

1 HOUSE BILL NO. 616

2 INTRODUCED BY R. HAGAN

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE PERMITTING AND LICENSING LIMITATIONS FOR
5 BREWERS AND BREWERIES AND HOLDERS OF A RETAIL BEER LICENSE OR AN ALL-BEVERAGES
6 LICENSE; REVISING THE RETAIL SALE OF BEER BY A BREWER OR BREWERY; ALLOWING HOLDERS
7 OF A RETAIL BEER LICENSE OR AN ALL-BEVERAGES LICENSE TO ALSO HOLD A BREWER'S LICENSE;
8 ALLOWING HOLDERS OF A BREWER'S LICENSE TO ALSO HOLD A RETAIL BEER LICENSE OR AN
9 ALL-BEVERAGES LICENSE; ALLOWING EXISTING SMALL BREWERIES WITH SAMPLE ROOMS TO
10 PURCHASE RESTRICTED BEER RETAILER'S LICENSES FROM THE DEPARTMENT OF REVENUE DURING
11 A 2-YEAR PERIOD; ESTABLISHING A LICENSE ISSUANCE FEE FOR THE RESTRICTED BEER RETAILER'S
12 LICENSE; PROVIDING THAT SAMPLES OF BEER PROVIDED BY A SMALL BREWERY MAY NOT EXCEED
13 A PERCENTAGE OF THE AMOUNT OF BEER BREWED AND FERMENTED ANNUALLY ON THE PREMISES
14 WHERE THE SAMPLES ARE PROVIDED; PROVIDING A TRANSITION SECTION FOR EXISTING SMALL
15 BREWERIES; EXPANDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-1-106, 16-3-213, 16-3-214,
16 16-3-241, 16-3-242, 16-3-301, 16-3-406, 16-4-104, AND 16-4-401, MCA; AND PROVIDING AN IMMEDIATE
17 EFFECTIVE DATE AND A TERMINATION DATE."

18
19 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

20
21 **NEW SECTION. Section 1. Beer sales by brewers -- additional license allowed to expand scope**
22 **of operation.** (1) A licensed brewer or brewery that manufactures less than 60,000 barrels of beer annually may
23 purchase or hold a license issued pursuant to 16-4-104 or 16-4-201.

24 (2) A person that holds a license issued pursuant to 16-4-104 or 16-4-201 may become a licensed
25 brewer or brewery for the purpose of manufacturing less than 60,000 barrels of beer annually.

26 (3) A person that is licensed as a brewer or brewery that also holds a license issued pursuant to
27 16-4-104 or 16-4-201:

28 (a) shall maintain a business for both the brewery license and the license issued pursuant to 16-4-104
29 or 16-4-201 on the same premises;

30 (b) is subject to all applicable fees provided for in 16-4-501 and 16-4-503;

- 1 (c) may not purchase or hold licenses issued pursuant to both 16-4-104 and 16-4-201;
- 2 (d) is not subject to a limitation on the amount of beer provided by the brewery operation to the retail
3 operation;
- 4 (e) is not subject to the limitations of 16-3-241, 16-3-242, 16-3-301, or 16-3-406 when the unlawful or
5 prohibited acts are conducted between a brewer and a retail licensee that are the same person;
- 6 (f) is not subject to the small brewery sample room time and ounce limitations of 16-3-213(4); and
- 7 (g) is not subject to the small brewery sample room annual consumption limitations of 16-3-213(5).

8

9 **Section 2.** Section 16-1-106, MCA, is amended to read:

10 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

11 (1) "Agency franchise agreement" means an agreement between the department and a person appointed
12 to sell liquor and table wine as a commission merchant rather than as an employee.

13 (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance
14 with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

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

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

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

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

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

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

23 (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from
24 malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

25 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

26 (6) "Beer importer" means a person other than a brewer who imports malt beverages.

27 (7) "Brewer" means a person who produces malt beverages.

