

1 HOUSE BILL NO. 539
2 INTRODUCED BY K. ZOLNIKOV
3
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, AND 16-3-311, MCA; AND
8 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

11
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

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- 1 from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- 2 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- 3 (6) "Beer importer" means a person other than a brewer who imports malt beverages.
- 4 (7) "Brewer" means a person who produces malt beverages.
- 5 (8) "Caffeinated or stimulant-enhanced malt beverage" means:
- 6 (a) a beverage:
- 7 (i) that is fermented in a manner similar to beer and from which some or all of the fermented
- 8 alcohol has been removed and replaced with distilled ethyl alcohol;
- 9 (ii) that contains at least 0.5% of alcohol by volume;
- 10 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 11 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 12 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
- 13 and taurine; or
- 14 (b) a beverage:
- 15 (i) that contains at least 0.5% of alcohol by volume;
- 16 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 17 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 18 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 19 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
- 20 and taurine;
- 21 (v) for which the producer is required to file a formula for approval with the United States alcohol
- 22 and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 23 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 24 (9) "Community" means:
- 25 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 26 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
- 27 community for census purposes; and

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

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

4 (11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-
5 312.

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

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

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

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

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

24 ~~(15)~~(16) "Immediate family" means a spouse, dependent children, or dependent parents.

25 ~~(16)~~(17) "Import" means to transfer beer or table wine from outside the state of Montana into the state
26 of Montana.

27 ~~(17)~~(18) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a

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1 caffeinated or stimulant-enhanced malt beverage.

2 ~~(18)~~(19) "Malt beverage" means:

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

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

10 ~~(19)~~(20) (a) "Original package" means the sealed container in which a manufacturer packages its
11 product for retail sale.

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

13 (i) bottles;

14 (ii) cans; and

15 (iii) kegs.

16 ~~(20)~~(21) "Package" means a container or receptacle used for holding an alcoholic beverage.

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

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

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

26 ~~(24)~~(25) "Public place" means a place, building, or conveyance to which the public has or may be
27 permitted to have access and any place of public resort.

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1 ~~(25)~~(26) "Retail price" means the price established by an agent for the sale of liquor to persons who do
2 not hold liquor licenses. The retail price may not be less than the department's posted price.

3 ~~(26)~~(27) "Rules" means rules adopted by the department or the department of justice pursuant to this
4 code.

5 ~~(27)~~(28) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of
6 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious
7 purposes.

8 ~~(28)~~(29) "Special event", as it relates to an application for a beer and wine special permit, means a
9 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

10 ~~(29)~~(30) "State liquor warehouse" means a building owned or under control of the department for the
11 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

12 ~~(30)~~(31) "Storage depot" means a building or structure owned or operated by a brewer at any point in
13 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with
14 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
15 permitted by this code.

16 ~~(31)~~(32) "Subwarehouse" means a building or structure owned or operated by a licensed beer
17 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or
18 table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and
19 distribution of beer or table wine as permitted by this code.

20 ~~(32)~~(33) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
21 cider.

22 ~~(33)~~(34) "Table wine distributor" means a person importing into or purchasing in Montana table wine or
23 sacramental wine for sale or resale to retailers licensed in Montana.

24 ~~(34)~~(35) "Warehouse" means a building or structure located in Montana that is owned or operated by a
25 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
26 wine as permitted by this code.

27 ~~(35)~~(36) "Wine" means an alcoholic beverage made from or containing the normal alcoholic

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1 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
2 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
3 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
4 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
5 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
6 wine in accordance with federal regulations are also wine."

7

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

9 **"16-3-302. Sale by retailer for consumption on premises.** (1) It is lawful for a licensed retailer to
10 sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the
11 retailer.

12 (2) It is lawful for a licensee who has an all-beverages license that the licensee uses at a golf
13 course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under
14 16-4-109 to sell beer and wine:

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

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

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

22 (4) (a) It is lawful for a licensee who has an all-beverages license or has a retail license issued
23 under ~~16-4-104~~ 16-4-105 to sell and serve alcoholic beverages for which the licensee is licensed at a guest
24 ranch or similar business as defined in 16-1-106. The guest ranch or similar business must be owned by the
25 licensee or by a concessionaire with which the licensee has a concession agreement under 16-4-418. For a
26 license operated at a guest ranch or similar business, alcoholic beverages may be served anytime within the
27 outdoor portions of the licensed premises and in one permanent building AT ANY TIME DURING THE HOURS

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1 ALLOWED UNDER 16-3-304.

