

1 HOUSE BILL NO. 534

2 INTRODUCED BY E. BUTTREY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LICENSE LAWS RELATING
5 TO BREWERS AND BREWERIES; ALLOWING LICENSED BREWERS TO HOLD A RETAIL LICENSE;
6 ALLOWING A HOLDER OF A RETAIL LICENSE TO HOLD A BREWER LICENSE; AMENDING SECTIONS
7 16-3-213, 16-3-241, 16-3-242, 16-3-244, AND 16-4-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 NEW SECTION. Section 1. Additional license allowed. (1) A licensed brewer may purchase or hold
12 complete ownership of a license issued pursuant to 16-4-104 or 16-4-201.

13 (2) A person who holds a license issued pursuant to 16-4-104 or 16-4-201 may purchase or hold
14 complete ownership of a brewer license.

15 (3) A person that holds a brewer license and a license issued pursuant to 16-4-104 or 16-4-201:

16 (a) shall maintain both licenses on the same premises, as approved by the department, and may
17 hold:

18 (i) additional brewer licenses; or

19 (ii) up to two additional licenses issued pursuant to 16-4-104 or 16-4-201;

20 (b) may not provide samples pursuant to 16-3-213 for the brewery located at the same premises as
21 the license issued pursuant to 16-4-104 or 16-4-201, and all retail sales must be conducted through the license
22 issued pursuant to 16-4-104 or 16-4-201;

23 (c) may operate pursuant to 16-3-214 with the exception of 16-3-214(1)(b); and

24 (d) is not subject to the limitations of 16-3-241, 16-3-242, 16-3-244, or 16-4-401 when the prohibited
25 acts are conducted by a brewer in the operation of its license issued pursuant to 16-4-104 or 16-4-201.

26
27 **Section 2.** Section 16-3-213, MCA, is amended to read:

28 "**16-3-213. ~~Brewers or beer importers not to retail beer -- small brewery exceptions~~ Brewery**

1 **sample room.** ~~(1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer or~~
 2 ~~breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the~~
 3 ~~intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This~~
 4 ~~section does not prohibit breweries from selling and delivering beer manufactured by them, in original~~
 5 ~~packages, at either wholesale or retail.~~

6 ~~(2)~~ ~~(a)~~ (1) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual
 7 nationwide production of not less than 100 barrels or more than 60,000 barrels, including:

8 (i) the production of all affiliated manufacturers; and

9 (ii) beer purchased from any other beer producer to be sold by the brewery.

10 (b) A small brewery may, at one location for each brewery license and at no more than three locations
 11 including affiliated manufacturers, provide samples of beer that were brewed and fermented on the premises in
 12 a sample room located on the licensed premises. The samples may be provided with or without charge
 13 between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to
 14 each individual customer during a business day. No more than 2,000 barrels may be provided annually for on-
 15 premises consumption including all affiliated manufacturers. This subsection (1) does not apply to a brewery
 16 that holds complete ownership of a license issued pursuant to 16-4-104 or 16-4-201.

17 ~~(3)~~ (2) For the purposes of this section, "affiliated manufacturer" means a manufacturer of beer:

18 (a) that one or more members of the manufacturing entity have more than a majority share interest in
 19 or that controls directly or indirectly another beer manufacturing entity;

20 (b) for which the business operations conducted between or among entities are interrelated or
 21 interdependent to the extent that the net income of one entity cannot reasonably be determined without
 22 reference to operations of the other entity; or

23 (c) of which the brand names, products, recipes, merchandise, trade name, trademarks, labels, or
 24 logos are identical or nearly identical."

25

26 **Section 3.** Section 16-3-241, MCA, is amended to read:

27 **"16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer**

28 **importers, and wholesalers unlawful -- exceptions.** (1) (a) ~~Except as provided in [section 1], it is unlawful~~

1 for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures,
 2 equipment, or any other advertising matter or any other property to a retail licensee, used or to be used in the
 3 dispensation of beer in and about the interior of the place of business of the licensed retailer, or to furnish, give,
 4 or pay for any repairs, improvements, or painting on or within the premises.

5 (b) It is lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

6 (i) bottle openers, can openers, trays, tap handles, menus, apparel, coasters, glassware, cups,
 7 napkins, or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any
 8 one retail establishment for display use within the interior of the retail establishment;

9 (ii) not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each brand
 10 of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place of
 11 business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name,
 12 trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture.
 13 Any beer advertised must be available for sale on the retailer's premises at the time the displays are used
 14 unless the displays are the property of the retailer or, if supplied by a brewer, beer importer, or wholesaler, a
 15 display has been in the retailer's possession for more than 9 months.

