

1 HOUSE BILL NO. 539

2 INTRODUCED BY K. ZOLNIKOV

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS;
5 ALLOWING AN ALCOHOLIC BEVERAGES LICENSEE TO OPERATE A GUEST RANCH ~~OR SIMILAR~~
6 ~~BUSINESS~~ AND SERVE ALCOHOL AT THE PREMISES; REVISING DEFINITIONS; REVISING LAWS
7 RELATED TO LICENSE LAPSE; AMENDING SECTIONS 16-1-106 AND 16-3-302, MCA; AND PROVIDING
8 AN IMMEDIATE EFFECTIVE DATE."

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

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

13 "16-1-106. Definitions. As used in this code, the following definitions apply:

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

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

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

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

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

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

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

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

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

- 1 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- 2 (6) "Beer importer" means a person other than a brewer who imports malt beverages.
- 3 (7) "Brewer" means a person who produces malt beverages.
- 4 (8) "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) "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.

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

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

4 (12) "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) "Growler" means any fillable, sealable container complying with federal law.

8 (14) (a) "Guest ranch ~~or similar business~~" means a business or organization that provides guests
9 with overnight lodging, dining, and onsite outdoor recreational activities typical of western ranching for the
10 purposes of vacation or recreation. Recreational activities offered by a guest ranch ~~or similar business~~ may
11 include but are not limited to horseback riding, wagon or sleigh rides, fishing, shooting, and working with
12 livestock. The premises of a guest ranch ~~or similar business~~ must comprise at least 50 contiguous acres. The
13 permanent building included within the premises must be entirely located outside the license quota area of an
14 incorporated city or an incorporated town as determined under 16-4-105(1) or 16-4-201. The premises of a
15 guest ranch ~~or similar business~~ may include restaurants, sporting and recreational equipment shops, event
16 venues, arenas, and other facilities that may be used by other persons in addition to the overnight guests.

17 (b) The term does not include premises used as rehabilitation centers, group homes, clinics,
18 nursing homes, church or other religious campgrounds, or other similar uses.

19 (14)(15) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
20 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of
21 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

22 (15)(16) "Immediate family" means a spouse, dependent children, or dependent parents.

23 (16)(17) "Import" means to transfer beer or table wine from outside the state of Montana into the state
24 of Montana.

25 (17)(18) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
26 caffeinated or stimulant-enhanced malt beverage.

27 (18)(19) "Malt beverage" means:

28 (a) an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination

1 of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with
2 or without other malted cereals and with or without the addition of unmalted or prepared cereals, other
3 carbohydrates, or products prepared from carbohydrates and with or without other wholesome products
4 suitable for human food consumption; or

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

7 ~~(19)~~(20) (a) "Original package" means the sealed container in which a manufacturer packages its
8 product for retail sale.

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

10 (i) bottles;

11 (ii) cans; and

12 (iii) kegs.

13 ~~(20)~~(21) "Package" means a container or receptacle used for holding an alcoholic beverage.

14 ~~(21)~~(22) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
15 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
16 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of
17 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor
18 stores, and a 20% markup.

19 ~~(22)~~(23) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and
20 sealed with a lid, for consumption at a place other than the licensee's premises.

21 ~~(23)~~(24) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
22 contains 50% of alcohol by volume.

23 ~~(24)~~(25) "Public place" means a place, building, or conveyance to which the public has or may be
24 permitted to have access and any place of public resort.

25 ~~(25)~~(26) "Retail price" means the price established by an agent for the sale of liquor to persons who do
26 not hold liquor licenses. The retail price may not be less than the department's posted price.

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

1 ~~(27)~~(28) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of
2 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious
3 purposes.

4 ~~(28)~~(29) "Special event", as it relates to an application for a beer and wine special permit, means a
5 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

6 ~~(29)~~(30) "State liquor warehouse" means a building owned or under control of the department for the
7 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

8 ~~(30)~~(31) "Storage depot" means a building or structure owned or operated by a brewer at any point in
9 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with
10 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
11 permitted by this code.

12 ~~(31)~~(32) "Subwarehouse" means a building or structure owned or operated by a licensed beer
13 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or
14 table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and
15 distribution of beer or table wine as permitted by this code.

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

18 ~~(33)~~(34) "Table wine distributor" means a person importing into or purchasing in Montana table wine or
19 sacramental wine for sale or resale to retailers licensed in Montana.

20 ~~(34)~~(35) "Warehouse" means a building or structure located in Montana that is owned or operated by a
21 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
22 wine as permitted by this code.

23 ~~(35)~~(36) "Wine" means an alcoholic beverage made from or containing the normal alcoholic
24 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
25 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
26 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
27 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
28 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as

1 wine in accordance with federal regulations are also wine."

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3 **Section 2.** Section 16-3-302, MCA, is amended to read:

4 **"16-3-302. Sale by retailer for consumption on premises.** (1) It is lawful for a licensed retailer to
5 sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the
6 retailer.

7 (2) It is lawful for a licensee who has an all-beverages license that the licensee uses at a golf
8 course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under
9 16-4-109 to sell beer and wine:

10 (a) in the building or other structural premises constituting the clubhouse or primary indoor
11 recreational quarters of the golf course; and

12 (b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other
13 movable satellite device that is moved from place to place, whether inside or outside of a building or other
14 structure.

15 (3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place
16 within the boundaries of the golf course, whether inside or outside of a building or other structure.

17 (4) (a) It is lawful for a licensee who has an all-beverages license or has a retail license issued
18 under ~~16-4-104~~ 16-4-105 to sell and serve alcoholic beverages for which the licensee is licensed at a guest
19 ranch or similar business as defined in 16-1-106. The guest ranch or similar business must be owned by the
20 licensee or by a concessionaire with which the licensee has a concession agreement under 16-4-418. For a
21 license operated at a guest ranch or similar business, alcoholic beverages may be served anytime within the
22 outdoor portions of the licensed premises and in one permanent building at any time during the hours allowed
23 under 16-3-304.

24 (b) An applicant or licensee desiring to operate a license as described in this subsection (4) shall
25 submit to the department a premises floorplan that describes the premises as a guest ranch and depicts both
26 the indoor and outdoor portions of the premises. The floorplan must be submitted to the department as part of a
27 license application or as part of a premises alteration request as described in 16-3-311(2).

28 (b)(c) A license operated at a guest ranch or similar business is subject to the requirements that are

1 applicable to retail licenses generally, including the premises suitability provisions of 16-3-311, except that:

2 (i) the premises may include any number of temporary, mobile, or partial structures, including but
3 not limited to tents, teepees, yurts, picnic shelters, recreational vehicles, wagons, trailers, or any other
4 structures that are not permanent buildings, provided that all temporary, mobile, or partial structures may not be
5 used for alcohol storage purposes unless approved by the department, and may only be used for alcohol
6 service and consumption if they remain within the licensee's approved outdoor premises area;

7 (ii) the premises may include any outdoor areas in which the licensee or concessionaire has
8 possessory interest, which may be demonstrated by property ownership records, a lease agreement, a
9 concession agreement, or other evidence of possessory interest acceptable to the department;

10 (iii) the premises may be separated by roadways, waterways, natural barriers, or fence lines if the
11 premises are otherwise contiguous;

12 (iv) a perimeter barrier is not required if the property line is otherwise marked; and

13 (v) the premises may be identified on the license by legal description rather than by building
14 address.

15 ~~(e)~~(d) For the purposes of this subsection (4), the term "permanent building" means a fixed,
16 nonmobile structure with floor-to-ceiling exterior walls, a full roof, electrical wiring, and plumbing fixtures."

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18 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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