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HOUSE BILL NO. 127

INTRODUCED BY F. ANDERSON

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COMBINED BEER WHOLESALER AND TABLE WINE DISTRIBUTOR LICENSES; CREATING A COMBINED BEER WHOLESALER AND TABLE WINE DISTRIBUTOR LICENSE; ELIMINATING SEPARATE BEER WHOLESALER AND TABLE WINE DISTRIBUTOR LICENSES; REVISING DEFINITIONS; PROVIDING FOR LICENSE FEES; AMENDING SECTIONS 16-1-106, 16-3-218, AND 16-4-501, MCA; REPEALING SECTIONS 16-4-103 AND 16-4-108, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Combined beer wholesaler and table wine distributor license. (1) A

person desiring to sell and distribute beer, table wine, or sacramental wine at wholesale to licensed retailers or table wine to agency liquor stores under the provisions of this code shall apply to the department for a license to do so and shall submit with the application the initial license fee provided in 16-4-501. The department may issue licenses to qualified applicants in accordance with the provisions of this code.

(2) Combined beer wholesaler and table wine distributor licenses issued in any year expire on June 30 of that year at midnight.

(3) A license fee may not be imposed on combined beer wholesaler and table wine distributor licensees by a municipality or any other political subdivision of the state.

(4) The license must at all times be prominently displayed in the combined beer wholesaler and table wine distributor's licensed premises.

(5) (a) An applicant must have:

(i) a fixed place of business;

(ii) sufficient capital; and

(iii) the facilities, storehouse, and receiving house or warehouse for the receiving, storage,

1 handling, and moving of beer, table wine, or sacramental wine in large and jobbing quantities for distribution
2 and sale in original packages to other licensed distributors, licensed retailers, or agency liquor stores.

3 (b) Each combined beer wholesaler and table wine distributor licensee is entitled to only one
4 license, which must be issued for the licensee's licensed premises in Montana. A subwarehouse license may
5 be issued for each subwarehouse operated by the licensee. The license must at all times be prominently
6 displayed at the subwarehouse.

7 (6) For the purposes of this code, a holder of a combined beer wholesaler and table wine
8 distributor license is a "beer wholesaler" and a "table wine distributor" as defined at 16-1-106.

9

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

11 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

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

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

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

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

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

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

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

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

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

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

1 (7) "Beer wholesaler" means a person importing into or purchasing in Montana beer for sale or
2 resale to retailers licensed in Montana.

3 ~~(7)~~(8) "Brewer" means a person who produces malt beverages.

4 ~~(8)~~(9) "Caffeinated or stimulant-enhanced malt beverage" means:

5 (a) a beverage:

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

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

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

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

13 (b) a beverage:

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

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

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

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

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

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

23 ~~(9)~~(10) "Community" means:

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

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

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

Amendment - 1st Reading-white - Requested by: Fred Anderson - (H) Business and Labor

- 2023

68th Legislature 2023

Drafter: Jameson Walker, 406-444-3722

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1 ~~(10)~~(11) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

2 ~~(11)~~(12) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-
3 312.

4 ~~(12)~~(13) "Department" means the department of revenue, unless otherwise specified, and includes the
5 department of justice with respect to receiving and processing, but not granting or denying, an application under
6 a contract entered into under 16-1-302.

7 ~~(13)~~(14) "Growler" means any fillable, sealable container complying with federal law.

8 ~~(14)~~(15) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
9 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of
10 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

11 ~~(15)~~(16) "Immediate family" means a spouse, dependent children, or dependent parents.

12 ~~(16)~~(17) "Import" means to transfer beer or table wine from outside the state of Montana into the state
13 of Montana.

14 ~~(17)~~(18) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
15 caffeinated or stimulant-enhanced malt beverage.

16 ~~(18)~~(19) "Malt beverage" means:

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

22 (b) an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any
23 kind, glucose, sugar, or molasses that has not undergone distillation.

24 ~~(19)~~(20) (a) "Original package" means the sealed container in which a manufacturer packages its
25 product for retail sale.

26 (b) The term includes but is not limited to:

27 (i) bottles;

28 (ii) cans; and

1 (iii) kegs.

2 ~~(20)~~(21) "Package" means a container or receptacle used for holding an alcoholic beverage.

3 ~~(24)~~(22) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses

4 as fixed and determined by the department and in addition an excise and license tax as provided in this code.

5 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of

6 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor

7 stores, and a 20% markup.

8 ~~(22)~~(23) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and

9 sealed with a lid, for consumption at a place other than the licensee's premises.

10 ~~(23)~~(24) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that

11 contains 50% of alcohol by volume.

12 ~~(24)~~(25) "Public place" means a place, building, or conveyance to which the public has or may be

13 permitted to have access and any place of public resort.

14 ~~(25)~~(26) "Retail price" means the price established by an agent for the sale of liquor to persons who do

15 not hold liquor licenses. The retail price may not be less than the department's posted price.

16 ~~(26)~~(27) "Rules" means rules adopted by the department or the department of justice pursuant to this

17 code.

18 ~~(27)~~(28) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of

19 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious

20 purposes.

21 ~~(28)~~(29) "Special event", as it relates to an application for a beer and wine special permit, means a

22 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

23 ~~(29)~~(30) "State liquor warehouse" means a building owned or under control of the department for the

24 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

25 ~~(30)~~(31) "Storage depot" means a building or structure owned or operated by a brewer at any point in

26 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with

27 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as

28 permitted by this code.