28 (8) "Caffeinated or stimulant-enhanced malt beverage" means:

29 (a) a beverage:

30 (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has

- 1 been removed and replaced with distilled ethyl alcohol;
- 2 (ii) that contains at least 0.5% of alcohol by volume;
- 3 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 4 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 5 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
- 6 taurine; or
- 7 (b) a beverage:
- 8 (i) that contains at least 0.5% of alcohol by volume;
- 9 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 10 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 11 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 12 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
- 13 taurine;
- 14 (v) for which the producer is required to file a formula for approval with the United States alcohol and
- 15 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 16 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 17 (9) "Community" means:
- 18 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 19 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
- 20 community for census purposes; and
- 21 (c) in a consolidated local government, the area of the consolidated local government not otherwise
- 22 incorporated.
- 23 (10) "Department" means the department of revenue, unless otherwise specified, and includes the
- 24 department of justice with respect to receiving and processing, but not granting or denying, an application under
- 25 a contract entered into under 16-1-302.
- 26 (11) "Growler" means any refillable, resealable container complying with federal law.
- 27 (12) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices
- 28 of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of alcohol
- 29 by volume, including but not limited to flavored, sparkling, or carbonated cider.
- 30 (13) "Immediate family" means a spouse, dependent children, or dependent parents.

1 (14) "Import" means to transfer beer or table wine from outside the state of Montana into the state of
2 Montana.

3 (15) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a caffeinated
4 or stimulant-enhanced malt beverage.

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

10 (17) "Package" means a container or receptacle used for holding an alcoholic beverage.

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

15 (19) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains 50%
16 of alcohol by volume.

17 (20) "Public place" means a place, building, or conveyance to which the public has or may be permitted
18 to have access and any place of public resort.

19 (21) "Retail price" means the price established by an agent for the sale of liquor to persons who do not
20 hold liquor licenses. The retail price may not be less than the department's posted price.

21 (22) "Rules" means rules adopted by the department or the department of justice pursuant to this code.

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

24 (24) "Small brewery" has the meaning provided in 16-3-213.

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

27 ~~(25)~~(26) "State liquor warehouse" means a building owned or under control of the department for the
28 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

29 ~~(26)~~(27) "Storage depot" means a building or structure owned or operated by a brewer at any point in the
30 state of Montana off and away from the premises of a brewery, which building or structure is equipped with

1 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
2 permitted by this code.

3 ~~(27)~~(28) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler
4 or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine
5 distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer
6 or table wine as permitted by this code.

7 ~~(28)~~(29) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
8 cider.

9 ~~(29)~~(30) "Table wine distributor" means a person importing into or purchasing in Montana table wine for
10 sale or resale to retailers licensed in Montana.

11 ~~(30)~~(31) "Warehouse" means a building or structure located in Montana that is owned or operated by a
12 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine
13 as permitted by this code.

14 ~~(31)~~(32) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation
15 of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur
16 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of
17 alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in
18 accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic
19 beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in
20 accordance with federal regulations are also wine."

21

22 **Section 3.** Section 16-3-213, MCA, is amended to read:

23 **"16-3-213. Brewers Purpose -- brewers or beer importers not to retail beer -- small brewery**
24 **exceptions -- limitations.** (1) Except as provided ~~for small breweries in subsection (2) in this section,~~ it is
25 unlawful for any brewer or breweries or any beer importer to have or own any permit to sell or retail beer at any
26 place or premises. ~~It is the intention of~~ The purpose of this section is to:

27 (a) prohibit brewers and beer importers from engaging in the retail sale of beer;

28 (b) strictly limit the retail sale of beer by a small brewery that does not hold a beer retailer's license or
29 an all-beverage license pursuant to [section 1];

30 (c) provide a mechanism for a brewery to expand marketing of craft beer;

1 (d) promote distribution opportunities for retailers; and
 2 (e) provide an opportunity for an individual that holds a brewery license to hold a beer retailer's license
 3 or an all-beverage license when sample room consumption increases beyond 40% of total production.

4 (2) This section does not prohibit breweries from selling and delivering beer manufactured by them, in
 5 original packages, at either wholesale or retail.

