

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; REVISING LAWS RELATING TO MONTANA DISTILLERY HOURS OF
8 OPERATION; ALLOWING LICENSED RETAILERS TO PURCHASE BEER AND TABLE WINE FROM
9 LICENSED IN-STATE RETAILERS AND PROVIDING LIMITATIONS; AMENDING SECTIONS 16-1-106, 16-3-
10 301, AND 16-3-302, AND 16-3-311, AND 16-4-312, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE
11 DATE."

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

- 14
15 **Section 1.** Section 16-1-106, MCA, is amended to read:
16 **"16-1-106. Definitions.** As used in this code, the following definitions apply:
17 (1) "Agency franchise agreement" means an agreement between the department and a person
18 appointed to sell liquor and table wine as a commission merchant rather than as an employee.
19 (2) "Agency liquor store" means a store operated under an agency franchise agreement in
20 accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises
21 consumption.
22 (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
23 (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink
24 that contains more than 0.5% of alcohol by volume.
25 (5) (a) "Beer" means:
26 (i) a malt beverage containing not more than 8.75% of alcohol by volume; or
27 (ii) an alcoholic beverage containing not more than 14% alcohol by volume:

**Amendment - 1st Reading/2nd House-blue - Requested by: Free Conference Committee on
HB 539**

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Drafter: Jameson Walker, 406-444-3722

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1 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
2 wine as permitted by this code.

3 ~~(35)~~(36) "Wine" means an alcoholic beverage made from or containing the normal alcoholic
4 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
5 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
6 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
7 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
8 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
9 wine in accordance with federal regulations are also wine."
10

11 **Section 2.** Section 16-3-301, MCA, is amended to read:

12 **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1) It
13 is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewery, winery, or
14 wholesaler licensed under the provisions of this code except as allowed in 16-4-213(8).

15 (2) It is unlawful for a licensed retailer to transport beer or wine from one licensed premises or
16 other facility to any other licensed premises owned by the licensee except as allowed in 16-4-213(8).

17 (3) It is unlawful for a licensed retailer to purchase or acquire liquor from anyone except an agency
18 liquor store except as allowed in 16-4-213(8).

19 (4) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery,
20 winery, or wholesaler licensed or registered under this code.

21 (5) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or
22 give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

23 (a) any person under 21 years of age; or

24 (b) any person actually, apparently, or obviously intoxicated.

25 (6) Any person under 21 years of age or any other person who knowingly misrepresents the
26 person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with
27 the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this

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1 section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in
2 violation of any federal law.

3 (7) All licensees shall display in a prominent place in their premises a placard, issued by the
4 department, stating fully the consequences for violations of the provisions of this code by persons under 21
5 years of age.

6 (8) For purposes of 45-5-623 and this title, the establishment of the following facts by a person
7 making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of
8 innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

9 (a) the purchaser falsely represented and supported with documentary evidence that an ordinary
10 and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

11 (b) the appearance of the purchaser was such that an ordinary and prudent person would believe
12 the purchaser to be of legal age to purchase alcoholic beverages; and

13 (c) the sale was made in good faith and in reasonable reliance upon the representation and
14 appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

15 (9) A licensed retailer may purchase beer and table wine from a licensed in-state retailer and
16 transport the purchased beer and table wine to the licensed retailer's premises. The department may penalize
17 retailers purchasing beer and table wine from out-of-state retailers subject to this code. Purchases under this
18 subsection are limited to a maximum of 6 gallons a day. (See compiler's comments for contingent termination of
19 certain text.)"

20

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

22 **"16-3-302. Sale by retailer for consumption on premises.** (1) It is lawful for a licensed retailer to
23 sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the
24 retailer.

25 (2) It is lawful for a licensee who has an all-beverages license that the licensee uses at a golf
26 course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under
27 16-4-109 to sell beer and wine:

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1 FROM THE BUILDING COMPROMISING THE MAIN LICENSED PREMISES BUT MUST OTHERWISE MEET THE PREMISES
2 SUITABILITY REQUIREMENTS OF 16-3-311. THE LICENSEE SHALL PAY AN APPLICATION FEE OF \$100 FOR EACH AREA
3 ALLOWED UNDER THIS SUBSECTION (5)."

