

HOUSE BILL NO. 541

INTRODUCED BY A. HERTZ, E. HILL SMITH, G. HERTZ

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE DEFINITION OF SMALL BREWERY; INCREASING
5 THE NUMBER OF BARRELS A BREWERY MAY PRODUCE TO QUALIFY AS A SMALL BREWERY;
6 REQUIRING THAT THE PRODUCTION OF AFFILIATED ~~COMPANIES~~ MANUFACTURERS AND BEER
7 PURCHASED FROM OTHER BREWERIES MUST BE USED IN DETERMINING THE AMOUNT OF
8 PRODUCTION; REVISING TAXES IMPOSED ON PRODUCTION BY BREWERS; AND AMENDING ~~SECTION~~
9 SECTIONS 16-1-406, 16-3-213, AND 16-4-501, MCA."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12
13 **SECTION 1. SECTION 16-1-406, MCA, IS AMENDED TO READ:**
14 **"16-1-406. Taxes on beer.** (1) (a) A tax is imposed on each barrel of 31 gallons of beer sold in Montana
15 by a wholesaler. A barrel of beer equals 31 gallons. The tax is based upon the total number of barrels of beer
16 produced by a brewer in a year. A brewer who produces less than ~~20,000~~ 10,000 barrels of beer a year is taxed
17 on the following increments of production:
18 (i) up to 5,000 barrels, \$1.30;
19 (ii) 5,001 barrels to 10,000 barrels, \$2.30; ~~and~~
20 ~~(iii) 10,001 barrels to 20,000 barrels, \$3.30.~~
21 (b) The tax on beer sold for a brewer who produces over ~~20,000~~ 10,000 barrels is \$4.30.
22 (2) The tax imposed pursuant to subsection (1) is due at the end of each month from the wholesaler upon
23 beer sold by the wholesaler during that month. The department shall compute the tax due on beer sold in
24 containers other than barrels or in barrels of more or less capacity than 31 gallons.
25 (3) Each quarter, in accordance with the provisions of 17-2-124, of the tax collected pursuant to
26 subsection (1), an amount equal to:
27 (a) 23.26% must be deposited in the state treasury to the credit of the department of public health and
28 human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency; and
29 (b) the balance must be deposited in the state general fund."

30

1 **Section 2.** Section 16-3-213, MCA, is amended to read:

2 **"16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.** (1) Except as
3 provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to have
4 or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit
5 brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries from
6 selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

7 (2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide
8 production of not less than 100 barrels or more than ~~40,000~~ ~~60,000~~ ~~12,000~~ 60,000 barrels, including:

9 (i) the production of all affiliated companies, as described in section 1504(a) of the Internal Revenue
10 Code, 26 U.S.C. 1504(a) MANUFACTURERS; and

11 (ii) beer purchased from any other beer producer to be sold by the brewery.

12 (b) A small brewery may, at one location for each brewery license AND AT NO MORE THAN THREE LOCATIONS
13 INCLUDING AFFILIATED MANUFACTURERS, provide samples of beer that were brewed and fermented on the premises
14 in a sample room located on the licensed premises. The samples may be provided with or without charge
15 between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to each
16 individual customer during a business day. NO MORE THAN 2,000 BARRELS MAY BE PROVIDED ANNUALLY FOR ON
17 PREMISES CONSUMPTION INCLUDING ALL AFFILIATED MANUFACTURERS.

18 (3) FOR THE PURPOSES OF THIS SECTION, "AFFILIATED MANUFACTURERS" MEANS A MANUFACTURER OF BEER:

19 (A) THAT ONE OR MORE MEMBERS OF THE MANUFACTURING ENTITY HAVE MORE THAN A MAJORITY SHARE
20 INTEREST IN OR THAT CONTROLS DIRECTLY OR INDIRECTLY ANOTHER BEER MANUFACTURING ENTITY;

21 (B) FOR WHICH THE BUSINESS OPERATIONS CONDUCTED BETWEEN OR AMONG ENTITIES ARE INTERRELATED OR
22 INTERDEPENDENT TO THE EXTENT THAT THE NET INCOME OF ONE ENTITY CANNOT REASONABLY BE DETERMINED WITHOUT
23 REFERENCE TO OPERATIONS OF THE OTHER ENTITY; OR

24 (C) OF WHICH THE BRAND NAMES, PRODUCTS, RECIPES, MERCHANDISE, TRADE NAME, TRADEMARKS, LABELS,
25 OR LOGOS ARE IDENTICAL OR NEARLY IDENTICAL."

26

27 **SECTION 3.** SECTION 16-4-501, MCA, IS AMENDED TO READ:

28 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine
29 only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise
30 specified in this section, the fee is an annual fee and is imposed as follows:

- 1 (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale
2 within the state, \$500;
- 3 (ii) for each storage depot, \$400;
- 4 (b) (i) each beer wholesaler, \$400; each winery, \$200; each table wine distributor, \$400;
5 (ii) for each subwarehouse, \$400;
- 6 (c) each beer retailer, \$200;
- 7 (d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer
8 license;
- 9 (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction
10 with beer, \$200;
- 11 (e) any unit of a nationally chartered veterans' organization, \$50.
- 12 (2) The permit fee under 16-4-301(1) is computed at the following rate:
- 13 (a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests,
14 other than those applied for pursuant to 16-4-301(1)(c); and
- 15 (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the
16 provisions of 16-4-301(1)(c).
- 17 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale
18 of all alcoholic beverages.
- 19 (4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee
20 in the sum of \$300.
- 21 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to
22 a beer-only license pursuant to 16-4-105, is \$200.
- 23 (6) The annual renewal fee for:
- 24 (a) a brewer producing ~~20,000~~ 10,000 or fewer barrels of beer, as defined in 16-1-406, is \$200; and
25 (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license.
- 26 (7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay
27 an annual license fee as follows:
- 28 (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and
29 incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans'
30 organization and \$400 for all other licensees;

1 (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or
2 within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed
3 to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for
4 all other licensees;

5 (c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or
6 within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed
7 to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for
8 all other licensees;

9 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5
10 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
11 boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other
12 licensees;

13 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns
14 is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary
15 of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the
16 corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license
17 fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant.
18 When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city
19 and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable
20 by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

21 (f) an applicant for the issuance of an original license to be located in areas described in subsections
22 (6) and (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's
23 ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of \$20,000
24 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal of a license
25 issued prior to July 1, 1974. However, all licenses are subject to the specified annual renewal fees.

26 (8) The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

27 (9) The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.

28 (10) The annual fee for a special beer and table wine license for a nonprofit arts organization under
29 16-4-303 is \$250.

30 (11) The annual fee for a distillery is \$600.

1 (12) The license fees provided in this section are exclusive of and in addition to other license fees
2 chargeable in Montana for the sale of alcoholic beverages.

3 (13) In addition to other license fees, the department of revenue may require a licensee to pay a late fee
4 of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary
5 date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the
6 licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1
7 year and 2 months after the licensee's anniversary date.

8 (14) All license and permit fees collected under this section must be deposited as provided in 16-2-108."

9 - END -