

HOUSE BILL NO. 711

INTRODUCED BY R. MARSHALL

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LAWS RELATING TO COLLECTION OF PAYMENT FOR DELIVERIES OF BEER AND WINE; ELIMINATING THE 7-DAY CREDIT LIMITATION AND PROVIDING FOR CASH ON DELIVERY; REVISING LIEN LAWS RELATED TO ALCOHOL DELIVERIES; ALLOWING FOR AN ELECTRONIC FUNDS TRANSFER; AND AMENDING SECTIONS 16-3-243, 16-3-406, AND 16-4-404, MCA."

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

Section 1. Section 16-3-243, MCA, is amended to read:

"16-3-243. ~~Seven-day credit limitation~~ Cash on delivery. (1) ~~No~~ A sale or delivery of beer shall ~~may not~~ be made to any retail licensee except for cash paid ~~within 7 days after~~ on the delivery ~~thereof of the~~ beer, and in no event shall any ~~A~~ brewer, beer importer, or wholesaler ~~may not~~ extend ~~more than 7 days'~~ credit on account of ~~such the~~ beer to a retail licensee, ~~nor shall any a~~ retail licensee ~~may not~~ accept or receive delivery of ~~such the~~ beer without agreement to pay in cash ~~therefor within 7 days from~~ for its delivery thereof. An electronic funds transfer or a correctly dated check which that is honored upon presentment shall when presented may be considered as cash within the meaning of this code.

(2) Any extension or acceptance of credit in violation ~~hereof of this section shall be regarded and is~~ construed ~~as to be~~ rendering or receiving financial assistance, and the licenses of brewers, beer importers, wholesalers, and retail licensees involved in ~~the violation hereof shall~~ must be suspended or revoked, as determined by the department in its discretion."

Section 2. Section 16-3-406, MCA, is amended to read:

"16-3-406. **Financial interest in retailers prohibited.** (1) A winery or table wine distributor may not advance or loan money to, or furnish money for, or pay for or on behalf of any retailer any license or tax that may be required to be paid by any retailer, and a winery or table wine distributor may not be financially

1 interested, either directly or indirectly, in the conduct or operation of the business of a retailer.

2 (2) A winery or table wine distributor is considered to have a financial interest if:

3 (a) the winery or table wine distributor owns or holds any interest in or a lien or mortgage against  
4 the retailer or the retailer's premises; ~~or~~

5 (b) the winery or table wine distributor is under any contract with a retailer concerning future  
6 purchases or the sale of merchandise by one from or to the other; ~~or~~

7 (c) the table wine distributor extends ~~more than 7 days~~ credit to a retail licensee or furnishes to  
8 any retail licensee any furniture, fixtures, or equipment to be used in the dispensation or sale of table wine; or

9 (d) any retailer holds an interest as a stockholder, or otherwise, in the business of the table wine  
10 distributor."

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12 **Section 3.** Section 16-4-404, MCA, is amended to read:

13 **"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license  
14 may not be issued until on or after the date set in the notice for hearing protests.

15 (2) Every license issued under this code must state the name of the person to whom it is issued,  
16 the location, by street and number or other appropriate specific description of location if no street address  
17 exists, of the premises where the business is to be ~~carried on~~ conducted under the license, and other  
18 information the department considers necessary. If the licensee is a partnership or if more than one person has  
19 an interest in the business operated under the license, the names of all persons in the partnership or interested  
20 in the business must appear on the license. Every license must be posted in a conspicuous place on the  
21 premises in which the business authorized under the license is conducted, and the license must be exhibited  
22 ~~upon~~ on request to any authorized representative of the department or the department of justice or to any  
23 peace officer of the state ~~of Montana~~.

24 (3) A license issued under the provisions of this code is a privilege personal to the licensee named  
25 in the license and is valid until the expiration of the license, ~~unless~~ ~~sooner~~ unless the license is revoked or suspended  
26 earlier.

27 (4) A license may be transferred to the executor or administrator of the estate of a deceased  
28 licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a

1 license. The license may descend or be disposed of with the licensed business under appropriate probate  
2 proceedings.

3 (5) (a) A licensee may apply to the department for a transfer of the license to different premises  
4 within the quota area if:

5 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

6 (ii) the lease of the licensed premises has expired;

7 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the  
8 landlord; or

9 (iv) the licensee has proposed removal of the license to premises that are as substantially suited  
10 for the retail alcoholic beverages business as the premises proposed to be vacated.

11 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases  
12 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the  
13 licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant to  
14 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department may not  
15 allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than  
16 facilities that exist or had existed at the premises from which the transfer is proposed to be made.

17 (6) Upon a bona fide sale of the business operated under a license, the license may be transferred  
18 to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the  
19 department. A licensee or transferee or proposed transferee who operates or attempts to operate under a  
20 supposedly transferred license prior to the approval of the transfer by the department, endorsed ~~upon~~on the  
21 license in writing, is considered to be operating without a license and the license affected may be revoked or  
22 suspended by the department. The department may, within its discretion, permit a qualified purchaser to  
23 operate the business to be transferred pending final approval if there has not been a change in location and the  
24 application for transfer has been filed with the department.

25 (7) Except as provided in 16-4-204 and subsections (2) through (6) of this section, a license may  
26 not be transferred or sold or used for any place of business not described in the license. A license may be  
27 subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and  
28 approval of the department, must be endorsed on the license. ~~Beer or wine sold to a licensee on credit~~

1 pursuant to ~~16-3-243 or 16-3-406~~ does not create a lien upon a license, but a subsequent licensee has the  
2 obligation to pay for the beer or wine."

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