16 (iii) permanent or temporary advertising matter of a decorative nature, excluding items described in
 17 subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and

18 (iv) maintenance or repair services on draft beer equipment to keep it sanitary and in good working
 19 condition.

20 (2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and
 21 dispensing of beer to a special permittee or a retailer for use:

22 (a) in catering an event that is off the permittee's or retailer's regular premises; or

23 (b) up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours."
 24

25 **Section 4.** Section 16-3-242, MCA, is amended to read:

26 **"16-3-242. Financial interest in retailers prohibited.** (1) ~~A~~Except as provided in [section 1], a
 27 brewer, beer importer, or wholesaler may not:

28 (a) advance, or loan, or furnish money to ~~or furnish money for~~ or pay for or on behalf of any retailer

1 any license or tax that may be required to be paid for any by the retailer. ~~A brewer, beer importer, or wholesaler~~
 2 ~~may not; or~~

3 (b) be financially interested, either directly or indirectly, in the conduct or operation of the business of
 4 a retailer.

5 (2) A brewer, beer importer, or wholesaler is considered to have a financial interest within the
 6 meaning of this section if:

7 ~~(1)~~(a) the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage
 8 against the retailer or the retailer's premises;

9 ~~(2)~~(b) the brewer, beer importer, or wholesaler is under any contract with a retailer concerning future
 10 purchases or the sale of merchandise by one from or to the other; or

11 ~~(3)~~(c) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."
 12

13 **Section 5.** Section 16-3-244, MCA, is amended to read:

14 "**16-3-244. Beer advertising limitations.** ~~§(1) Except as provided in subsection (2), it is lawful to~~
 15 advertise beer, as defined and regulated, subject to the restrictions on brewers and beer importers contained in
 16 16-3-241 of this code and subject to the following restrictions on retailers. A retail licensee may not display or
 17 permit to be displayed on the exterior portion or surface of the retailer's place of business or on the exterior
 18 portion or surface of any building of which the place of business is a part or on any premises adjacent to the
 19 place of business, whether any of the premises are owned or leased by the retailer, any sign, poster, or
 20 advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the
 21 manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer, unless it is on a
 22 marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days
 23 per display period.

24 (2) A person that holds a brewer license and a license issued pursuant to 16-4-104 or 16-4-201 under
 25 [section 1] is not subject to the restrictions in subsection (1) for products manufactured by the person."
 26

27 **Section 6.** Section 16-4-401, MCA, is amended to read:

28 "**16-4-401. License as privilege -- criteria for decision on application -- exceptions.** (1) A license

1 under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is
2 entitled.

3 (2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in
4 the case of a license that permits on-premises consumption, the department shall find in every case in which it
5 makes an order for the issuance of a new license or for the approval of the transfer of a license that:

6 (a) if the applicant is an individual:

7 (i) and the application is approved, the applicant will not possess an ownership interest in more than
8 three establishments licensed under this chapter for all-beverages sales. However, resort retail all-beverages
9 licenses issued under 16-4-213 do not count toward this limit.

10 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
11 106;

12 (iii) except as provided in subsections (9) and (10), the applicant or any member of the applicant's
13 immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of
14 alcoholic beverages;

15 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
16 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
17 with all applicable laws of the state and local governments; and

18 (v) the applicant is not under 19 years of age;

19 (b) if the applicant is a publicly traded corporation:

20 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
21 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the
22 applicant shall designate two or more officers or board members, each of whom must meet the requirements
23 for an individual applicant listed in subsection (2)(a).

24 (ii) each individual who has control over the operation of the license meets the requirements for an
25 individual applicant listed in subsection (2)(a);

26 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an
27 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a
28 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of

1 subsection (8) apply.

2 (iv) the corporation is authorized to do business in Montana;

3 (c) if the applicant is a privately held corporation:

4 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
5 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the
6 applicant shall designate two or more officers or board members, each of whom must meet the requirements
7 for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet
8 the requirements of subsection (2)(a).

9 (ii) each individual who has control over the operation of the license meets the requirements for an
10 individual applicant listed in subsection (2)(a);

11 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an
12 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a
13 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of
14 subsection (8) apply.

15 (iv) the corporation is authorized to do business in Montana;

16 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
17 (2)(a);

18 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
19 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the
20 requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all
21 limited partners must meet the requirements of subsection (2)(a).

22 (f) if the applicant is a limited liability company, all managing members and those members whose
23 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If
24 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
25 subsection (2)(a).