2 (B) AN APPLICANT OR LICENSEE DESIRING TO OPERATE A LICENSE AS DESCRIBED IN THIS SUBSECTION (4)
3 SHALL SUBMIT TO THE DEPARTMENT A PREMISES FLOORPLAN THAT DESCRIBES THE PREMISES AS A GUEST RANCH AND
4 DEPICTS BOTH THE INDOOR AND OUTDOOR PORTIONS OF THE PREMISES. THE FLOORPLAN MUST BE SUBMITTED TO THE
5 DEPARTMENT AS PART OF A LICENSE APPLICATION OR AS PART OF A PREMISES ALTERATION REQUEST AS DESCRIBED IN
6 16-3-311(2).

7 (b)(C) A license operated at a guest ranch or similar business is subject to the REQUIREMENTS THAT
8 ARE APPLICABLE TO RETAIL LICENSES GENERALLY, INCLUDING THE premises suitability provisions of 16-3-311,
9 except that:

10 (i) the premises may include any number of temporary, mobile, or partial structures, including but
11 not limited to tents, teepees, yurts, picnic shelters, recreational vehicles, wagons, trailers, or any other
12 structures that are not permanent buildings, PROVIDED THAT ALL TEMPORARY, MOBILE, OR PARTIAL STRUCTURES MAY
13 NOT BE USED FOR ALCOHOL STORAGE PURPOSES UNLESS APPROVED BY THE DEPARTMENT, AND MAY ONLY BE USED
14 FOR ALCOHOL SERVICE AND CONSUMPTION IF THEY REMAIN WITHIN THE LICENSEE'S APPROVED OUTDOOR PREMISES
15 AREA;

16 (ii) the premises may include any outdoor areas in which the licensee or concessionaire has
17 possessory interest, WHICH MAY BE DEMONSTRATED BY PROPERTY OWNERSHIP RECORDS, A LEASE AGREEMENT, A
18 CONCESSION AGREEMENT, OR OTHER EVIDENCE OF POSSESSORY INTEREST ACCEPTABLE TO THE DEPARTMENT;

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

21 (iv) a perimeter barrier is not required IF THE PROPERTY LINE IS OTHERWISE MARKED; and

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

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

26 (5) (a) It is lawful for a licensee who has an all-beverages license or a resort area all-beverages
27 license to sell alcoholic beverages;

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1 (i) in the building or other structural premises constituting the primary indoor lodging quarters of a
2 hotel or other short-term lodging facility;

3 (ii) if the licensee's premises include a swimming pool, in a permanent, licensed alcohol service
4 structure in the swimming pool area separate from the main licensed premises;

5 (iii) if the licensee's premises include a ski hill, in up to two permanent, licensed alcohol service
6 structures separate from the main licensed premises within the exterior boundaries of the same premises that
7 are owned, leased, or otherwise under the control of and operated by the same property owner, licensee, and if
8 applicable, concessionaire;

9 (iv) if the licensee's premises include a golf course, the premises in addition to the main licensed
10 premises may include:

11 (A) the building or alcohol service structure constituting the clubhouse or primary recreational
12 quarters of the golf course that is separate from the main licensed premises; and

13 (B) the outdoor area within the boundaries of the golf course.

14 (b) Buildings or structural premises allowed under this subsection (5) may be separate from the
15 building comprising the main licensed premises but must otherwise meet the premises suitability
16 requirements of 16-3-311. The licensee shall pay an application fee of \$100 for each area allowed under this
17 subsection (5)."

