

1 HOUSE BILL NO. 969
2 INTRODUCED BY K. ZOLNIKOV, B. MITCHELL
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A THIRD-PARTY DELIVERY LICENSE FOR
5 ALCOHOL; ALLOWING AN OFF-PREMISES RETAIL LICENSEE TO HAVE A THIRD-PARTY DELIVERY
6 LICENSEE DELIVER BEER OR TABLE WINE; REQUIRING THE SALE OF ALCOHOL TO THE END
7 CONSUMER; PROVIDING LICENSURE REQUIREMENTS; PROVIDING REQUIREMENTS FOR THE THIRD-
8 PARTY DELIVERY LICENSEE; REVISING LAWS RELATING TO RESPONSIBLE SERVER TRAINING;
9 PROVIDING FOR LICENSURE ~~AND~~ FEES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 16-4-
10 115, 16-4-501, AND 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1007, AND 16-4-1008
11 MCA."

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

14
15 NEW SECTION. **Section 1. Third-party delivery license -- definitions.** (1) The off-premises retail
16 licensee shall sell the beer or table wine to the end consumer. The third-party delivery licensee may not sell
17 beer or table wine to the end consumer. The off-premises retail licensee must have the exclusive authority to
18 determine which beer or table wine is available for delivery and set the prices for these beverages.

19 (2) (a) The department may issue a third-party delivery license to a third-party delivery licensee if
20 the following requirements are met:

21 (i) the owners and officers of the third-party delivery licensee meet the requirements for an off-
22 premises retail licensee under 16-4-401 to hold a license; and

23 (ii) the third-party delivery licensee submits an application and pays the initial license fee as
24 provided in 16-4-501.

25 (b) Third-party delivery licenses may be renewed annually if:

26 (i) the owners and officers of the third-party delivery licensee continue to meet the requirements
27 for an off-premises retail licensee under 16-4-401 to hold a license; and

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1 (ii) the third-party delivery licensee submits a renewal form and the annual renewal fee as
2 provided in 16-4-501.

3 (3) A third-party delivery licensee may only deliver beer or table wine through drivers who meet the
4 following requirements:

5 (a) are an employee or independent contractor of the third-party delivery licensee;

6 (b) are at least 21 years of age;

7 (c) have a valid driver's license;

8 (d) have not been convicted of a felony or an alcohol-related offense; and

9 (e) have completed a responsible server and sales training program or a delivery training program
10 under Title 16, chapter 4, part 10, prior to their first delivery.

11 (4) Drivers are subject to the penalties described in Title 16, chapter 4, part 10.

12 (5) Any beer or table wine sold by an off-premises retail licensee for delivery by a third-party
13 delivery licensee must be removed from the off-premises retail licensee's licensed premises only during the
14 hours in which the off-premises retail licensee is permitted to sell alcoholic beverages. The delivery must be
15 completed before the time that the off-premises retail licensee is required to end sales of alcoholic beverages.

16 (6) Any beer or table wine unable to be delivered for any reason must be immediately returned to
17 the licensed premises of the off-premises retail licensee that sold the beer or table wine. The third-party delivery
18 licensee must document and maintain a record of the delivery attempt.

19 (7) The person to whom the delivery is made must be at least 21 years of age. The driver shall use
20 an identification scanning software technology or an alternative approved by the department to verify the age
21 and identity of the recipient at the time of delivery.

22 (8) Deliveries may not be made to anyone who is actually, apparently, or obviously intoxicated.

23 (9) A licensee under this section that delivers alcoholic beverages shall maintain books and
24 records reflecting the date, time, address, and recipient of the alcohol delivery for each delivery, the name and
25 business address of the person making the delivery, and the name and license number of the off-premises
26 retail licensee selling the alcoholic beverage. Records must be maintained either in hard copy or electronic
27 format for 3 years. Licensees shall make these books and records available to the department and its

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1 investigators on reasonable notice from the department.

2 (10) An off-premises retail licensee may utilize the services of a third-party delivery licensee by
3 means of the telephone, the internet, a mobile application, or other electronic means to facilitate the ordering or
4 delivery of beer or table wine from inventory located at the off-premises retail licensee's licensed premises.

5 (11) An off-premises retail licensee is not subject to violations of this code section that arise out of
6 the delivery of beer or table wine delivered by a third-party delivery licensee ~~if:~~

7 ~~(a) the purchaser affirmed to the off-premises retail licensee or the third-party delivery licensee that~~
8 ~~the purchaser and recipient are not under 21 years of age;~~

9 ~~(b) the beer and table wine are in original packaging and are packaged in a manner that clearly~~
10 ~~discloses to the driver that the delivery contains beer or table wine, or the third-party delivery licensee's driver~~
11 ~~packages the order containing the beer and table wine; and~~

12 ~~(c) the off-premises retail licensee discloses to the third-party delivery licensee that the order to be~~
13 ~~delivered contains beer or table wine.~~

14 (12) Any violation of this code by a third-party delivery licensee or its drivers are subject to penalties
15 as provided in 16-4-406.

