

1 HOUSE BILL NO. 285

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5
6 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO CIGAR BARS;
7 ALLOWING FOR CIGAR BARS; PROVIDING REQUIREMENTS FOR CIGAR BARS; PROVIDING INDOOR
8 VENTILATION REQUIREMENTS; RESTRICTING TOBACCO PRODUCT USE TO CIGARS; EXEMPTING
9 CIGAR BARS FROM INDOOR SMOKING PROHIBITIONS; PROVIDING DEFINITIONS; AND AMENDING
10 SECTIONS 16-1-106, 50-40-103, AND 50-40-104, MCA."

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

13
14 NEW SECTION. **Section 1. Cigar bar.** (1) An all-beverages licensee under 16-4-201 may operate a
15 cigar bar. A cigar bar may permit the smoking of cigars in the public place on the premises. Only cigars that are
16 purchased on the premises may be smoked. Nothing in this section permits the smoking of any other tobacco,
17 alternative nicotine, or vapor products, as defined in 16-11-302, on the premises.

18 (2) A cigar bar:

19 (a) must generate 10% or more of its annual gross income from the sale of cigars;

20 (b) must have a humidor on the premises;

21 (c) if indoor, must have a public place that is enclosed by solid walls or windows, a ceiling, and a solid
22 door and is equipped with a ventilation system by which exhausted air is not recirculated to nonsmoking areas
23 and smoke is not back streamed into nonsmoking areas;

24 (d) must post a notice of the prohibition against smoking of products other than cigars; and

25 (e) may not knowingly sell to or permit entrance to any person less than 21 years of age.

26 (3) For the purposes of this section:

27 (a) the term "cigar" means premium tobacco products that:

28 (i) are composed of only tobacco leaves, water, and a de minimis amount of vegetable-based

1 adhesive;

2 (ii) are handmade and are not machine made;

3 (iii) are wrapped in whole leaf tobacco;

4 (iv) contain 100% leaf tobacco binder;

5 (v) are capped by hand;

6 (vi) do not have a filter, tip, or nontobacco mouthpiece;

7 (vii) have a characterizing flavor that is added through a natural process such as mixing different types

8 of tobacco leaves, soaking, or aromatic smoking and are not flavored through a chemical process or other

9 means; and

10 (viii) weigh at least 2.7 grams per cigar; and

11 (b) "public place" means an enclosed area to which the public is invited.

12 (4) Any licensee meeting the requirements of this section shall annually report to the department, on a
13 form prescribed by the department, the revenue generated from the sale of cigars as a percentage of annual
14 gross income.

15

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

17 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

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

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

9 (a) a beverage:

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

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

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

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

17 (b) a beverage:

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

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

21 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

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

24 (v) for which the producer is required to file a formula for approval with the United States alcohol and
25 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

26 (vi) that is not exempt pursuant to 27 CFR 25.55(f).

27 (9) "Cigar bar" means a licensee that meets the requirements of [section 1].

28 ~~(9)(10)~~ "Community" means:

1 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

2 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
3 community for census purposes; and

4 (c) in a consolidated local government, the area of the consolidated local government not otherwise
5 incorporated.

6 ~~(10)~~(11) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

7 ~~(14)~~(12) "Department" means the department of revenue, unless otherwise specified, and includes the
8 department of justice with respect to receiving and processing, but not granting or denying, an application under
9 a contract entered into under 16-1-302.

10 ~~(42)~~(13) "Growler" means any refillable, resealable container complying with federal law.

11 ~~(43)~~(14) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
12 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of
13 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

14 ~~(44)~~(15) "Immediate family" means a spouse, dependent children, or dependent parents.

15 ~~(45)~~(16) "Import" means to transfer beer or table wine from outside the state of Montana into the state
16 of Montana.

17 ~~(46)~~(17) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
18 caffeinated or stimulant-enhanced malt beverage.

19 ~~(47)~~(18) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
20 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their
21 parts or their products and with or without other malted cereals and with or without the addition of unmalted or
22 prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other
23 wholesome products suitable for human food consumption.

24 ~~(48)~~(19) "Package" means a container or receptacle used for holding an alcoholic beverage.

25 ~~(49)~~(20) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
26 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
27 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of
28 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor

1 stores, and a 20% markup.

2 ~~(20)~~(21) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
3 contains 50% of alcohol by volume.

4 ~~(24)~~(22) "Public place" means a place, building, or conveyance to which the public has or may be
5 permitted to have access and any place of public resort.

6 ~~(22)~~(23) "Retail price" means the price established by an agent for the sale of liquor to persons who do
7 not hold liquor licenses. The retail price may not be less than the department's posted price.

8 ~~(23)~~(24) "Rules" means rules adopted by the department or the department of justice pursuant to this
9 code.

10 ~~(24)~~(25) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of
11 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious
12 purposes.

