

SENATE BILL NO. 543

INTRODUCED BY E. BOLDMAN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING OFF-PREMISES BEER AND WINE LICENSES TO DELIVER BEER AND WINE; CREATING A THIRD-PARTY DELIVERY LICENSE FOR ALCOHOL; ALLOWING AN OFF-PREMISES RETAIL LICENSEE TO HAVE A THIRD-PARTY DELIVERY LICENSEE DELIVER BEER OR TABLE WINE; REQUIRING THE SALE OF ALCOHOL TO THE END CONSUMER; PROVIDING LICENSURE REQUIREMENTS; PROVIDING REQUIREMENTS FOR THE THIRD-PARTY DELIVERY LICENSEE; REVISING LAWS RELATING TO RESPONSIBLE SERVER TRAINING; PROVIDING FOR LICENSING BY THE DEPARTMENT OF REVENUE; PROVIDING FOR PAYMENT OF A FEE; AND AMENDING SECTION SECTIONS 16-4-115, 16-4-501, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1005, 16-4-1007, AND 16-4-1008, MCA."

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

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

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

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

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

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

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

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 of  
21 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  
28 investigators on reasonable notice from the department.

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

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

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

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

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

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

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

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

19 (b) "Third-party delivery licensee" means a person who offers a service to deliver, but not to buy or  
20 sell, beer or table wine in original packaging from an off-premises retail licensee issued a license under 16-4-  
21 115 and enters into a written agreement with the off-premises retail licensee for the purpose of delivering beer  
22 or table wine sold by the off-premises retail licensee.

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

25 **"16-4-115. Beer and wine licenses for off-premises consumption -- third-party delivery -- own**  
26 **delivery for grocery stores.** (1) A retail license to sell beer or table wine, or both, in the original packages for  
27 off-premises consumption may be issued only to a person, firm, or corporation that is approved by the  
28 department as a person, firm, or corporation qualified to sell beer or table wine, or both. If the premises

1 proposed for licensing are operated in conjunction with another business, that business must be a grocery store  
2 or drugstore licensed as a pharmacy. The number of licenses that the department may issue is not limited by  
3 the provisions of 16-4-105 but must be determined by the department in the exercise of its sound discretion,  
4 and the department may in the exercise of its sound discretion grant or deny an application for any license or  
5 suspend or revoke any license for cause.

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

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

- 11 (a) the applicant is qualified to receive a license;
- 12 (b) the applicant's premises are suitable for the carrying on of the business; and
- 13 (c) the requirements of this code and the rules promulgated by the department are met and  
14 complied with.

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

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

19 (6) An off-premises retail licensee may use a third-party delivery licensee to deliver beer and table  
20 wine as provided in [section 1].

21 (6)(7) A grocery store with a license to sell beer and TABLE wine in original packaging may apply to  
22 the department and pay a fee for an endorsement to, with the licensee's own agents or employees who are 21  
23 years of age or older, deliver beer and TABLE wine in original packaging if the delivery includes groceries in their  
24 original packaging or food that is prepared by the licensee at the licensee's premises. The purchase price of the  
25 delivered beer and TABLE wine may not exceed the purchase price of the delivered food. Deliveries under this  
26 subsection may be made only to a residential or commercial address."

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

**"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine

only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for sale within the state, \$500;

(ii) for each storage depot, \$400;

(b) (i) each beer wholesaler, \$400; each winery, \$200; each table wine distributor, \$400;

(ii) for each subwarehouse, \$400;

(c) each beer retailer, \$200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;

(e) any unit of a nationally chartered veterans' organization, \$50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) \$1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of \$300.