6 ~~————(2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide~~
 7 ~~production of not less than 100 barrels or more than 10,000 barrels.~~

8 ~~————(b)(3) A small brewery may, at one location for each brewery license, provide samples of beer that were~~
 9 ~~was brewed and fermented on the premises in a sample room located on the licensed premises.~~

10 (4) The samples provided pursuant to this section may be provided with or without charge between the
 11 hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each individual
 12 customer during a business day. A small brewery must be closed for on-premises consumption between 8 p.m.
 13 and 10 a.m.

14 (5) (a) After conducting business for a period of 2 years, the total annual samples of beer provided with
 15 or without charge for consumption in a sample room may not exceed the applicable percentage of the total
 16 amount of beer brewed and fermented annually on the premises where the samples are provided. The applicable
 17 percentage of beer that may be provided with or without charge for consumption in a sample room decreases
 18 as beer production increases.

19 (b) Beer that is sold on the premises for consumption on or off the premises is counted as beer provided
 20 in the sample room.

21 (c) The calculations in subsection (5)(d) are based on consumption and production during each prior
 22 calendar year. A small brewer is allowed to exceed the limits provided in this section during the course of the
 23 calendar year if the small brewer is in compliance with the applicable percentages in subsection (5)(d) at the close
 24 of the calendar year.

25 (d) The applicable percentages are as follows:

26 (i) for the first 300 barrels a year, the applicable percentage is 100%; and

27 (ii) for a brewery that produces more than 300 barrels a year, the applicable percentage is 40% for all
 28 beer produced in excess of the 300 barrel exemption under subsection (5)(d)(i).

29 (6) (a) For the purposes of this section, "small brewery" means a brewery that:

30 (i) has an annual nationwide production of not less than 100 barrels or more than 10,000 barrels; and

1 (ii) satisfies the consumption to production ratio limitations in subsection (5).

2 (b) A brewery is not a small brewery if it has or owns a beer retailer's license or an all-beverage license
 3 pursuant to [section 1]."

4

5 **Section 4.** Section 16-3-214, MCA, is amended to read:

6 **"16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and
 7 restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon
 8 payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the
 9 department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of
 10 this code and rules prescribed by the department, to:

11 (a) sell and deliver beer from its storage depot or brewery to:

12 (i) a wholesaler;

13 (ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver
 14 the beer and if:

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

17 (B) the total amount of beer sold or delivered directly to all retailers, other than the brewer itself if the
 18 brewer is operating with a retail license pursuant to [section 1], does not exceed 10,000 barrels a year; or

19 (iii) the public;

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

22 (c) provide its own products that it is licensed to provide pursuant to [section 1]; or

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

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

26 (3) A brewery may import or purchase, upon terms and conditions the department may require,
 27 necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing purposes.

28 (4) ~~An~~ Except as provided in [section 1], an additional license fee may not be imposed on a brewery
 29 providing its own products on its licensed premises for consumption on the premises.

30 (5) This section does not prohibit a licensed brewer from shipping and selling beer directly to a

1 wholesaler in this state under the provisions of 16-3-230."

2

3 **Section 5.** Section 16-3-241, MCA, is amended to read:

4 **"16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer**
5 **importers, and wholesalers unlawful -- exceptions.** (1) (a) Except as provided in subsection (3), it is unlawful
6 for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures,
7 equipment, or any other advertising matter or any other property to a retail licensee, used or to be used in the
8 dispensation of beer in and about the interior of the place of business of the licensed retailer, or to furnish, give,
9 or pay for any repairs, improvements, or painting on or within the premises.

10 (b) It is lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

11 (i) bottle openers, can openers, trays, tap handles, menus, apparel, coasters, glassware, cups, napkins,
12 or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any one retail
13 establishment for display use within the interior of the retail establishment;

14 (ii) not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each brand
15 of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place of
16 business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name,
17 trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture.
18 Any beer advertised must be available for sale on the retailer's premises at the time the displays are used unless
19 the displays are the property of the retailer or, if supplied by a brewer, beer importer, or wholesaler, a display has
20 been in the retailer's possession for more than 9 months.

21 (iii) permanent or temporary advertising matter of a decorative nature, excluding items described in
22 subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and

23 (iv) maintenance or repair services on draft beer equipment to keep it sanitary and in good working
24 condition.

