

SENATE BILL NO. 21

INTRODUCED BY S. FITZPATRICK

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE FINGERPRINT REQUIREMENTS; ADOPTING QUALIFICATIONS FOR LOCATION MANAGERS; REVISING FINGERPRINT REQUIREMENTS TO INCLUDE LOCATION MANAGERS; DEFINING "LOCATION MANAGER"; AMENDING SECTIONS 16-1-106 AND 16-4-414, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Location managers. (1) Each applicant and each licensee shall submit an application to the department designating at least one location manager. Except as provided in subsection (2), a location manager must meet the following requirements:

(a) the location manager's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the location manager is likely to operate the establishment in compliance with all applicable laws of the state and local governments;

(b) the location manager has not been convicted of a felony or, if the location manager has been convicted of a felony, the location manager's rights have been restored; and

(c) the location manager is not under 19 years of age.

(2) If a location manager is an applicant or owner required to be vetted under 16-4-401, the requirements of this section do not apply.

(3) If an applicant or licensee designates a business entity as a location manager, the business entity must designate at least one officer, member, or partner that meets the requirements of subsection (1).

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

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

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- (1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.
- (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.
- (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.
- (5) (a) "Beer" means:
- (i) a malt beverage containing not more than 8.75% of alcohol by volume; or
 - (ii) an alcoholic beverage containing not more than 14% alcohol by volume:
- (A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and
- (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- (6) "Beer importer" means a person other than a brewer who imports malt beverages.
- (7) "Brewer" means a person who produces malt beverages.
- (8) "Caffeinated or stimulant-enhanced malt beverage" means:
- (a) a beverage:
 - (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;
 - (ii) that contains at least 0.5% of alcohol by volume;
 - (iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
 - (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

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- 1 (b) a beverage:
- 2 (i) that contains at least 0.5% of alcohol by volume;
- 3 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 4 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 5 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 6 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
- 7 and taurine;
- 8 (v) for which the producer is required to file a formula for approval with the United States alcohol
- 9 and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 10 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 11 (9) "Community" means:
- 12 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 13 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
- 14 community for census purposes; and
- 15 (c) in a consolidated local government, the area of the consolidated local government not
- 16 otherwise incorporated.
- 17 (10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.
- 18 (11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-
- 19 312.
- 20 (12) "Department" means the department of revenue, unless otherwise specified, and includes the
- 21 department of justice with respect to receiving and processing, but not granting or denying, an application under
- 22 a contract entered into under 16-1-302.
- 23 (13) "Growler" means any fillable, sealable container complying with federal law.
- 24 (14) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
- 25 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of
- 26 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.
- 27 (15) "Immediate family" means a spouse, dependent children, or dependent parents.

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

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

(18) "Location manager" means ~~an employee a person~~ who provides general oversight of the alcoholic beverage operations and ensures compliance with alcoholic beverage laws and regulations. A location manager may be an owner of a license, an employee of the licensee, or an entity that contracts to provide services for the licensee.

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

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

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

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

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

(i) bottles;

(ii) cans; and

(iii) kegs.

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

~~(24)~~(22) _____ "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as fixed and determined by the department and in addition an excise and license tax as provided in this code. In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency

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1 liquor stores, and a 20% markup.

2 ~~(22)~~(23) _____ "Prepared serving" means a container of alcoholic beverages, filled at the time of sale
3 and sealed with a lid, for consumption at a place other than the licensee's premises.

4 ~~(23)~~(24) _____ "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
5 contains 50% of alcohol by volume.

6 ~~(24)~~(25) _____ "Public place" means a place, building, or conveyance to which the public has or may
7 be permitted to have access and any place of public resort.

8 ~~(25)~~(26) _____ "Retail price" means the price established by an agent for the sale of liquor to persons
9 who do not hold liquor licenses. The retail price may not be less than the department's posted price.