18
19 **Section 3.** Section 16-3-311, MCA, is amended to read:

20 **"16-3-311. Suitable premises for licensed retail establishments.** (1) (a) A licensed retailer may
21 use a part of a building as premises licensed for on-premises consumption of alcoholic beverages, except as
22 otherwise allowed in 16-3-302(5). The licensed retailer must demonstrate that it has adequate control over all
23 alcoholic beverages to prevent self-service, service to underage persons, and service to persons who are
24 actually or apparently intoxicated. Except as provided in subsection (8), the premises must be separated from
25 the rest of the building by permanent walls but may have inside access to the rest of the building at all times
26 even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in
27 which the alcoholic beverages are served. A licensee may lease the kitchen or another specified area to allow

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1 another business entity to operate a business within its premises without permanent floor-to-ceiling walls and
2 without a concession agreement if the other business does not take orders for, serve, or deliver alcohol and has
3 a separate point of sale system. If the premises are located in a portion of a building, the licensed retailer must
4 be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic
5 beverages after hours, either by the presence of a lockable door or other security features such as rolling gates,
6 locking cabinets, tap locks, or key card access.

7 (b) A resort retail all-beverages licensee, ~~or~~ a retail all-beverages licensee, or an on-premises
8 consumption beer and wine licensee within the boundaries of a resort area may also utilize an up to three
9 alternate alcoholic beverage storage facility facilities as allowed in 16-4-213(8).

10 (2) A licensee may alter the approved floorplan of the premises. The alteration must be consistent
11 with the requirements of subsection (1)(a). A licensee shall provide a copy of the revised floorplan with the
12 proposed alteration for the licensed premises to the department within 7 days of beginning the alteration.
13 Department approval may not be unreasonably withheld. If the completed alteration differs from the approved
14 alteration due to modifications required for approval by other state or local government entities, such as
15 compliance with fire or building codes, the department must be notified, but preapproval is not required for
16 these modifications. An alteration for the purposes of this section is any structural change in a premises that
17 does not increase the square footage of the existing approved premises. An alteration that increases the
18 square footage of the existing approved premises must be approved by the department prior to beginning the
19 alteration. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an
20 alteration under this section. If the alteration does not require the licensee to obtain a building permit, then the
21 inspections by local government agencies may not be required for department approval.

22 (3) The interior portion of the licensed premises must be a continuous area that is under the
23 control of the licensee and not interrupted by any area in which the licensee does not have adequate control,
24 and includes multiple floors on the premises and common areas necessarily shared by multiple building tenants
25 in order to allow patrons to access other tenant businesses or private dwellings in the same building, including
26 but not limited to entryways, hallways, stairwells, and elevators.

27 (4) The premises may include one or more exterior patios or decks as long as sufficient physical

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1 safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional
2 perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and
3 impedes foot traffic.

4 (5) Premises suitability does not include a minimum number of seats.

5 (6) A licensed retailer may apply to the department to have a noncontiguous storage area that is
6 under the control of the licensed retailer approved for onsite alcoholic beverage storage separate from its
7 service area as long as the licensed retailer demonstrates that there are adequate safeguards in place to
8 prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other
9 security features such as rolling gates, locking cabinets, tap locks, or key card access. The application fee is
10 \$100. On department approval, an on-premises consumption retailer's keg storage and beer lines running into
11 the licensed premises may be in a noncontiguous storage area provided that the licensee is able to maintain
12 control and adequate safeguards are in place to prevent public access.

13 (7) A licensed retailer operating within a hotel or similar short-term lodging facility may apply to the
14 department to allow for the delivery of alcoholic beverages to guests of accommodation units, and the
15 prestocking of alcoholic beverages in accommodation units is allowed for the accommodation units within the
16 property as long as the purchaser's age is verified and there are adequate safeguards in place to prevent
17 underage service. The application fee is \$100.

18 (8) An on-premises consumption retailer may be located adjacent to a brewery or winery if the
19 licensees are able to maintain control of their respective premises through adequate physical separation.

20 (9) (a) For the purposes of this section, "adequate physical separation" means:

21 (i) the premises of the retailer and the premises of the brewery or winery are secured after
22 business hours from each other and from any other business, including but not limited to prohibiting a customer
23 from accessing a brewery sample room and purchasing alcohol after the brewery tasting room hours of
24 operation as specified in 16-3-213(2)(b); and

25 (ii) the separation may include doors, gates, or windows that may be left open during business
26 hours.

27 (b) The term does not require permanent floor-to-ceiling walls."

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1

2 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

3

- END -

AMENDED