25 (2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and
26 dispensing of beer to a special permittee or a retailer for use:

27 (a) in catering an event that is off the permittee's or retailer's regular premises; or

28 (b) up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours.

29 (3) The unlawful acts described in subsection (1) are not unlawful if the acts are conducted between a
30 brewer and a retail licensee that are the same person."

1

2 **Section 6.** Section 16-3-242, MCA, is amended to read:

3 "**16-3-242. Financial interest in retailers prohibited -- exceptions.** (1) A Except as provided in

4 subsection (3), a brewer, beer importer, or wholesaler may not;

5 (a) advance, or loan, or furnish money to ~~or furnish money for~~ or pay for or on behalf of any retailer any

6 license or tax that may be required to be paid ~~for any by the retailer. A brewer, beer importer, or wholesaler may~~

7 ~~not; or~~

8 (b) be financially interested, either directly or indirectly, in the conduct or operation of the business of a

9 retailer.

10 (2) A brewer, beer importer, or wholesaler is considered to have a financial interest within the meaning

11 of this section if:

12 ~~(1)~~(a) the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against

13 the retailer or the retailer's premises;

14 ~~(2)~~(b) the brewer, beer importer, or wholesaler is under any contract with a retailer concerning future

15 purchases or the sale of merchandise by one from or to the other; or

16 ~~(3)~~(c) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler.

17 (3) The prohibited acts described in subsection (1) are not prohibited if the acts are conducted between

18 a brewer and a retail licensee that are the same person."

19

20 **Section 7.** Section 16-3-301, MCA, is amended to read:

21 "**16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age --**

22 **exceptions.** (1) Except as provided in subsection (8), it is unlawful for a licensed retailer to purchase or acquire

23 beer or wine from anyone except a brewery, winery, or wholesaler licensed under the provisions of this code.

24 (2) Except as provided in subsection (8), it is unlawful for a licensed retailer to transport beer or wine

25 from one licensed premises or other facility to any other licensed premises owned by the licensee.

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

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

28 (4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away

29 or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

30 (a) any person under 21 years of age; or

1 (b) any person actually, apparently, or obviously intoxicated.

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

7 (6) All licensees ~~must~~ shall display in a prominent place in their premises a placard, issued by the
8 department, stating fully the consequences for violations of the provisions of this code by persons under 21 years
9 of age.

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

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

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

17 (c) the sale was made in good faith and in reasonable reliance upon the representation and appearance
18 of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

19 (8) The unlawful acts described in subsections (1) and (2) are not unlawful if the acts are conducted
20 between a brewer and a retail licensee that are the same person. (See compiler's comments for contingent
21 termination of certain text.)"

22

23 **Section 8.** Section 16-3-406, MCA, is amended to read:

24 "**16-3-406. Financial interest in retailers prohibited -- exceptions.** (1) ~~A~~ Except as provided in
25 subsection (3), a winery or table wine distributor may not:

26 (a) advance, or loan, or furnish money to, or furnish money for, or pay for or on behalf of any retailer any
27 license or tax that may be required to be paid by any the retailer, and a winery or table wine distributor may not,
28 or

29 (b) be financially interested, either directly or indirectly, in the conduct or operation of the business of a
30 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

8 (d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine
9 distributor.

10 (3) The prohibited acts described in subsection (1) are not prohibited if the acts are conducted between
11 a brewer and a retail licensee that are the same person."

12

13 **Section 9.** Section 16-4-104, MCA, is amended to read:

14 **"16-4-104. Beer retailer's license -- application and issuance -- check of alcoholic content by**
15 **department -- exceptions.** (1) Any person desiring to possess and have beer for the purpose of retail sale under
16 the provisions of this code shall first apply to the department for a permit to do so and submit with the application
17 the license fee.

18 (2) Upon being satisfied, from the application or otherwise, that the applicant is qualified, the department
19 shall issue a license to the person. The license must at all times be prominently displayed in the place of business
20 of the person.

21 (3) If the department finds that the applicant is not qualified, a license may not be granted and the license
22 fee must be returned by the department.