13 ~~(25)~~(26) "Special event", as it relates to an application for a beer and wine special permit, means a
14 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

15 ~~(26)~~(27) "State liquor warehouse" means a building owned or under control of the department for the
16 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

17 ~~(27)~~(28) "Storage depot" means a building or structure owned or operated by a brewer at any point in
18 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with
19 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
20 permitted by this code.

21 ~~(28)~~(29) "Subwarehouse" means a building or structure owned or operated by a licensed beer
22 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or
23 table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and
24 distribution of beer or table wine as permitted by this code.

25 ~~(29)~~(30) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
26 cider.

27 ~~(30)~~(31) "Table wine distributor" means a person importing into or purchasing in Montana table wine or
28 sacramental wine for sale or resale to retailers licensed in Montana.

1 ~~(34)~~(32) "Warehouse" means a building or structure located in Montana that is owned or operated by a
 2 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
 3 wine as permitted by this code.

4 ~~(32)~~(33) "Wine" means an alcoholic beverage made from or containing the normal alcoholic
 5 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
 6 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
 7 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
 8 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
 9 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
 10 wine in accordance with federal regulations are also wine."
 11

12 **Section 3.** 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. The term does not include a cigar bar as
 18 provided in [section 1].

19 (2) "Department" means the department of public health and human services provided for in 2-15-
 20 2201.

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

23 ~~(a)~~(i) restaurants;

24 ~~(b)~~(ii) stores;

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

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

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

- 1 ~~(f)~~(vi) auditoriums, arenas, and assembly facilities;
 2 ~~(g)~~(vii) meeting rooms open to the public;
 3 ~~(h)~~(viii) bars;
 4 ~~(i)~~(ix) community college facilities;
 5 ~~(j)~~(x) facilities of the Montana university system; and
 6 ~~(k)~~(xi) public schools, as provided for in 20-1-220 and 50-40-104.

7 **(b) The term does not include a cigar bar as provided in [section 1].**

8 (4) "Establishment" means an enterprise under one roof that serves the public and for which a single
 9 person, agency, corporation, or legal entity is responsible.

10 (5) "Incidental to the service of alcoholic beverages or gambling operations" means that at least 60%
 11 of the business's annual gross income comes from the sale of alcoholic beverages or gambling receipts, or
 12 both.

13 (6) "Person" means an individual, partnership, corporation, association, political subdivision, or other
 14 entity.

15 (7) (a) "Place of work" means an enclosed room where one or more individuals work.

16 **(b) The term does not include a cigar bar as provided in [section 1].**

17 (8) "Smoking" or "to smoke" includes the act of lighting, smoking, or carrying a lighted cigar, cigarette,
 18 pipe, or any smokable product and includes the use of marijuana for a debilitating medical condition as
 19 provided for in Title 50, chapter 46."

20

21 **Section 4.** Section 50-40-104, MCA, is amended to read:

22 **"50-40-104. Smoking in enclosed public places prohibited -- notice to public -- places where**
 23 **prohibition inapplicable.** (1) Except as otherwise provided in this section, smoking in an enclosed public place
 24 is prohibited.

25 (2) The proprietor or manager of an establishment containing enclosed public places shall post a sign
 26 in a conspicuous place at all public entrances to the establishment stating, in a manner that can be easily read
 27 and understood, that smoking in the enclosed public place is prohibited.

28 (3) The proprietor or manager of an intrastate bus that is not chartered shall prohibit smoking in all

1 parts of the bus.

2 (4) The prohibition in subsection (1) does not apply to the following places, whether or not the public
3 is allowed access to those places:

4 (a) a private residence unless it is used for any of the following purposes, in which case the
5 prohibition in subsection (1) applies:

6 (i) a family day-care home or group day-care home, as defined in 52-2-703 and licensed pursuant to
7 Title 52, chapter 2, part 7;

8 (ii) an adult foster care home, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5; or

9 (iii) a health care facility, as defined in 50-5-101 and licensed pursuant to Title 50, chapter 5;

10 (b) a private motor vehicle;

11 (c) school property in which smoking is allowed pursuant to the exception in 20-1-220;

12 (d) a hotel or motel room designated as a smoking room and rented to a guest; however, not more
13 than 35% of the rooms available to rent to guests may be designated as smoking rooms; and

14 (e) a site that is being used in connection with the practice of cultural activities by American Indians
15 that is in accordance with the American Indian Religious Freedom Act, 42 U.S.C. 1996 and 1996a.

16 (5) This section does not apply to a cigar bar as provided in [section 1]."

17

18 **NEW SECTION. Section 5. Codification instruction.** [Section 1] is intended to be codified as an
19 integral part of Title 16, chapter 4, part 2, and the provisions of Title 16, chapter 4, part 2, apply to [section 1].

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