

Amendments to House Bill No. 534
1st Reading Copy

Requested by Edward Buttrey
For the (H) Business and Labor

Prepared by Jameson Walker
02/25/2021, 02:20:36

1. Title, line 6.

Following: "LICENSE;"

Insert: "REVISING THE DEFINITION OF BEER TO INCLUDE CERTAIN PRODUCTS; REVISING LAWS RELATING TO AGREEMENTS BETWEEN BREWERS, BEER IMPORTERS, AND WHOLESALERS;"

2. Title, line 7.

Following: line 6

Insert: "16-1-102, 16-1-106,"

Following: "16-3-213,"

Insert: "16-3-322,"

3. Page 1.

Following: line 26

Insert: "**Section 2.** Section 16-1-102, MCA, is amended to read:

"**16-1-102. Policy as to sale of beer.** It is the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code, must be controlled and regulated as provided under this code. Unless defined as beer in 16-1-106(5)(a)(ii) or (5)(a)(iii), beer, porter, ale, stout, and malt liquors containing more than 8.75% alcohol by volume and that are defined as "liquor" are subject to the regulations and controls provided for liquor." "

Insert: "**Section 3.** Section 16-1-106, MCA, is amended to read:

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

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

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

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

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

(5) (a) "Beer" means:

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

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

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

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

(iii) for purposes of this code, unless context otherwise requires otherwise, low-proof spirit beverages and wine-based beverages that contain not more than 14% alcohol by volume manufactured by fermentation or distillation mixed in solution with one or more of the following ingredients:

(A) potable water;

(B) fruit juices;

(C) fruit adjuncts;

(D) sugar;

(E) carbonation; or

(F) preservatives.

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

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

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

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

(a) a beverage:

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

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

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Renumber: subsequent sections

4. Page 2.

Following: line 25

Insert: "Section 5. Section 16-3-222, MCA, is amended to read:

"16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts, agreements, and franchises. (1) All contracts, agreements, or franchises between a brewer and a wholesaler or a beer importer and a wholesaler must specifically set forth or contain the following:

(1)(a) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer importer and the wholesaler involved mutually shall determine the size or extent of the area in which the

wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. The territory must be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer importer.

~~(2)(b)~~ the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

~~(3)(c)~~ that the brewer or beer importer recognizes that the wholesaler is free to manage the wholesaler's business in the manner that the wholesaler considers best and that this prerogative vests in the wholesaler the exclusive right to establish selling prices, to select the brands that the wholesaler wishes to handle, and to determine the effort and resources that the wholesaler will exert to develop and promote the sale of the brewer's or beer importer's products handled by the wholesaler;

~~(4)(d)~~ a procedure for the review of alleged wholesaler deficiencies asserted by the brewer or beer importer to constitute just cause as provided in 16-3-221, including the submission in writing to the wholesaler by the brewer or beer importer of the deficiencies, if the deficiencies are susceptible of correction and if the wholesaler desires to correct the deficiencies, and that a reasonable period of time must be given the wholesaler for rectification of the deficiencies prior to any notice of intent to terminate;

~~(5)(e)~~ a termination clause providing that the brewer or beer importer shall deliver, in writing, to the wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;

~~(6)(f)~~ that all agreements between a brewer and a wholesaler are interpreted and governed by the laws of Montana and that those laws must be liberally construed to effectuate the remedial purpose of the protections of the beer franchise law contained in 16-3-221 through 16-3-226;

~~(7)(g)~~ that in any dispute resulting in litigation between a brewer or a beer importer and a wholesaler, the litigation must occur in a Montana court, either federal or state, unless that forum would create an unreasonable burden on any party, as determined by the court in which the litigation is commenced;

~~(8)(h)~~ that all agreements between a brewer or a beer importer and a wholesaler must recognize the constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.

(2) For purposes of this section, the terms "brewer" or "beer importer" include a manufacturer of low-proof spirit beverages and wine-based beverages as provided in 16-1-106(5)(a)(iii)."

Renumber: subsequent sections

5. Page 3, line 23.

Following: "hours."

Insert: "(3) For purposes of this section, the terms "brewer" or "beer importer" include a manufacturer of low-proof spirit beverages and wine-based beverages as provided in 16-1-106(5) (a) (iii)."

- END -

Explanation - Note: Because the page and line numbers referred to in these amendment instructions are required to match the page and line numbers of the official bill version being amended, they will not necessarily match the page and line numbers shown in any related Amendments in Context document.