10 ~~(26)~~(27) _____ "Rules" means rules adopted by the department or the department of justice pursuant
11 to this code.

12 ~~(27)~~(28) _____ "Sacramental wine" means wine that contains more than 0.5% but not more than 24%
13 of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other
14 religious purposes.

15 ~~(28)~~(29) _____ "Special event", as it relates to an application for a beer and wine special permit,
16 means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

17 ~~(29)~~(30) _____ "State liquor warehouse" means a building owned or under control of the department
18 for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

19 ~~(30)~~(31) _____ "Storage depot" means a building or structure owned or operated by a brewer at any
20 point in the state of Montana off and away from the premises of a brewery, which building or structure is
21 equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or
22 distribute beer as permitted by this code.

23 ~~(31)~~(32) _____ "Subwarehouse" means a building or structure owned or operated by a licensed beer
24 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or
25 table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and
26 distribution of beer or table wine as permitted by this code.

27 ~~(32)~~(33) _____ "Table wine" means wine that contains not more than 16% of alcohol by volume and

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1 includes cider.

2 ~~(33)~~(34) _____ "Table wine distributor" means a person importing into or purchasing in Montana table
3 wine or sacramental wine for sale or resale to retailers licensed in Montana.

4 ~~(34)~~(35) _____ "Warehouse" means a building or structure located in Montana that is owned or
5 operated by a licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of
6 beer or table wine as permitted by this code.

7 ~~(35)~~(36) _____ "Wine" means an alcoholic beverage made from or containing the normal alcoholic
8 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
9 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
10 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
11 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
12 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
13 wine in accordance with federal regulations are also wine."
14

15 **Section 3.** Section 16-4-414, MCA, is amended to read:

16 **"16-4-414. Fingerprints required of applicants and location managers -- exceptions.** (1) Except
17 as provided in ~~subsections (2) and (3)~~ subsection (2), an applicant for a license under this code, an individual
18 who must meet the requirements of 16-4-401 for the issuance of a new license or for the approval of the
19 transfer of a license, and any person employed by the applicant as a location manager, and, if the applicant is a
20 privately held corporation, each person holding 15% or more of the outstanding stock and each officer shall
21 submit their fingerprints with the application to facilitate a fingerprint and background check by the department
22 of justice and the federal bureau of investigation. ~~If the applicant is a publicly traded corporation, any person~~
23 ~~employed by the applicant as a location manager and an officer shall submit their fingerprints with the~~
24 ~~application to facilitate a fingerprint and background check by the department of justice and the federal bureau~~
25 ~~of investigation. The results of the investigation must be used by the department in determining the applicant's~~
26 eligibility for a license.

27 ~~(2) (a) When the applicant is seeking a license for off-premises consumption, the following persons~~

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~~are subject to the fingerprint and background check described in subsection (1):~~

~~(i) the applicant;~~

~~(ii) a person designated by the applicant as responsible for operating the licensed establishment on behalf of the licensee; or~~

~~(iii) if the applicant is a corporation, each officer responsible for operating the licensed establishment.~~

~~(b) Additional fingerprint and background checks may be required at renewal only for new persons described in subsection (2)(a).~~

(2) (a) If the applicant is a publicly traded corporation, an officer and any person employed by the applicant as a location manager are subject to the fingerprint and background check in subsection (1).

(b) If the applicant employs a business entity as a location manager, a person designated pursuant to [section 1(3)] is subject to the fingerprint and background check in subsection (1).

(c) A change in the form of a licensee's business entity that does not result in any person having a new ownership interest in the business is not grounds for the department to require a fingerprint or background check.

~~(3) When the applicant is seeking a license for off-premises consumption, a person employed by the applicant as a manager is not subject to the fingerprint and background check described in subsection (1).~~

~~(4)(3)~~ Approved applicants may use a single background check and set of fingerprints for multiple license applications within 3-5 years. Applicants must attest that no criminal charges have been filed since the background check was last completed."

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

NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

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