SENATE BILL NO. 527

INTRODUCED BY J. SMALL, E. BUTTREY

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING WINERY LAWS; PROVIDING FOR A FARM WINERY LICENSE AND A MONTANA WINEGROWER LICENSE; PROVIDING REQUIREMENTS BASED ON AGRICULTURAL PRODUCTION; PROVIDING FEES; PROVIDING FOR THE DISTRIBUTION OF WINE; AND AMENDING SECTION 16-3-411, MCA."

WHEREAS, current winery laws in Montana do not focus on the entities that agriculturally grow and produce wine in this state;

WHEREAS, this act seeks to create two licenses to facilitate and promote Montana agricultural wine production in this state.

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

NEW SECTION. Section 1. Farm winery license. (1) A person may be licensed by the department to produce wine under a farm winery license if the person meets the requirements of this section.

(2) The licensee must own or lease a minimum of 10 acres of land in this state that is zoned as agriculture in which a minimum of 3 acres are planted and maintained as a vineyard with no fewer than 1,200 producing vines. A variance on the vine requirement may be granted by the department upon formal request of the licensee.

(3) The winery must be on the vineyard property or contiguous to the vineyard property.

(4) The maximum annual output of wine production for a farm winery license is 80,000 cases and the minimum annual output is 85 cases. The winery must produce wine by beginning with raw agricultural products. The winemaking process, beginning with fermentation, must be on-site from raw agricultural product to bottle-ready, finished wine.

(5) The bottling of the wine may take place either internally or through a bottling service that must be on-site.
(6) The fruit inputs used in the production of wine may be from any location with the following limitations:

(a) there is no limit on the use of Montana agricultural products in the production of the wine;

(b) non-Montana grown fruits must be limited to no more than the lesser of 20% additional, by weight, of on-site vineyard production or 50 tons. A variance on the sourcing requirements may be granted by the department of agriculture upon formal request of the licensee.

(7) Wine inputs may be sourced from any location, with the following limitations:

(a) wine may be imported as bulk but it is limited to no more than 20% additional to the receiving winery’s annual wine production calculated from total finished wine of the vintage year;

(b) it must be blended with Montana grown production at a minimum of 75% Montana grown;

(c) it may be shiners, imported and sold as bottled by the buyer and recognized as bottled by the seller if it is sourced from another licensed Montana farm winery and included as part of the 20% of wine import allowance. For purposes of this subsection (7), the term "shiners" means sealed, bottled, and finished wine without the label affixed.

(8) Except as provided in subsection (9), all wine production may be sold and distributed by a licensed wine distributor. Wine produced by the farm winery may be:

(a) delivered through a common carrier from the farm winery or any approved storage area to the licensed wine distributor;

(b) delivered by the farm winery from the farm winery or approved storage area to the licensed wine distributor if the farm winery uses its own vehicles, equipment, and employees to deliver the wine; or

(c) picked up by the licensed wine distributor at the winery or approved storage facility.

(9) Up to the greater of either 4,500 cases or 50% of the annual production of the wine may be sold directly from the farm winery without the use of a licensed distributor as follows:

(a) to agency liquor stores that is:

(i) delivered through a common carrier from the farm winery or any approved storage area;

(ii) delivered by the farm winery from the farm winery or approved storage area if the farm winery uses its own vehicles, equipment, and employees to deliver the wine; or

(iii) picked up by the agency liquor store at the winery or approved storage facility;
to retail licensees that is:

(i) delivered by common carrier from the farm winery or approved storage;

(ii) delivered by the farm winery from the farm winery or approved storage area if delivered by the farm winery’s own vehicles, equipment, and agents; or

(iii) picked up by the retailer at the winery or approved storage facility; or

(c) directly to consumers for wine:

(i) that is shipped to the consumer by common carrier from the winery or any approved storage facility;

(ii) that is delivered by the Montana farm winery’s own vehicles, equipment, and employees or the consumers pick up the wine from the Montana farm winery or approved storage facility if the wine is in sealed, labeled packaging for off-site consumption.