26 (3) In the case of a license that permits only off-premises consumption and subject to subsection (8),
27 the department shall find in every case in which it makes an order for the issuance of a new license or for the
28 approval of the transfer of a license that:

1 (a) if the applicant is an individual:

2 (i) and the application is approved, the applicant will not possess an ownership interest in more than
3 three establishments licensed under this chapter for all-beverages sales;

4 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
5 106;

6 (iii) the applicant or any member of the applicant's immediate family is without financing from or any
7 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

8 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
9 the applicant's rights have been restored;

10 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
11 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
12 with all applicable laws of the state and local governments; and

13 (vi) the applicant is not under 19 years of age;

14 (b) if the applicant is a publicly traded corporation:

15 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
16 in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
17 designate two or more officers or board members, each of whom must meet the requirements for an individual
18 applicant listed in subsection (3)(a).

19 (ii) the corporation is authorized to do business in Montana;

20 (c) if the applicant is a privately held corporation:

21 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
22 applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the
23 applicant shall designate two or more officers or board members, each of whom must meet the requirements
24 for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet
25 the requirements of subsection (3)(a).

26 (ii) the corporation is authorized to do business in Montana;

27 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
28 (3)(a);

1 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
2 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the
3 requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all
4 limited partners must meet the requirements of subsection (3)(a).

5 (f) if the applicant is a limited liability company, all managing members and those members whose
6 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If
7 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
8 subsection (3)(a).

9 (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or
10 wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the
11 issuance of a new license or for the approval of the transfer of a license that:

12 (a) if the applicant is an individual:

13 (i) except as provided in subsections (9) and (10), the applicant has no ownership interest in any
14 establishment licensed under this chapter for retail alcoholic beverages sales;

15 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
16 106;

17 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
18 the applicant's rights have been restored;

19 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
20 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
21 with all applicable laws of the state and local governments;

22 (v) the applicant is not under 19 years of age; and

23 (vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
24 controlled by a manufacturer of an alcoholic beverage;

25 (b) if the applicant is a publicly traded corporation:

26 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
27 in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
28 designate two or more officers or board members, each of whom must meet the requirements for an individual

1 applicant listed in subsection (4)(a).

2 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
3 controlled by a manufacturer of an alcoholic beverage; and

4 (iii) the corporation is authorized to do business in Montana;

5 (c) if the applicant is a privately held corporation:

6 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
7 applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the
8 applicant must designate two or more officers or board members, each of whom must meet the requirements
9 for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet
10 the requirements of subsection (4)(a).

11 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
12 controlled by a manufacturer of an alcoholic beverage; and

13 (iii) the corporation is authorized to do business in Montana;

14 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
15 (4)(a);

16 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
17 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the
18 requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all
19 limited partners must meet the requirements of subsection (4)(a).

20 (f) if the applicant is a limited liability company, all managing members and those members whose
21 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If
22 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
23 subsection (4)(a).

24 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
25 apply separately to each class of stock.

26 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to
27 16-4-302.

28 (7) An applicant's source of funding must be from a suitable source. A lender or other source of

1 money or credit may be found unsuitable if the source:

2 (a) is a person whose prior financial or other activities or criminal record:

3 (i) poses a threat to the public interest of the state;

4 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or

5 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business;

6 or

7 (b) has been convicted of a felony offense within 5 years of the date of application or is on probation

8 or parole or under deferred prosecution for committing a felony offense.

9 (8) (a) An individual applying for an all-beverages license or having any ownership interest in an
10 entity applying for an all-beverages license may not, if the application were to be approved, own an interest in
11 more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

12 (b) If two or more individuals through business or family relationship share in the profits or liabilities of
13 all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not
14 exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-
15 beverages licenses will be held.

16 (9) Pursuant to [section 1]:

17 (a) a person licensed as a brewer may also hold a license issued pursuant to 16-4-104 and 16-4-201;

18 and

19 (b) a person who holds a license issued pursuant to 16-4-104 and 16-4-201 may hold a brewer

20 license.

21 (10) The prohibited acts described in subsections (2)(a)(iii) and (4)(a)(i) are not prohibited if the acts
22 are conducted by an applicant that holds a brewer and retail license pursuant to [section 1]."

23

24 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an
25 integral part of Title 16, chapter 3, part 2, and the provisions of Title 16, chapter 3, part 2, apply to [section 1].

26

27 **NEW SECTION. Section 8. Saving clause.** [This act] does not affect rights and duties that matured,
28 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

1

2 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2021.

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