23 (4) The department may, at any time, examine the books of account and the premises of any licensed
24 retailer and otherwise check the retailer's methods of conducting business and the alcoholic content of the beer
25 kept for sale.

26 (5) A person may not sell beer at retail without a valid license issued under this code.

27 (6) A person licensed to sell beer at retail under this section may also be licensed as a brewer.

28 (7) (a) A licensed brewer that operated a small brewery with a sample room on [the effective date of this
29 act] may purchase a restricted beer retailer's license from the department under the provisions of this section.

30 The restricted license:

- 1 (i) may not be sold or transferred for a period of 5 years from the date of purchase;
 2 (ii) may not be used for premises where gambling is conducted;
 3 (iii) may include a wine amendment issued pursuant to 16-4-105(2);
 4 (iv) is not subject to the quota limitations of 16-4-105;
 5 (v) must be purchased from the department within 2 years of [the effective date of this act]; and
 6 (vi) must be purchased from the department by submitting a license issuance fee of \$100,000 in addition
 7 to all other fees and taxes.

8 (b) If the department finds that the applicant for the restricted license is not qualified, a restricted license
 9 may not be granted and the license issuance fee must be returned by the department. The issuance fee provided
 10 for in subsection (7)(a)(vi) must, in accordance with the provisions of 17-2-124, be deposited to the credit of the
 11 general fund."

12

13 **Section 10.** Section 16-4-401, MCA, is amended to read:

14 **"16-4-401. License as privilege -- criteria for decision on application -- exceptions.** (1) A license
 15 under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is
 16 entitled.

17 (2) Except as provided in 16-4-311 and subsection (6) of this section, in the case of a license that permits
 18 on-premises consumption, the department shall find in every case in which it makes an order for the issuance
 19 of a new license or for the approval of the transfer of a license that:

20 (a) if the applicant is an individual:

21 (i) the applicant will not possess an ownership interest in more than one establishment licensed under
 22 this chapter for all-beverages sales;

23 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

24 (iii) except as provided in subsection (9), the applicant or any member of the applicant's immediate family
 25 is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

26 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business
 27 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all
 28 applicable laws of the state and local governments; and

29 (v) the applicant is not under 19 years of age;

30 (b) if the applicant is a publicly traded corporation:

1 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
2 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the
3 applicant shall designate two or more officers or board members, each of whom must meet the requirements for
4 an individual applicant listed in subsection (2)(a).

5 (ii) each individual who has control over the operation of the license meets the requirements for an
6 individual applicant listed in subsection (2)(a);

7 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an
8 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a
9 corporation who owns less than 10% of the outstanding stock in that corporation.

10 (iv) the corporation is authorized to do business in Montana;

11 (c) if the applicant is a privately held corporation:

12 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
13 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the
14 applicant shall designate two or more officers or board members, each of whom must meet the requirements for
15 an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the
16 requirements of subsection (2)(a).

17 (ii) each individual who has control over the operation of the license meets the requirements for an
18 individual applicant listed in subsection (2)(a);

19 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an
20 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a
21 corporation who owns less than 10% of the outstanding stock in that corporation.

22 (iv) the corporation is authorized to do business in Montana;

23 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
24 (2)(a);

25 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
26 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements
27 of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners
28 must meet the requirements of subsection (2)(a).

29 (f) if the applicant is a limited liability company, all managing members and those members whose
30 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If

1 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
2 subsection (2)(a).

3 (3) In the case of a license that permits only off-premises consumption, the department shall find in every
4 case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license
5 that:

6 (a) if the applicant is an individual:

7 (i) the applicant will not possess an ownership interest in more than one establishment licensed under
8 this chapter for all-beverages sales;

9 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

10 (iii) the applicant or any member of the applicant's immediate family is without financing from or any
11 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

12 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
13 the applicant's rights have been restored;

14 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business
15 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all
16 applicable laws of the state and local governments; and

17 (vi) the applicant is not under 19 years of age;

18 (b) if the applicant is a publicly traded corporation:

19 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
20 in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
21 designate two or more officers or board members, each of whom must meet the requirements for an individual
22 applicant listed in subsection (3)(a).