16 (13) Nothing in this section may be construed to require a technology services company to obtain a
17 third-party delivery license if the company does not employ or contract with delivery drivers and instead
18 provides software or an application that connects consumers and off-premises retail licensees for the delivery
19 of beer or table wine from the off-premises retail licensee.

20 (14) A third-party delivery license is not required for a common carrier lawfully transporting or
21 shipping alcoholic beverages.

22 (15) The third-party delivery licensee shall maintain a general liability insurance policy in an amount
23 of no less than \$5 million for each occurrence.

24 ~~(15)~~(16) As used in this section, the following definitions apply:

25 (a) "Third-party delivery license" means a license issued by the department to a third-party delivery
26 licensee for the delivery of beer or table wine.

27 (b) "Third-party delivery licensee" means a person who offers a service to deliver, but not to buy or

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1 sell, beer or table wine in original packaging from an off-premises retail licensee issued a license under 16-4-
2 115 and enters into a written agreement with the off-premises retail licensee for the purpose of delivering beer
3 or table wine sold by the off-premises retail licensee.

4

5 **Section 2.** Section 16-4-115, MCA, is amended to read:

6 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
7 or table wine, or both, in the original packages for off-premises consumption may be issued only to a person,
8 firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer or
9 table wine, or both. If the premises proposed for licensing are operated in conjunction with another business,
10 that business must be a grocery store or drugstore licensed as a pharmacy. The number of licenses that the
11 department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in
12 the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or
13 deny an application for any license or suspend or revoke any license for cause.

14 (2) Upon receipt of a completed application for a license under this section, accompanied by the
15 necessary license fee as provided in 16-4-501, the department shall request that the department of justice
16 make a background investigation of all matters relating to the application.

17 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
18 subsection (1), the department shall determine whether:

19 (a) the applicant is qualified to receive a license;

20 (b) the applicant's premises are suitable for the carrying on of the business; and

21 (c) the requirements of this code and the rules promulgated by the department are met and
22 complied with.

23 (4) License applications submitted under this section are not subject to the provisions of 16-4-203
24 and 16-4-207.

25 (5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in
26 original packaging.

27 (6) An off-premises retail licensee may use a third-party delivery licensee to deliver beer and table

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1 wine in original packaging or may apply to the department and pay a fee for an endorsement to, with the off-
2 premises retail licensee's own employees who are 21 years of age or older, deliver beer and table wine in
3 original packaging."
4

5 **Section 3.** Section 16-4-501, MCA, is amended to read:

6 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine
7 only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise
8 specified in this section, the fee is an annual fee and is imposed as follows:

- 9 (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for
10 sale within the state, \$500;
- 11 (ii) for each storage depot, \$400;
- 12 (b) (i) each beer wholesaler, \$400; each winery, \$200; each table wine distributor, \$400;
- 13 (ii) for each subwarehouse, \$400;
- 14 (c) each beer retailer, \$200;
- 15 (d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer
16 license;
- 17 (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in
18 conjunction with beer, \$200;
- 19 (e) any unit of a nationally chartered veterans' organization, \$50.
- 20 (2) The permit fee under 16-4-301(1) is computed at the following rate:
- 21 (a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting
22 contests, other than those applied for pursuant to 16-4-301(1)(c); and
- 23 (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the
24 provisions of 16-4-301(1)(c).
- 25 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the
26 sale of all alcoholic beverages.
- 27 (4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license

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1 fee in the sum of \$300.

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

4 (6) The annual renewal fee for:

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

6 (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license; and

7 (c) a continuing care retirement community limited all-beverages license is \$500 for each license.

8 (7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall
9 pay an annual license fee as follows:

10 (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities
11 and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans'
12 organization and \$400 for all other licensees;

13 (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000
14 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be
15 licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and
16 \$500 for all other licensees;

17 (c) for each license in incorporated cities with a population of more than 5,000 and less than
18 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to
19 be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization
20 and \$650 for all other licensees;

21 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance
22 of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
23 boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other
24 licensees;

25 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated
26 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
27 boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles

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1 of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations,
2 the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the
3 applicant. When the premises of the applicant to be licensed are situated within an incorporated town or
4 incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the
5 license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the
6 applicant.

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

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

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

14 (10) The annual fee for a special beer and table wine license for a nonprofit arts organization under
15 16-4-303 is \$250.

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

17 ~~(12)~~ The initial and annual fee for a third-party delivery license under [section 1] is ~~\$500~~ \$1,000.

18 ~~(12)(13)~~ The license fees provided in this section are exclusive of and in addition to other license fees
19 chargeable in Montana for the sale of alcoholic beverages.

20 ~~(13)(14)~~ In addition to other license fees, the department of revenue may require a licensee to pay a
21 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
22 anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month
23 after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal
24 year or 1 year and 2 months after the licensee's anniversary date.

25 ~~(14)(15)~~ All license and permit fees collected under this section must be deposited as provided in 16-2-
26 108."