4

5 **Section 4.** SECTION 16-3-311, MCA, IS AMENDED TO READ:

6 **"16-3-311. Suitable premises for licensed retail establishments.** (1) (a) A licensed retailer may
7 use a part of a building as premises licensed for on-premises consumption of alcoholic beverages, except as
8 otherwise allowed in 16-3-302(5). The licensed retailer must demonstrate that it has adequate control over all
9 alcoholic beverages to prevent self-service, service to underage persons, and service to persons who are
10 actually or apparently intoxicated. Except as provided in subsection (8), the premises must be separated from
11 the rest of the building by permanent walls but may have inside access to the rest of the building at all times
12 even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in
13 which the alcoholic beverages are served. A licensee may lease the kitchen or another specified area to allow
14 another business entity to operate a business within its premises without permanent floor-to-ceiling walls and
15 without a concession agreement if the other business does not take orders for, serve, or deliver alcohol and has
16 a separate point of sale system. If the premises are located in a portion of a building, the licensed retailer must
17 be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic
18 beverages after hours, either by the presence of a lockable door or other security features such as rolling gates,
19 locking cabinets, tap locks, or key card access.

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

23 (2) A licensee may alter the approved floorplan of the premises. The alteration must be consistent
24 with the requirements of subsection (1)(a). A licensee shall provide a copy of the revised floorplan with the
25 proposed alteration for the licensed premises to the department within 7 days of beginning the alteration.
26 Department approval may not be unreasonably withheld. If the completed alteration differs from the approved
27 alteration due to modifications required for approval by other state or local government entities, such as

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1 compliance with fire or building codes, the department must be notified, but preapproval is not required for
2 these modifications. An alteration for the purposes of this section is any structural change in a premises that
3 does not increase the square footage of the existing approved premises. An alteration that increases the
4 square footage of the existing approved premises must be approved by the department prior to beginning the
5 alteration. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an
6 alteration under this section. If the alteration does not require the licensee to obtain a building permit, then the
7 inspections by local government agencies may not be required for department approval.

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

13 (4) The premises may include one or more exterior patios or decks as long as sufficient physical
14 safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional
15 perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and
16 impedes foot traffic.

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

18 (6) A licensed on-premises retailer may apply to the department to have a noncontiguous storage
19 area that is under the control of the licensed on-premises retailer approved for ~~onsite~~ alcoholic beverage
20 storage, either onsite separate from its service area or offsite within 10 miles or the premises as long as the
21 licensed on-premises retailer demonstrates that there are adequate safeguards in place to prevent public
22 access to alcoholic beverages after hours, either by the presence of a lockable door or other security features
23 such as rolling gates, locking cabinets, tap locks, or key card access. Alcohol stored at an offsite noncontiguous
24 storage area must be transported only by the licensee or the licensee's employees who are 21 years of age or
25 older. The application fee is \$100. On department approval, an on-premises consumption retailer's keg storage
26 and beer lines running into the licensed premises may be in a noncontiguous storage area provided that the
27 licensee is able to maintain control and adequate safeguards are in place to prevent public access.

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1 (7) A licensed retailer operating within a hotel or similar short-term lodging facility may apply to the
2 department to allow for the delivery of alcoholic beverages to guests of accommodation units, and the
3 prestocking of alcoholic beverages in accommodation units is allowed for the accommodation units within the
4 property as long as the purchaser's age is verified and there are adequate safeguards in place to prevent
5 underage service. The application fee is \$100. Licensees may receive alcohol deliveries at a noncontiguous
6 storage area.

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

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

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

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

16 (b) The term does not require permanent floor-to-ceiling walls."
17

18 **Section 5.** Section 16-4-312, MCA, is amended to read:

19 **"16-4-312. Domestic distillery.** (1) A distillery located in Montana and licensed pursuant to 16-4-311
20 may:

21 (a) import necessary products in bulk;

22 (b) bottle, produce, blend, store, transport, or export liquor that it produces; and

23 (c) perform those operations that are permitted for bonded distillery premises under applicable
24 regulations of the United States department of the treasury.

25 (2) (a) A distillery that is located in Montana and licensed pursuant to 16-4-311 shall sell liquor to
26 the department under this code, and the department shall include the distillery's liquor as a listed product.

27 (b) The distillery may use a common carrier for delivery of the liquor to the department.

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1 (c) A distillery that produces liquor within the state under this subsection (2) shall maintain records
2 of all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and
3 prices of liquor that it ships to the department and other information that the department may determine to be
4 necessary to ensure that distribution of liquor within this state conforms to the requirements of this code.