1 ~~(31)~~(32) "Subwarehouse" means a building or structure owned or operated by a licensed combined
2 beer wholesaler ~~or~~ and table wine distributor, located at a site in Montana other than the site of the combined
3 beer wholesaler's ~~or~~ and table wine distributor's warehouse ~~or principal place of business~~, and used for the
4 receiving, storage, and distribution of beer, ~~or~~ table wine, or sacramental wine as permitted by this code.

5 ~~(32)~~(33) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
6 hard cider.

7 ~~(33)~~(34) "Table wine distributor" means a person importing into or purchasing in Montana table wine or
8 sacramental wine for sale or resale to retailers licensed in Montana and a person importing into or purchasing
9 in Montana table wine for sale or resale to agency liquor stores.

10 ~~(34)~~(35) "Warehouse" means a building or structure located in Montana that is owned or operated by a
11 licensed combined beer wholesaler ~~or~~ and table wine distributor for the receiving, storage, and distribution of
12 beer or table wine as permitted by this code.

13 ~~(35)~~(36) "Wine" means an alcoholic beverage made from or containing the normal alcoholic
14 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
15 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
16 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
17 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
18 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
19 wine in accordance with federal regulations are also wine."

21 **Section 3.** Section 16-3-218, MCA, is amended to read:

22 **"16-3-218. "Distribute" defined.** As used in 16-3-219, and 16-3-220, ~~16-4-103, and 16-4-108,~~
23 "distribute" means to deliver table wine to an agency liquor store or to deliver beer or table wine to a retailer's
24 premises licensed to sell beer, table wine, or sacramental wine as well as an alternate alcoholic beverage
25 storage facility as allowed in 16-4-213(8)."

27 **Section 4.** Section 16-4-501, MCA, is amended to read:

28 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine

1 only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise
2 specified in this section, the fee is an annual fee and is imposed as follows:

3 (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for
4 sale within the state, \$500;

5 (ii) for each storage depot, \$400;

6 (b) (i) ~~each beer wholesaler, \$400~~ each license for selling and distributing beer, table wine, or
7 sacramental wine at wholesale to licensed retailers or table wine to agency liquor stores under [section 1], \$800
8 \$400; each winery, \$200; ~~each table wine distributor, \$400~~;

9 (ii) for each subwarehouse, ~~\$400~~ \$800 \$400;

10 (c) each beer retailer, \$200;

11 (d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer
12 license;

13 (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in
14 conjunction with beer, \$200;

15 (e) any unit of a nationally chartered veterans' organization, \$50.

16 (2) The permit fee under 16-4-301(1) is computed at the following rate:

17 (a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting
18 contests, other than those applied for pursuant to 16-4-301(1)(c); and

19 (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the
20 provisions of 16-4-301(1)(c).

21 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the
22 sale of all alcoholic beverages.

23 (4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license
24 fee in the sum of \$300.

25 (5) The annual license fee for a license to sell wine on the premises, when issued as an
26 amendment to a beer-only license pursuant to 16-4-105, is \$200.

27 (6) The annual renewal fee for:

28 (a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is \$200;

- 1 (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license; and
- 2 (c) a continuing care retirement community limited all-beverages license is \$500 for each license.
- 3 (7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall
- 4 pay an annual license fee as follows:
- 5 (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities
- 6 and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans'
- 7 organization and \$400 for all other licensees;
- 8 (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000
- 9 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be
- 10 licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and
- 11 \$500 for all other licensees;
- 12 (c) for each license in incorporated cities with a population of more than 5,000 and less than
- 13 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to
- 14 be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization
- 15 and \$650 for all other licensees;
- 16 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance
- 17 of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
- 18 boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other
- 19 licensees;
- 20 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated
- 21 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
- 22 boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles
- 23 of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations,
- 24 the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the
- 25 applicant. When the premises of the applicant to be licensed are situated within an incorporated town or
- 26 incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the
- 27 license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the
- 28 applicant.

1 (f) an applicant for the issuance of a resort retail all-beverages license shall pay a \$100,000
2 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another
3 location within the boundaries of the resort area or to another owner to be used at a location within the
4 boundaries of the resort area.

5 (8) The fee for one all-beverages license to a public airport is \$800. This license is
6 nontransferable.

7 (9) The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.

8 (10) The annual fee for a special beer and table wine license for a nonprofit arts organization under
9 16-4-303 is \$250.

10 (11) The annual fee for a distillery is \$600.

11 (12) The license fees provided in this section are exclusive of and in addition to other license fees
12 chargeable in Montana for the sale of alcoholic beverages.

13 (13) In addition to other license fees, the department of revenue may require a licensee to pay a
14 late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's
15 anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month
16 after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal
17 year or 1 year and 2 months after the licensee's anniversary date.

18 (14) All license and permit fees collected under this section must be deposited as provided in 16-2-
19 108."

20
21 **NEW SECTION. Section 5. Repealer.** The following sections of the Montana Code Annotated are
22 repealed:

23 16-4-103. Wholesalers' licenses -- application and issuance -- subwarehouses -- imported beer handled
24 through warehouse or subwarehouse -- wine storage.

25 16-4-108. Table wine distributor's license.
26

27 **NEW SECTION. Section 6. Transition.** The department shall reclassify existing licenses to
28 combined licenses pursuant to [section 1] after June 30, 2024, and during the existing license's renewal.

1

2 NEW SECTION. **Section 7. Codification instruction.** [Section 1] is intended to be codified as an
3 integral part of Title 16, chapter 4, part 1, and the provisions of Title 16, chapter 4, part 1, apply to [section 1].

4

5 NEW SECTION. **Section 8. Effective date.** [This act] is effective July 1, 2024.

6

- END -

AMENDED