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

(6) The annual renewal fee for:

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

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

- 1 (c) a continuing care retirement community limited all-beverages license is \$500 for each license.
- 2 (7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall
- 3 pay an annual license fee as follows:
- 4 (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities
- 5 and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans'
- 6 organization and \$400 for all other licensees;
- 7 (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000
- 8 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be
- 9 licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and
- 10 \$500 for all other licensees;
- 11 (c) for each license in incorporated cities with a population of more than 5,000 and less than
- 12 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to
- 13 be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization
- 14 and \$650 for all other licensees;
- 15 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance
- 16 of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
- 17 boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other
- 18 licensees;
- 19 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated
- 20 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
- 21 boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles
- 22 of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations,
- 23 the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the
- 24 applicant. When the premises of the applicant to be licensed are situated within an incorporated town or
- 25 incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the
- 26 license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the
- 27 applicant.
- 28 (f) an applicant for the issuance of a resort retail all-beverages license shall pay a \$100,000

1 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another  
2 location within the boundaries of the resort area or to another owner to be used at a location within the  
3 boundaries of the resort area.

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

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

7 (10) The annual fee for a special beer and table wine license for a nonprofit arts organization under  
8 16-4-303 is \$250.

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

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

11 ~~(12)(13)~~ The license fees provided in this section are exclusive of and in addition to other license fees  
12 chargeable in Montana for the sale of alcoholic beverages.

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

18 ~~(14)(15)~~ All license and permit fees collected under this section must be deposited as provided in 16-2-  
19 108."

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

22 **"16-4-1001. Short title.** This part may be cited as the "Responsible Alcohol Sales, ~~and Service, and~~  
23 Delivery Act"."

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

26 **"16-4-1002. Legislative intent.** It is the intent of this part that retail establishments and manufacturers  
27 licensed to sell or serve alcoholic beverages to the public and third-party delivery services licensed to deliver  
28 alcoholic beverages to the public ensure that all licensees, ~~and~~ their employees, or their independent

1 contractors that sell, ~~or serve,~~ or deliver alcoholic beverages are appropriately trained to comply with state law  
2 prohibiting the sale, ~~or service,~~ or delivery of alcoholic beverages to persons under 21 years of age and to  
3 persons who are intoxicated. This part does not apply to special permits issued under 16-4-301."  
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5 **Section 6.** Section 16-4-1003, MCA, is amended to read:

6 **"16-4-1003. Definition.** As used in this part, "licensee" means a person or entity licensed by the  
7 department to sell alcoholic beverages at retail for either on-premises or off-premises consumption or to deliver  
8 alcoholic beverages."  
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10 **Section 7.** Section 16-4-1004, MCA, is amended to read:

11 **"16-4-1004. Notification -- violation -- penalty.** (1) A licensee shall certify annually on its license  
12 renewal form that the licensee is in compliance with the provisions of this part.

13 (2) A license renewal form that falsely includes information that the licensee, and all their  
14 employees, or their independent contractors have been trained pursuant to this part is a violation of this code.

15 (3) If, after an investigation under 16-4-406, a licensee is determined to have violated subsection  
16 (2) of this section, the licensee must be assessed an administrative penalty under 16-4-406 or the penalty for  
17 false swearing under 45-7-202."  
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19 **Section 8.** Section 16-4-1005, MCA, is amended to read:

20 **"16-4-1005. Licensees required to ensure training.** A licensee shall:

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

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



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

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

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

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**"16-4-1008. Penalty.** (1) A licensee found as a result of a routine check for compliance with 16-3-301, 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 offense, a \$200 penalty for a second offense, and a \$350 penalty for a third offense in a 3-year period. The fine must be paid to the department and deposited in the enterprise fund to the credit of the department for administration of this part.

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

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(a) the licensee's prior violation history;

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

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

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

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

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**NEW SECTION. Section 11. Delivery training program.** (1) The department shall certify all delivery

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training programs that include the following:

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(a) methods to identify and prevent sales to underage or intoxicated persons;

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(b) strategies used by underage persons to obtain alcohol;

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(c) acceptable forms of identification and procedures for checking identification;

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(d) actions that can be taken to prevent an alcohol-related incident from occurring; and

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(e) other requirements adopted by the department relating to the delivery of alcoholic beverages.

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(2) Upon receipt of a proposed delivery training program from the holder of a third-party alcohol

1 delivery license, the department has 15 business days to approve, deny, or request modifications to the  
2 proposed training program.

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

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

8 - END -

AMENDMENT