5 (3) A microdistillery may:

6 (a) provide, with or without charge, not more than 2 ounces of liquor that it produces at the
7 microdistillery to consumers for prepared servings;

8 (i) ~~though through~~ curbside pickup between 10 a.m. and 8 p.m.; and

9 (ii) ~~or consumption on the premises between 10 a.m. and 8 p.m. for on-premises consumption~~
10 ~~during the hours of operation that are identical to those allowed for a brewery license provided for in 16-3-~~
11 ~~213(2)(b) and corresponding administrative rules relating to the service, consumption, and possession of~~
12 ~~alcoholic beverages on the premises;~~ or

13 (b) sell liquor in original packaging that it produces at retail at the distillery between the hours of 8
14 a.m. and 2 a.m. directly to the consumer, including curbside pickup, for off-premises consumption if:

15 (i) not more than ~~4.75~~ 4.5 liters a day is sold to an individual; and

16 (ii) the minimum retail price as determined by the department is charged."

17

18

19 NEW SECTION. Section 6. Transition. The department shall revise its administrative rules
20 implementing 16-3-213 and 16-4-312 or any other applicable statute to include sample room hours of
21 operations that are identical for Montana distilleries and breweries. The intent of this act is to make the hours of
22 operation for service to and consumption and possession of alcohol by consumers at breweries and distilleries
23 equal.

24

25 COORDINATION SECTION. Section 7. Coordination instruction. If both House Bill No. 164 and
26 [this act] are passed and approved and both contain a section that amends 16-1-106 to provide a definition for
27 the term "guest ranch", then [section 1 of this act], amending 16-1-106, is void.

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COORDINATION SECTION. **Section 8. Coordination instruction.** If both Senate Bill No. 75 and [this act] are passed and approved and both contain a section that amends 16-3-302, then the sections amending 16-3-302 are void and 16-3-302 must be amended as follows:

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

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

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

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

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

(4) (a) It is lawful for a licensee who has an all-beverages license or a resort area all-beverages license to sell alcoholic beverages:

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

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

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

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1 (iv) if the licensee's premises include a golf course, the premises in addition to the main licensed
2 premises may include:
3 (A) the building or alcohol service structure constituting the clubhouse or primary recreational
4 quarters of the golf course that is separate from the main licensed premises; and
5 (B) the outdoor area within the boundaries of the golf course.
6 (b) Buildings or structural premises allowed under this subsection (4) may be separate from the
7 building comprising the main licensed premises but must otherwise meet the premises suitability requirements
8 of 16-3-311. The licensee shall pay an application fee of \$100 for each area allowed under this subsection (4).
9 (5) (a) It is lawful for a licensee who has an all-beverages license or has a retail license issued
10 under 16-4-105 to sell and serve alcoholic beverages for which the licensee is licensed at a guest ranch as
11 defined in 16-1-106. The guest ranch must be owned by the licensee or by a concessionaire with which the
12 licensee has a concession agreement under 16-4-418. For a license operated at a guest ranch, alcoholic
13 beverages may be served anytime within the outdoor portions of the licensed premises and in one permanent
14 building at any time during the hours allowed under 16-3-304.
15 (b) An applicant or licensee desiring to operate a license as described in this subsection (5) shall
16 submit to the department a premises floorplan that describes the premises as a guest ranch and depicts both
17 the indoor and outdoor portions of the premises. The floorplan must be submitted to the department as part of a
18 license application or as part of a premises alteration request as described in 16-3-311(2).
19 (c) A license operated at a guest ranch is subject to the requirements that are applicable to retail
20 licenses generally, including the premises suitability provisions of 16-3-311, except that:
21 (i) the premises may include any number of temporary, mobile, or partial structures, including but
22 not limited to tents, teepees, yurts, picnic shelters, recreational vehicles, wagons, trailers, or any other
23 structures that are not permanent buildings, provided that all temporary, mobile, or partial structures may not be
24 used for alcohol storage purposes unless approved by the department, and may only be used for alcohol
25 service and consumption if they remain within the licensee's approved outdoor premises area;
26 (ii) the premises may include any outdoor areas in which the licensee or concessionaire has
27 possessory interest, which may be demonstrated by property ownership records, a lease agreement, a

1 concession agreement, or other evidence of possessory interest acceptable to the department;
2 (iii) the premises may be separated by roadways, waterways, natural barriers, or fence lines if the
3 premises are otherwise contiguous;
4 (iv) a perimeter barrier is not required if the property line is otherwise marked; and
5 (v) the premises may be identified on the license by legal description rather than by building
6 address.
7 (d) For the purposes of this subsection (5), the term "permanent building" means a fixed,
8 nonmobile structure with floor-to-ceiling exterior walls, a full roof, electrical wiring, and plumbing fixtures."

9

10 NEW SECTION. Section 9. Effective date. [This act] is effective on passage and approval.

11 - END -