27

1 **Section 4.** Section 16-4-1001, MCA, is amended to read:

2 **"16-4-1001. Short title.** This part may be cited as the "Responsible Alcohol Sales, ~~and Service, and~~
3 ~~Delivery~~ Act"."

5 **Section 5.** Section 16-4-1002, MCA, is amended to read:

6 **"16-4-1002. Legislative intent.** It is the intent of this part that retail establishments and manufacturers
7 licensed to sell or serve alcoholic beverages to the public ~~and third-party delivery services licensed to deliver~~
8 ~~alcoholic beverages to the public~~ ensure that all licensees, ~~and~~ their employees, ~~or their independent~~
9 ~~contractors~~ that sell, ~~or~~ serve, ~~or deliver~~ alcoholic beverages are appropriately trained to comply with state law
10 prohibiting the sale, ~~or~~ service, ~~or delivery~~ of alcoholic beverages to persons under 21 years of age and to
11 persons who are intoxicated. This part does not apply to special permits issued under 16-4-301."

13 **Section 6.** Section 16-4-1003, MCA, is amended to read:

14 **"16-4-1003. Definition.** As used in this part, "licensee" means a person or entity licensed by the
15 department to sell alcoholic beverages at retail for either on-premises or off-premises consumption ~~or deliver~~
16 ~~alcoholic beverages.~~"

18 **Section 7.** Section 16-4-1004, MCA, is amended to read:

19 **"16-4-1004. Notification -- violation -- penalty.** (1) A licensee shall certify annually on its license
20 renewal form that the licensee is in compliance with the provisions of this part.
21 (2) A license renewal form that falsely includes information that the licensee, ~~and all their~~
22 ~~employees, or their independent contractors,~~ have been trained pursuant to this part is a violation of this code.
23 (3) If, after an investigation under 16-4-406, a licensee is determined to have violated subsection
24 (2) of this section, the licensee must be assessed an administrative penalty under 16-4-406 or the penalty for
25 false swearing under 45-7-202."

27 **Section 8.** Section 16-4-1005, MCA, is amended to read:

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1 **"16-4-1005. Licensees required to ensure training.** A licensee shall:

2 (1) require each employee or independent contractor who is authorized to sell, serve, or deliver
3 alcoholic beverages in the normal course of employment or business and, in the case of employment, the
4 employee's immediate supervisor to successfully complete training to ensure compliance with state law
5 regarding the sale, ~~and service,~~ or delivery of alcoholic beverages. ~~The~~ Except as provided in [section 1],
6 training must be completed within 60 days of the employee's date of hire and every 3 years after the
7 employee's or independent contractor's initial training.

8 (2) maintain employment records or business records verifying employee or independent
9 contractor completion of the training required in subsection (1)."

10

11 **Section 9.** Section 16-4-1007, MCA, is amended to read:

12 **"16-4-1007. Jurisdiction.** The implementation and enforcement of any mandatory server and sales
13 training programs and delivery training programs in this state is under the exclusive authority and jurisdiction of
14 the department."

15

16 **Section 10.** Section 16-4-1008, MCA, is amended to read:

17 **"16-4-1008. Penalty.** (1) A licensee found as a result of a routine check for compliance with 16-3-301,
18 16-6-304, ~~or~~ 16-6-305, or [section 1] to be out of compliance with 16-4-1005 shall pay a \$50 penalty for a first
19 offense, a \$200 penalty for a second offense, and a \$350 penalty for a third offense in a 3-year period. The fine
20 must be paid to the department and deposited in the enterprise fund to the credit of the department for
21 administration of this part.

22 (2) The department shall consider the following as mitigating circumstances before taking an
23 action pursuant to 16-4-406 against a licensee who is not in compliance with the provisions of this part:

24 (a) the licensee's prior violation history;

25 (b) the licensee's good faith effort to prevent a violation;

26 (c) the existence of written policies governing employee conduct; and

27 (d) whether the evidence of a violation was based solely on the investigating authority creating an

1 opportunity for the violation rather than on complaints received or observed misconduct."
2

3 **NEW SECTION. Section 11. Delivery training program.** (1) The department shall certify all delivery
4 training programs that include the following:

- 5 (a) methods to identify and prevent sales to underage or intoxicated persons;
- 6 (b) strategies used by underage persons to obtain alcohol;
- 7 (c) acceptable forms of identification and procedures for checking identification;
- 8 (d) actions that can be taken to prevent an alcohol-related incident from occurring; and
- 9 (e) other requirements adopted by the department relating to the delivery of alcoholic beverages.

10 (2) Upon receipt of a proposed delivery training program from the holder of a third-party alcohol
11 delivery license, the department has 15 business days to approve, deny, or request modifications to the
12 proposed training program.
13

14 **NEW SECTION. Section 12. Codification instruction.** (1) [Section 1] is intended to be codified as
15 an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

16 (2) [Section 11] is intended to be codified as an integral part of Title 16, chapter 4, part 10, and the
17 provisions of Title 16, chapter 4, part 10, apply to [section 11].
18

19 - END -