



GOVERNOR'S OFFICE OF  
BUDGET AND PROGRAM PLANNING

## Fiscal Note 2023 Biennium

**Bill #** HB0705

**Title:** Generally revise alcohol and gaming laws

**Primary Sponsor:** Buttrey, Edward

**Status:** As Amended in House Committee

- Significant Local Gov Impact     
  Needs to be included in HB 2     
  Technical Concerns  
 Included in the Executive Budget     
  Significant Long-Term Impacts     
  Dedicated Revenue Form Attached

### FISCAL SUMMARY

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b>Expenditures:</b>				
General Fund	\$258,000	\$0	\$0	\$0
State Special Revenue	\$0	\$0	\$0	\$0
<b>Revenue:</b>				
General Fund	\$5,200	\$0	\$0	\$0
State Special Revenue	\$5,200	\$0	\$0	\$0
<b>Net Impact-General Fund Balance:</b>	<u>(\$252,800)</u>	<u>\$0</u>	<u>\$0</u>	<u>\$0</u>

**Description of fiscal impact:** HB 705 as amended allows for storage facilities for alcohol on resort areas and noncontiguous storage areas for licensed retailers. It also changes several areas of code dealing with resort license privileges, license applicant eligibility, premises approval, and other additional sections. The Department of Revenue expects the application fee to raise \$5,200 in FY 2022.

### FISCAL ANALYSIS

#### Assumptions:

1. HB 705 allows retailers at resort areas to operate an alcoholic beverage storage facility pursuant to department approval after an application and an associated \$100 one-time fee.
2. The Department of Revenue (DOR) expects that two resort areas will seek approval for a storage facility.
3. HB 705 also allows retailers to seek approval for a noncontiguous storage area with an associated \$100 one-time fee.
4. The department expects that 50 retailers will seek approval for the noncontiguous storage area.
5. At \$100 per application, this will raise \$5,200 in FY 2022 for the liquor enterprise fund.
6. The department expects \$258,000 in one-time contracted services for the software implementation of the new storage facility application and miscellaneous license application changes.

- The application revenue is to the credit of the liquor enterprise fund. However, since the liquor enterprise fund transfers its end of year balance to the general fund, any credits to the liquor enterprise fund are indirect credits of the general fund.

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<b><u>Fiscal Impact:</u></b>				
<b><u>Expenditures:</u></b>				
Operating Expenses	\$258,000	\$0	\$0	\$0
<b>TOTAL Expenditures</b>	<b>\$258,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Funding of Expenditures:</u></b>				
General Fund (01)	\$258,000	\$0	\$0	\$0
<b>TOTAL Funding of Exp.</b>	<b>\$258,000</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Revenues:</u></b>				
General Fund (01)	\$5,200	\$0	\$0	\$0
State Special Revenue (02)	\$5,200	\$0	\$0	\$0
<b>TOTAL Revenues</b>	<b>\$10,400</b>	<b>\$0</b>	<b>\$0</b>	<b>\$0</b>
<b><u>Net Impact to Fund Balance (Revenue minus Funding of Expenditures):</u></b>				
General Fund (01)	(\$252,800)	\$0	\$0	\$0
State Special Revenue (02)	\$5,200	\$0	\$0	\$0

**Technical Notes:**

**Department of Revenue (DOR)**

- Section 1 allows a licensee to alter their premises without DOR approval to begin, but it is unclear what would happen if the alteration did not meet suitability when completed. Involving the DOR prior to starting an alteration could save the licensee time and money if the alteration ultimately wouldn't meet suitability or building, health or fire codes and could create a public safety concern.
- Section 1 and Section 2 both allow things such as snow and hillsides to be considered a boundary for a patio or deck, but snow would not be present all year and whether a hillside impedes foot traffic is subjective and the area would then not meet suitability. Current suitability already allows for things such as bushes, planters, etc. and the DOR doesn't feel this level of detail is needed in law. The DOR suggests replacing the second sentence with "an additional perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and impedes foot traffic."
- Section 1 (6) talks about allowing a noncontiguous storage area for onsite storage, but it is unclear what this means. The DOR suggests clarification that the licensee has control of this area still.
- Section 1 (7) and Section 2 (5), it is not clear how age would be verified if the purchaser weren't present.
- Recommended to require that licensees wishing to pre-stock accommodation units should apply to the DOR for approval so the DOR can verify there are adequate safeguards in place.
- Section 2 (7) says that the provisions of 16-4-418, MCA, apply, but some of the provisions of 16-4-418, MCA, would conflict with this. The DOR would suggest specifying which provisions of 16-4-418, MCA, would apply.
- Section 2 (8) conflicts with 16-3-311, MCA, which allows a license to be in a singular building.

