

SENATE BILL NO. 193

INTRODUCED BY B. TUTVEDT

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A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LIQUOR LAWS; AMENDING LAWS RELATED TO AGENCY LIQUOR STORE COMMISSIONS BY SPECIFYING COMMISSION RATES BASED ON SALES; DESIGNATING THE STATE MARKUP RELATING TO RETAIL SELLING PRICE; AND AMENDING SECTIONS 16-1-404 AND 16-2-101, MCA."

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

**Section 1.** Section 16-1-404, MCA, is amended to read:

**"16-1-404. License tax on liquor -- amount -- distribution of proceeds.** (1) Except as provided in subsection (4), the department shall collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of:

(a) 10% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(b) 8.6% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold more than 50,000 proof gallons but not more than 200,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section;

(c) 2% of the retail selling price on all liquor sold and delivered in the state by a company that manufactured, distilled, rectified, bottled, or processed and that sold not more than 50,000 proof gallons of liquor nationwide in the calendar year preceding imposition of the tax pursuant to this section.

(2) The license tax must be charged and collected on all liquor produced in or brought into the state and taxed by the department. The retail selling price must be computed by adding to the cost of the liquor the state markup ~~as designated by the department~~ of 43%. The license tax must be figured in the same manner as the state excise tax and is in addition to the state excise tax. The department shall retain in a separate account the amount of the license tax received. The department, in accordance with the provisions of 17-2-124, shall allocate the revenue as follows:



1 (a) Thirty-four and one-half percent is allocated to the state general fund.

2 (b) Sixty-five and one-half percent must be deposited in the state special revenue fund to the credit of  
3 the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism  
4 and chemical dependency.

5 (3) The license tax proceeds that are allocated to the department of public health and human services  
6 for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency must be credited  
7 quarterly to the department of public health and human services. The legislature may appropriate a portion of the  
8 license tax proceeds to support alcohol and chemical dependency programs. The remainder must be distributed  
9 as provided in 53-24-206.

10 (4) The following are exempt from the tax and markup imposed by this section:

11 (a) flavors and other nonbeverage ingredients containing alcohol that are imported or purchased by a  
12 brewery under conditions set by the department as provided in 16-3-214; and

13 (b) necessary distilled spirits imported in bulk for use by a distillery or microdistillery under conditions  
14 set by the department as provided in 16-4-311 and 16-4-312."

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

17 **"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement --**

18 **kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate agency  
19 liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

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

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

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

28 (B) The agency liquor store's purchase price is the department's posted price less the agency liquor  
29 store's commission rate ~~and less the agency liquor store's weighted average discount ratio. For purposes of this~~  
30 ~~subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on~~

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

8 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within  
 9 60 days of the date on which the department invoices the liquor to the agency liquor store.

10 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

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

13 (4) (a) Agency liquor stores must receive commissions based on their calendar year liquor purchases  
 14 from the state liquor warehouse, payable as follows:

15 (i) (A) ~~a 10% commission for agencies in communities with less than 3,000 in population, unless adjusted~~  
 16 ~~pursuant to subsection (6); or~~ a 16% commission for purchases of not more than \$250,000;

17 (B) a 15.5% commission for purchases of more than \$250,000 but not more than \$500,000;

18 (C) a 15% commission for purchases of more than \$500,000 but not more than \$750,000;

19 (D) a 14.5% commission for purchases of more than \$750,000 but not more than \$1 million;

20 (E) a 14% commission for purchases of more than \$1 million but not more than \$1.5 million;

21 (F) a 13.5% commission for purchases of more than \$1.5 million but not more than \$2 million;

22 (G) a 13% commission for purchases of more than \$2 million but not more than \$3.5 million; or

23 (H) a 12% commission for purchases of more than \$3.5 million; or

24 ~~(B)(ii) a commission established by competitive bidding, which is guaranteed for 3 calendar years, at~~  
 25 ~~which time the agency liquor store's commission is subject to subsection (4)(a)(i). unless adjusted pursuant to~~  
 26 ~~subsection (6) for agencies in communities with 3,000 or more in population; plus~~

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

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

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

2 or

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

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

12 (i) notify agency liquor stores of their commission rate to be applied during the current calendar year  
 13 based on the agency's sales from the prior year as determined under subsection (4)(a)(i); and

14 (ii) adjust the dollar values for purchase amounts under subsection (4)(a)(i) based on the consumer price  
 15 index for the prior calendar year and notify all agency liquor stores of the adjustment.

16 (5) An agency franchise agreement must:

17 (a) be effective for a 10-year period and must be renewed at the existing commission rate for additional  
 18 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

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

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

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

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

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

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

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

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

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

~~—— (i) if the agent demonstrates that:~~

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

~~—— (B) the average commission percentage is insufficient to yield net income commensurate with net income experienced before the cost increases occurred; and~~

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

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

~~(8)(7)~~ (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily performed the requirements of the agency franchise agreement because the agent:

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

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand,

1 delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase  
2 special orders;

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

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

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

12 (c) In the case of failure to make timely payments to the department for liquor purchased, the department  
13 may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the  
14 possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination  
15 and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall  
16 remain closed until a final decision has been reached following a hearing held pursuant to the Montana  
17 Administrative Procedure Act.

18 ~~(9)~~(8) An agency franchise agreement may be terminated upon mutual agreement by the agent and the  
19 department.

20 ~~(10)~~(9) An agent may assign an agency franchise agreement to a person who, upon approval of the  
21 department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities  
22 of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the  
23 department of an intent to assign the agency franchise agreement 60 days before the intended effective date of  
24 the assignment. The department may not unreasonably withhold approval of an assignment request.

25 ~~(11)~~(10) A person or entity may not hold an ownership interest in more than one agency liquor store.

26 ~~(12)~~(11) The department shall maintain sufficient inventory in the state warehouse in order to meet a  
27 monthly service level of at least 97%."

28 - END -