, personally or through an

1 employee, obtain from a winery, as provided in 16-3-411(1)(h), a quantity of table wine or fortified wine that the
2 licensee may agree to buy and that the winery may agree to sell."

3

4 **Section 21.** Section 16-3-419, MCA, is amended to read:

5 **"16-3-419. Suppliers' prohibitions.** A supplier may not:

6 (1) coerce, induce, or attempt to coerce or induce a table wine distributor to engage in an illegal act or
7 course of conduct;

8 (2) require a table wine distributor to accept delivery of a product or other item or commodity that was
9 not ordered by the wine distributor;

10 (3) fix or maintain the price at which a distributor shall resell table wine or fortified wine."

11

12 **Section 22.** Section 16-4-107, MCA, is amended to read:

13 **"16-4-107. Winery license -- winery and importer registration.** (1) (a) Wine, other than for personal
14 consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be
15 manufactured or directly distributed to retailers within the state only by a licensed winery. An application for a
16 winery license must be accompanied by a fee of \$400, which constitutes the first annual license fee, and a
17 licensee shall in each succeeding year pay an annual fee as provided in 16-4-501. Winery licensees located in
18 Montana must hold the appropriate basic permit required by the United States department of the treasury and
19 be qualified for a license in accordance with the provisions of 16-4-401(4). Winery licensees located in another
20 state must hold the appropriate basic permit required by the United States department of the treasury and the
21 appropriate license to manufacture wine from the state in which the winery is located and shall provide all other
22 information required by the department.

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

27 (2) A winery that is not located in the state or an importer of table wines or fortified wines that holds the
28 appropriate license from the United States department of the treasury and that desires to distribute its table wines
29 or fortified wines within this state through licensed table wine distributors only shall apply to the department of
30 revenue for registration on forms to be prepared and furnished by the department. Each winery shall furnish the

1 department with a copy of each container label currently used by the winery on its products imported into
2 Montana. The department shall require the winery or importer to agree to furnish monthly and other reports
3 concerning quantities and prices of table wine or fortified wine that it ships into the state, names and addresses
4 of consignees, and any other information that the department may determine to be necessary to ensure that
5 importation and distribution of table wines or fortified wines within this state conform to the requirements of this
6 code. A winery or importer of table wines or fortified wines may not ship table wines or fortified wines into this
7 state until the registration is granted by the department. The registration may be canceled or suspended by the
8 department upon a finding after notice and hearing that the registrant has not complied with the terms of its
9 registration."

10

11 **Section 23.** Section 16-4-108, MCA, is amended to read:

12 **"16-4-108. Table wine distributor's license.** (1) (a) Any person desiring to sell and distribute table wine
13 at wholesale to retailers under the provisions of this code shall apply to the department of revenue for a license
14 to do so and shall submit with the application the annual license fee of \$400. The department may issue licenses
15 to qualified applicants in accordance with the provisions of this code.

16 (b) Any person desiring to sell and distribute fortified wine at wholesale to retailers under the provisions
17 of this code shall apply to the department of revenue for a license to do so and shall submit with the application
18 an initial license fee of \$400 in addition to the license fee provided for in subsection (1)(a). After paying a first-time
19 fee for the sale or distribution of fortified wine, the person is required to pay only the annual license fee provided
20 for in subsection (1)(a).

21 (2) All table wine distributors' licenses issued in any year expire on June 30 of that year at midnight.

22 (3) A license fee may not be imposed upon table wine distributors by a municipality or any other political
23 subdivision of the state.

24 (4) The license must be at all times prominently displayed in the place of business of the table wine
25 distributor.

26 (5) An applicant must have a fixed place of business, sufficient capital, the facilities, storehouse, and
27 receiving house or warehouse for the receiving, storage, handling, and moving of table wine or fortified wine in
28 large and jobbing quantities for distribution and sale in original packages to other licensed table wine distributors
29 or licensed retailers. Each table wine distributor is entitled to only one wholesale table wine license, which must
30 be issued for the distributor's principal place of business in Montana. A duplicate license may be issued for one

1 subwarehouse only in Montana for each table wine distributor's license. The duplicate license must at all times
 2 be prominently displayed at the subwarehouse. A table wine distributor may also hold a license to sell beer at
 3 wholesale but may not hold or have any interest, direct or indirect, in any license to sell beer, table wine, fortified
 4 wine, or liquor at retail.

5 (6) A table wine distributor that distributes fortified wine may not sell fortified wine below the posted price.

6 ~~(7)(7)~~ If the applicant is a foreign corporation, the corporation must be authorized to do business in
 7 Montana.

8 ~~(7)(8)~~ As used in subsection (1), "distribute" has the meaning provided in 16-3-218."
 9

10 **Section 24.** Section 16-4-115, MCA, is amended to read:

11 **"16-4-115. Beer and wine licenses for off-premises consumption -- sales of fortified wine.** (1) A
 12 retail license to sell beer, ~~or~~ table wine, or ~~both~~, fortified wine in the original packages for off-premises
 13 consumption may be issued only to a person, firm, or corporation that is approved by the department as a person,
 14 firm, or corporation qualified to sell beer, ~~or~~ table wine, or ~~both~~, fortified wine and whose premises proposed for
 15 licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of
 16 licenses that the department may issue is not limited by the provisions of 16-4-105 but must be determined by
 17 the department in the exercise of its sound discretion, and the department may in the exercise of its sound
 18 discretion grant or deny an application for any license or suspend or revoke any license for cause.

19 (2) Upon receipt of a completed application for a license under this section, accompanied by the
 20 necessary license fee as provided in 16-4-501, the department shall request that the department of justice make
 21 a background investigation of all matters relating to the application.

22 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
 23 subsection (1), the department shall determine whether:

24 (a) the applicant is qualified to receive a license;

25 (b) the applicant's premises are suitable for the carrying on of the business; and

26 (c) the requirements of this code and the rules promulgated by the department are met and complied
 27 with.

28 (4) License applications submitted under this section are not subject to the provisions of 16-4-203 and
 29 16-4-207.

30 (5) If the premises proposed for licensing under this section are a new or remodeled structure, the

1 department may issue a conditional license prior to completion of the premises upon reasonable evidence that
2 the premises will be suitable for the carrying on of business as a bona fide grocery store or a drugstore licensed
3 as a pharmacy.

4 (6) The holder of a license for the sale of wine for off-premises consumption may sell fortified wine only
5 if 50% or more of the licensee's revenue is from the sale of table wine."

6 - END -