(iii) in tastings that are permitted with no more than 1.5 fluid ounces per taste of each wine per consumer per day and may be served without charge to the consumer. Food service may be limited to shelf-stable snack foods requiring no flatware or high-temperature holding capacity.

(iv) in a farm winery tasting room. The tasting room requires an additional endorsement to the farm winery license that is subject to local regulations for farm businesses. The farm winery tasting room must be located on-site or contiguous to the farm winery. Tastings are permitted with no more than 1.5 fluid ounces per taste of each wine per consumer per day and may be served without charge to the consumer. Wine may be consumed on-site or provided in sealed packaging to be consumed off-site. Food service may be limited to shelf-stable snack foods requiring no flatware or high-temperature holding capacity or may be full-service in accordance with local regulations.

(v) in a farm winery satellite tasting room. A farm winery is allowed up to three satellite tasting rooms. An additional license endorsement is required for each satellite tasting room. The satellite tasting room must be approved by local regulations. A satellite tasting room must have an approved storage facility. Wine may be consumed on-site but is limited to a total of 18 fluid ounces per consumer per day and between the hours of 8 a.m. and 8 p.m. A satellite tasting room may sell wine in sealed packaging to be consumed off-premises. Wine tastings are limited to no more than 1.5 fluid ounces per taste of each wine per consumer per day and may be served without charge to the consumer and are not included in the 18-fluid-ounce limit for each
consumer. The extent of food service must be approved by local regulations.

vi) provided at a farmers’ market, public, or private event through a permit obtained through the department of revenue. A farm winery may obtain up to 25 permits a year from the department of revenue. Each permit has a fee of $30 paid to the department of revenue. Each permit use, and form of service as for on-premises or off-premises consumption, must be approved by the department of revenue and the county sheriff. Any one or combination of the following criteria may be approved:

(A) wine is consumed on-site;
(B) wine is in sealed packaging to be consumed off-site;
(C) tastings are permitted with no more than 1.5 fluid ounces per taste per wine per consumer per day and may be served without charge to the consumer.

(10) A farm winery may enter any agreement for a catering endorsement under Title 16 with approval by the department of revenue.

(11) A Montana farm winery license in Montana is allowed landlord position for tenant agreements for wine production purposes as a custom crush or alternating proprietorship facility under the following conditions:

(a) tenants must be operating with a Montana winegrower license;
(b) no more than two tenants may enter into an agreement to operate concurrently; and
(c) all production, distribution, and sales rights and obligations of each licensed entity apply only to that respective entity.

(12) The department of revenue may establish reasonable fees commensurate with costs for the administration of this section.

NEW SECTION. Section 2. Winegrower license. (1) A person may be licensed by the department to produce wine under a Montana winegrower license if the person meets the requirements of this section.

(2) The licensee must own or lease property in Montana that has no fewer than 200 producing grape vines. A variance on the vine requirement may be granted by the department upon formal request of the licensee.