8. Section 2 (8) conflicts with 16-3-301(1), MCA, which says it is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler licensed under the provisions of this code.
9. Section 2 (8) conflicts with 16-3-301(2), MCA, which says it is unlawful for a licensed retailer to transport beer or wine from one licensed premises or other facility to any other licensed premises owned by the licensee.
10. Section 2 (8) conflicts with 16-4-103(5), MCA, which refers to “distribute” as in 16-3-218, MCA, which means to deliver beer or wine to a retailer’s premises licensed to sell beer, table wine, or sacramental wine.
11. Section 2 (8) potentially conflict with 16-6-303, MCA, requiring liquor to come from an agency liquor store.
12. Section 2 (8) the licensees wishing to use the alternate storage facility should be the applicants, not the resort area.
13. Section 2 (8) should either have segregation of each licensee’s alcohol to ensure control if the licensees have different owners or should only be allowed if all of the licenses are owned by the same entity.
14. Section 2 (8) is unclear which licensee or if all of the licensees would be responsible for a violation should there be illegal alcohol or something along that line discovered at the storage facility.
15. Section 2 (8) assumes that the resort area wanting to allow licensees to use the storage facility need to apply to and be approved by the DOR, but it is unclear what the requirements are for approval.
16. Section 3 changes the requirements for who requires vetting by the DOR and increases the risk of allowing bad actors into the industry. It will also increase the disparity between alcohol licensing requirements and gambling licensing requirements and will put different requirements on different alcohol licensees.
17. Section 3 in several locations contains the language “who is substantially involved in the management of” which is too subjective and again could increase the risk of allowing bad actors into the industry by simply saying they are not substantially involved in the management.
18. Section 3 in several locations contains the language “however, nothing in this subsection (2)(a)(iv) authorizes the DOR to consider an applicant’s tax status or whether the applicant was or is an income tax protestor.” This appears to attempt to incorporate language from *Broers v. Montana DOR of Revenue*, 237 Mont. 367 (1989). In that case, the Montana Supreme Court stated: “A person's past record or present status as an income tax protestor, or, as argued at bar, a trespasser at Malmstrom Air Force Base bears no relation to the operation of a liquor establishment . . . Neither income tax protestation nor advocacy of nuclear disarmament bear any relation to the manufacture, sale, or distribution of alcoholic beverages.” These subsections appear to expand the Montana Supreme Court’s reasoning beyond an applicant’s status as an income tax protestor to also include “an applicant’s tax status.” Compliance with Montana taxes prior to the initial issuance of the license "demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments" which is required in current law. For example, compliance with Montana’s tax requirements is relevant to whether an applicant is likely to submit licensing fees and alcoholic beverage taxes during operation of the establishment. The DOR is also tasked with verifying if an applicant’s source of funding is suitable under 16-4-401(7), MCA. An applicant’s compliance with Montana’s tax requirements is used to confirm the applicant’s source of funding is suitable and does not create a danger of illegal practices, methods, or activities.
19. Section 3 (9) contains the language “in a timely manner” which is too subjective. The DOR would suggest replacing “in a timely manner” with “within 45 days.”
20. Section 4 (2)(b) makes it almost impossible to enforce Title 16. Proposed revocation is sometimes the only way to get a licensee into compliance as paying a fine does not get the DOR the paperwork we need. Without the paperwork, the DOR may not know who is actually operating the license or what the potential public harm might be. If the paperwork we are missing is something related to transfer of ownership, location manager or noninstitutional lenders for example, there is the potential of someone who is

unsuitable operating the establishment and the DOR would have no ability to remedy the situation without the ability to propose revocation.

- 21. Section 5 contains the language “responsible for operating the licensed establishment” which is too subjective and again could increase the risk of allowing bad actors into the industry as all they would have to say is that individual is not responsible for operating the licensed establishment.
- 22. Section 7, it is unclear if this privilege would extend to entities that concession with on-premises retailers.
- 23. New Section 10 calls for an effective date upon passage and approval and will not give the DOR sufficient time to implement the bill as it requires significant software developer hours.

**NOT SIGNED BY SPONSOR**

_____	_____	_____	_____
<i>Sponsor's Initials</i>	<i>4/12/21</i>	<i>KA</i>	<i>4-9-21</i>
	<i>Date</i>	<i>Budget Director's Initials</i>	<i>Date</i>