

## 1 SENATE BILL NO. 294

2 INTRODUCED BY ARNTZEN, BERRY, HUNTER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE DEPARTMENT OF REVENUE TO ADJUST  
5 PENALTIES WITHIN PENALTY RANGES BASED ON MITIGATING AND AGGRAVATING CIRCUMSTANCES  
6 ON THE PART OF A LICENSEE VIOLATING A PROVISION OF STATE ALCOHOL LAWS; AND AMENDING  
7 SECTION 16-4-406, MCA."

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

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11 **Section 1.** Section 16-4-406, MCA, is amended to read:

12 **"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating**  
13 **circumstances.** (1) The department shall upon a written, verified complaint of a person request that the  
14 department of justice investigate the action and operation of a brewer, winery, wholesaler, or retailer licensed  
15 under this code.

16 (2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the  
17 department, after reviewing admissions of the licensee or receiving the results of the department of justice's or  
18 a local law enforcement agency's investigation, has reasonable cause to believe that a licensee has violated a  
19 provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties  
20 prescribed:

21 (a) reprimand a licensee;

22 (b) proceed to revoke the license of the licensee;

23 (c) suspend the license for a period of not more than 3 months;

24 (d) refuse to grant a renewal of the license after its expiration; or

25 (e) impose a civil penalty not to exceed \$1,500.

26 (3) The department shall consider mitigating circumstances and may adjust penalties within penalty  
27 ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:

28 (a) there have been no violations by the licensee within the past 3 years;29 (b) there have been good faith efforts by the licensee to prevent a violation;30 (c) written policies exist that govern the conduct of the licensee's employees;

- 1           (d) there has been cooperation in the investigation of the violation that shows that the licensee,  
2 employee, or agent of the licensee accepts responsibility;
- 3           (e) the investigation was not based on complaints received or on observed misconduct, but was based  
4 solely on the investigating authority creating the opportunity for a violation; or
- 5           (f) the licensee has provided responsible alcohol server training to all of their employees.
- 6           (4) The department shall consider aggravating circumstances and may adjust penalties within penalty  
7 ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:
- 8           (a) prior warnings about compliance problems;  
9           (b) prior violations within the past 3 years;  
10          (c) lack of written policies governing employee conduct;  
11          (d) multiple violations during the course of the investigation;  
12          (e) efforts to conceal a violation;  
13          (f) the intentional nature of the violation; or  
14          (g) involvement of more than one patron or employee in a violation."

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