

HOUSE BILL NO. 644

INTRODUCED BY W. GALT

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING CIGAR BAR ENDORSEMENT FOR CERTAIN LIQUOR LICENSEES; CREATING THE CIGAR BAR ENDORSEMENT APPLICABLE TO ALL-BEVERAGES ALCOHOL LICENSES; PROVIDING AN ANNUAL FEE; PROVIDING A DEFINITION OF CIGAR BAR; REVISING THE MONTANA CLEAN INDOOR AIR ACT RELATING TO CIGAR BARS; AND AMENDING SECTIONS 16-1-106, 16-4-201, 50-40-103, AND 50-40-104, MCA."

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

NEW SECTION. **Section 1. Cigar bar endorsement.** (1) The department shall issue a cigar bar endorsement to an all-beverages licensee that:

- (a) holds an all-beverages license issued under 16-4-201;
- (b) applies for the endorsement;
- (c) pays the endorsement license fees as provided in 16-4-201; and
- (d) meets the requirements of this section.

(2) A cigar bar:

(a) may not serve food that is prepared on premises, but may serve items not to exceed \$2, including but not limited to snacks;

(b) generates 10% or more of its total annual gross income, not including vending machines, from:

- (i) the on-site sale of cigars, including cigars smoked in the cigar bar and cigars used off premises; and
- (ii) the rental of humidors;

(c) allows only the smoking of cigars;

(d) may not knowingly sell to or permit entrance to any person less than 21 years of age;

(e) sells cigars that:

- (i) exceed \$1 in retail value; and
- (ii) are the only cigars that may be smoked in the cigar bar; and

(f) must be enclosed on all sides and be located:

(i) in a physically separate building away from any public area where smoking is prohibited; or

1 (ii) in a building that shares space with other entities that prohibit smoking only if the area is physically
2 separated with adequate ventilation and smoke does not infiltrate the smoke-free area.

3 (3) A licensee shall annually certify to the department that the licensee and licensed premises meet the
4 requirements of this section. The department may inspect the licensee's premises and records to ensure
5 compliance with this section.

6

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

8 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 (a) a beverage:

28 (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has
29 been removed and replaced with distilled ethyl alcohol;

30 (ii) that contains at least 0.5% of alcohol by volume;

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

1 of Montana.

2 ~~(15)~~(16) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
3 caffeinated or stimulant-enhanced malt beverage.

4 ~~(16)~~(17) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
5 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts
6 or their products and with or without other malted cereals and with or without the addition of unmalted or prepared
7 cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome
8 products suitable for human food consumption.

9 ~~(17)~~(18) "Package" means a container or receptacle used for holding an alcoholic beverage.

10 ~~(18)~~(19) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
11 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
12 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the
13 department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores,
14 and a 20% markup.

15 ~~(19)~~(20) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains
16 50% of alcohol by volume.

17 ~~(20)~~(21) "Public place" means a place, building, or conveyance to which the public has or may be
18 permitted to have access and any place of public resort.

19 ~~(21)~~(22) "Retail price" means the price established by an agent for the sale of liquor to persons who do
20 not hold liquor licenses. The retail price may not be less than the department's posted price.

21 ~~(22)~~(23) "Rules" means rules adopted by the department or the department of justice pursuant to this
22 code.

23 ~~(23)~~(24) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol
24 by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

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 or
10 sacramental wine for 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 ~~(34)~~(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 16-4-201, MCA, is amended to read:

23 **"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell
24 liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and
25 the rules of the department, may be issued to any person who is approved by the department as a fit and proper
26 person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may
27 issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from
28 the corporate limits of those cities and towns must be determined on the basis of population prescribed in
29 16-4-502 as follows:

30 (a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate

1 limits of the towns, not more than two retail licenses;

2 (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000
3 inhabitants and within a distance of 5 miles from the corporate limits of the cities and towns, three retail licenses
4 for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

5 (c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate
6 limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500
7 inhabitants.

8 (2) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number
9 of inhabitants residing within a distance of 5 miles from the corporate limits of the city or town, governs the
10 number of retail licenses that may be issued for use within the city or town and within a distance of 5 miles from
11 the corporate limits of the city or town. The distance of 5 miles from the corporate limits of any incorporated city
12 or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed
13 for licensing to the nearest corporate boundary of the city or town.

14 (3) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary
15 of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line
16 equidistant between each city or town.

17 (4) For a period of 12 years after November 24, 2017, existing licenses as of November 24, 2017, in
18 either of two quota areas that were established as provided in subsection (3) may be transferred between the two
19 quota areas if they were part of a combined quota area prior to November 24, 2017.

20 (5) If any new retail all-beverages licenses are allowed by separating a combined quota area that existed
21 as of November 24, 2017, as provided in subsection (3), the department shall publish the availability of no more
22 than one new retail all-beverages license a year until the quota has been reached.