23 (ii) the corporation is authorized to do business in Montana;

24 (c) if the applicant is a privately held corporation:

25 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
26 applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the
27 applicant shall designate two or more officers or board members, each of whom must meet the requirements for
28 an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the
29 requirements of subsection (3)(a).

30 (ii) the corporation is authorized to do business in Montana;

1 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
2 (3)(a);

3 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
4 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements
5 of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners
6 must meet the requirements of subsection (3)(a).

7 (f) if the applicant is a limited liability company, all managing members and those members whose
8 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If
9 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
10 subsection (3)(a).

11 (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling
12 of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of
13 a new license or for the approval of the transfer of a license that:

14 (a) if the applicant is an individual:

15 (i) except as provided in subsection (9), the applicant has no ownership interest in any establishment
16 licensed under this chapter for retail alcoholic beverages sales;

17 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

18 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
19 the applicant's rights have been restored;

20 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business
21 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all
22 applicable laws of the state and local governments;

23 (v) the applicant is not under 19 years of age; and

24 (vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
25 controlled by a manufacturer of an alcoholic beverage;

26 (b) if the applicant is a publicly traded corporation:

27 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
28 in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
29 designate two or more officers or board members, each of whom must meet the requirements for an individual
30 applicant listed in subsection (4)(a).

- 1 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
2 controlled by a manufacturer of an alcoholic beverage; and
- 3 (iii) the corporation is authorized to do business in Montana;
- 4 (c) if the applicant is a privately held corporation:
- 5 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
6 applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the
7 applicant must designate two or more officers or board members, each of whom must meet the requirements for
8 an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the
9 requirements of subsection (4)(a).
- 10 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
11 controlled by a manufacturer of an alcoholic beverage; and
- 12 (iii) the corporation is authorized to do business in Montana;
- 13 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
14 (4)(a);
- 15 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
16 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements
17 of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners
18 must meet the requirements of subsection (4)(a).
- 19 (f) if the applicant is a limited liability company, all managing members and those members whose
20 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If
21 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
22 subsection (4)(a).
- 23 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply
24 separately to each class of stock.
- 25 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to
26 16-4-302.
- 27 (7) An applicant's source of funding must be from a suitable source. A lender or other source of money
28 or credit may be found unsuitable if the source:
- 29 (a) is a person whose prior financial or other activities or criminal record:
- 30 (i) poses a threat to the public interest of the state;

- 1 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or
 2 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business;
 3 or
 4 (b) has been convicted of a felony offense within 5 years of the date of application or is on probation or
 5 parole or under deferred prosecution for committing a felony offense.

6 (8) (a) A person licensed as a brewer may also hold a license issued pursuant to 16-4-104 or 16-4-201
 7 as provided in [section 1].

8 (b) A person that holds a license issued pursuant to 16-4-104 or 16-4-201 may become a licensed
 9 brewer as provided in [section 1].

10 (9) The prohibited acts described in subsections (2)(a)(iii) and (4)(a)(i) are not prohibited if the acts are
 11 conducted between an applicant and a brewer or retail licensee that are the same person."

12
 13 **NEW SECTION. Section 11. Transition -- existing small brewery.** A small brewery with a sample
 14 room that was conducting business on [the effective date of this act]:

15 (1) has 2 years after [the effective date of this act] to comply with the consumption-to-production ratio
 16 limitations in 16-3-213(5); and

17 (2) may apply for a restricted license issued under the provisions of 16-4-104(7) within 2 years of [the
 18 effective date of this act].

19
 20 **NEW SECTION. Section 12. Codification instruction.** [Section 1] is intended to be codified as an
 21 integral part of Title 16, chapter 3, part 2, and the provisions of Title 16, chapter 3, part 2, apply to [section 1].

22
 23 **NEW SECTION. Section 13. Saving clause.** [This act] does not affect rights and duties that matured,
 24 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

25
 26 **NEW SECTION. Section 14. Effective date.** [This act] is effective on passage and approval.

27
 28 **NEW SECTION. Section 15. Termination.** [Section 9(7)] terminates [2 years after the effective date
 29 of this act].

30 - END -