

1 _____ BILL NO. _____

2 INTRODUCED BY _____
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL REGULATORY ENFORCEMENT LAWS TO
5 PROHIBIT THE DEPARTMENT FROM ISSUING CERTAIN CITATIONS BASED ON CONTRIVED EVENTS;
6 ALLOWING THE DEPARTMENT TO ISSUE CITATIONS BASED ON A CONTRIVED EVENT ONLY AFTER
7 CERTAIN CIRCUMSTANCES; AND AMENDING 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 -- contrived events.** (1) The department shall, upon a written, verified complaint of a person,
14 request that the department of justice investigate the action and operation of a brewer, winery, wholesaler,
15 domestic distillery, table wine distributor, beer or wine importer, retailer, concessionaire, or any other person or
16 business licensed or registered under this code.

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

- 22 (a) reprimand a licensee or concessionaire or both;
- 23 (b) proceed to revoke the license of the licensee or the concession agreement of the concessionaire
24 or both;
- 25 (c) suspend the license or the concession agreement or both for a period of not more than 3 months;
- 26 (d) refuse to grant a renewal of the license or concession agreement or both after its expiration; or
- 27 (e) impose a civil penalty not to exceed \$1,500.

28 (3) The department shall consider mitigating circumstances and may adjust penalties within penalty

1 ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:

2 (a) there have been no violations by the licensee or concessionaire or both within the past 3 years;

3 (b) there have been good faith efforts by the licensee or concessionaire or both to prevent a violation;

4 (c) written policies exist that govern the conduct of the licensee's employees or the concessionaire's
5 employees or both;

6 (d) there has been cooperation in the investigation of the violation that shows that the licensee or
7 concessionaire or both or an employee or agent of the licensee or concessionaire or both accepts

8 responsibility; or

9 (e) ~~the investigation was not based on complaints received or on observed misconduct, but was~~
10 ~~based solely on the investigating authority creating the opportunity for a violation; or~~

11 (f) ~~the licensee or concessionaire or both have provided responsible alcohol server training to all of~~
12 ~~their employees.~~

13 (4) The department shall consider aggravating circumstances and may adjust penalties within penalty
14 ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:

15 (a) prior warnings about compliance problems;

16 (b) prior violations within the past 3 years;

17 (c) lack of written policies governing employee conduct;

18 (d) multiple violations during the course of the investigation;

19 (e) efforts to conceal a violation;

20 (f) the intentional nature of the violation; or

21 (g) involvement of more than one patron or employee in a violation.

22 (5) The department may not issue a violation to a licensee or a concessionaire provided the

23 investigation was not based on complaints or on observed misconduct, but was based solely on a contrived
24 event by the investigating authority or another designated organization creating the opportunity for a violation.

25 The department may issue a violation only if the licensee or concessionaire fails more than two contrived event
26 investigations within a 3-year period beginning with the first failure. For purposes of this section, the first two
27 violations resulting from a contrived event investigation within a 3-year period do not constitute a violation of
28 this code, and the department may not consider these violations in considering any mitigating circumstances

1 and penalties as provided in this section."

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