23 (6) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under
24 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may not
25 be issued in violation of the limitations.

26 (7) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and
27 nonassignable, as to ownership only, retail license to an enlisted personnel, noncommissioned officers', or
28 officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally
29 chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or
30 fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

1 (8) The number of retail all-beverages licenses that the department may issue for use at premises
 2 situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
 3 from the corporate limits of a city or town may not be more than one license for each 750 in population of the
 4 county after excluding the population of incorporated cities and incorporated towns in the county.

5 (9) An all-beverages license issued under subsection (8) that becomes located within 5 miles of an
 6 incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location
 7 within the city quota area for 5 years from the date of annexation.

8 (10) The department shall issue a cigar bar endorsement to any all-beverages licensee meeting the
 9 requirements of [section 1] and who pays an annual fee of \$250 for the cigar bar endorsement.

10 ~~(10)(11)~~ The department may adopt rules to implement this section."
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12 **Section 4.** Section 50-40-103, MCA, is amended to read:

13 **"50-40-103. Definitions.** As used in this part, the following definitions apply:

14 (1) "Bar" means an establishment with a license issued pursuant to Title 16, chapter 4, that is devoted
 15 to serving alcoholic beverages for consumption by guests or patrons on the premises and in which the serving
 16 of food is only incidental to the service of alcoholic beverages or gambling operations. The term includes but is
 17 not limited to taverns, night clubs, cocktail lounges, and casinos.

18 (2) "Department" means the department of public health and human services provided for in 2-15-2201.

19 (3) ~~(a)~~ "Enclosed public place" means an indoor area, room, or vehicle that the general public is allowed
 20 to enter or that serves as a place of work, including but not limited to the following:

21 ~~(a)~~(i) restaurants;

22 ~~(b)~~(ii) stores;

23 ~~(c)~~(iii) public and private office buildings and offices, including all office buildings and offices of political
 24 subdivisions, as provided for in 50-40-201, and state government;

25 ~~(d)~~(iv) trains, buses, and other forms of public transportation;

26 ~~(e)~~(v) health care facilities;

27 ~~(f)~~(vi) auditoriums, arenas, and assembly facilities;

28 ~~(g)~~(vii) meeting rooms open to the public;

29 ~~(h)~~(viii) bars;

30 ~~(i)~~(ix) community college facilities;

- 1 ~~(j)~~(x) facilities of the Montana university system; and
- 2 ~~(k)~~(xi) public schools, as provided for in 20-1-220 and 50-40-104.
- 3 **(b) The term does not include a cigar bar as provided in [section 1].**
- 4 (4) "Establishment" means an enterprise under one roof that serves the public and for which a single
- 5 person, agency, corporation, or legal entity is responsible.
- 6 (5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60%
- 7 of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or both.
- 8 (6) "Person" means an individual, partnership, corporation, association, political subdivision, or other
- 9 entity.
- 10 (7) (a) "Place of work" means an enclosed room where one or more individuals work.
- 11 **(b) The term does not include a cigar bar as provided in [section 1].**
- 12 (8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette,
- 13 pipe, or any smokable product and includes the use of marijuana for a debilitating medical condition as provided
- 14 for in Title 50, chapter 46."
- 15
- 16 **Section 5.** Section 50-40-104, MCA, is amended to read:
- 17 **"50-40-104. Smoking in enclosed public places prohibited -- notice to public -- places where**
- 18 **prohibition inapplicable.** (1) Except as otherwise provided in this section, smoking in an enclosed public place
- 19 is prohibited.
- 20 (2) The proprietor or manager of an establishment containing enclosed public places shall post a sign
- 21 in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read
- 22 and understood, that smoking in the enclosed public place is prohibited.
- 23 (3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all parts
- 24 of the bus.
- 25 (4) The prohibition in subsection (1) does not apply to the following places, whether or not the public is
- 26 allowed access to those places:
- 27 (a) a private residence unless it is used for any of the following purposes, in which case the prohibition
- 28 in subsection (1) applies:
- 29 (i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to Title
- 30 52, chapter 2, part 7;

- 1 (ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or
2 (iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;
3 (b) a private motor vehicle;
4 (c) school property in which smoking is allowed pursuant to the exception in 20-1-220;
5 (d) a hotel or motel room designated as a smoking room and rented to a guest; however, not more than
6 35% of the rooms available to rent to guests may be designated as smoking rooms; and
7 (e) a site that is being used in connection with the practice of cultural activities by American Indians that
8 is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

9 (5) This section does not apply to a licensed cigar bar as defined in 16-1-106."

10
11 **NEW SECTION. Section 6. Codification instruction.** [Section 1] is intended to be codified as an
12 integral part of Title 16, and the provisions of Title 16 apply to [section 1].

13 - END -