(3) The winery must be on the vineyard property or contiguous to the vineyard property except for
a winegrower license conducting wine production under a tenant agreement with any Montana winery, including
a winery licensed under Title 16 or a Montana farm winery under [section 1] or a winegrower license under this
section if there is a licensed storage facility on the vineyard property or is contiguous to the winegrower
vineyard property.
(4) The maximum annual output of wine production for a Montana winegrower license is 1,260
cases and the minimum annual output is 55 cases. The winegrower must produce wine by beginning with raw
agricultural products. The winemaking process, beginning with fermentation, must be on-site from raw
agricultural product to bottle-ready, finished wine, except when using a tenant agreement.
(5) The bottling of the wine may take place either internally or through a bottling service that must
be on-site except when using a tenant agreement.
(6) The fruit inputs used in the production of wine may be from any location, grown within Montana,
with the following limitations:
   (a) there is no limit on the use of agricultural products grown on the winegrower's property in the
       production of the wine;
   (b) non-Montana grown fruits are prohibited;
   (c) Montana grown fruit not grown on the winegrower's property is limited to no more than the
       lesser of 20% additional, by weight, of on-site vineyard production or 4 tons. A variance for the fruit import
       requirement may be available upon request to the department of agriculture.
   (d) any wine inputs are prohibited.
(7) All wine production must be sold directly to consumers for wine:
   (a) that is shipped to the consumer by common carrier from the winegrower's approved storage
       facility;
   (b) that is delivered by the Montana winegrower's own vehicles, equipment, and employees or the
       consumers pick up the wine from the Montana winegrower if the wine is in sealed, labeled packaging for off-site
       consumption.
   (c) in tastings that are permitted with no more than 1.5 fluid ounces per taste of each wine per
       consumer per day and may be served without charge to the consumer. Food service must be limited to shelf-
       stable snack foods requiring no flatware or high-temperature holding capacity.
provided at a farmers’ market, public, or private event through a permit obtained through the department of revenue. A Montana winegrower may obtain up to 25 permits a year from the department of revenue. Each permit has a fee of $20 to be paid to the department of revenue. Each permit use, and form of service as for on-premises or off-premises consumption, must be approved by the department of revenue and the applicable county sheriff. Any one or combination of the following criteria may be approved:

(i) wine is consumed on-site;
(ii) wine is in sealed packaging to be consumed off-site;
(iii) tastings are permitted with no more than 1.5 fluid ounces per taste per wine per consumer per day and may be served without charge to the consumer.

Ancillary revenue to a Montana winegrower license may not exceed 49% of the wine revenue in any calendar year.

A Montana winegrower license in Montana is allowed landlord position for tenant agreements for wine production purposes as a custom crush or alternating proprietorship facility under the following conditions:

(a) tenants must be operating with a Montana winegrower license;
(b) no more than two tenants may enter into an agreement to operate concurrently; and
(c) all production, distribution, and sales rights and obligations of each licensed entity apply only to that respective entity.

The department of revenue may establish fees commensurate with costs for the administration of this section.

Section 3. Section 16-3-411, MCA, is amended to read:

"16-3-411. Winery. (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

(a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;
(b) sell wine it produces at wholesale to wine distributors;
(c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;
(d) provide, without charge, wine it produces for consumption at the winery;
(e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;

(f) obtain a special event permit under 16-4-301;

(g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury;

(h) sell wine at the winery to a licensed retailer who presents the retailer’s license or a photocopy of the license;

(i) obtain a direct shipment endorsement to ship table wine as provided in Title 16, chapter 4, part 11, directly to an individual in Montana who is at least 21 years of age; or

(j) offer wine in its original packaging, prepared servings, or growlers for curbside pickup between 8 a.m. and 2 a.m.

(2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers if the winery:

(i) uses the winery’s own equipment, trucks, and employees to deliver the wine and the wine delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;

(ii) contracts with a licensed table wine distributor to ship and deliver the winery’s wine to the retailer; or

(iii) contracts with a common carrier to ship and deliver the winery’s wine to the retailer and:

(A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or bonded warehouse;

(B) individual shipments delivered by common carrier are limited to three cases a day for each licensed retailer; and

(C) the shipments delivered by common carrier do not exceed 4,500 cases a year.

(b) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and retailers, the shipment must be:

(i) in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to Montana Licensee";

(ii) delivered to the premises of a licensed table wine distributor or licensed retailer who is in good
standing; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

(c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, pursuant to 16-1-411, electronically file a report in the manner and form prescribed by the department, reporting the amount of wine or hard cider, or both, that it shipped in the state during the preceding period, including the names and addresses of consignees or retailers, and other information that the department may determine to be necessary to ensure that distribution of wine or hard cider, or both, within this state conforms to the requirements of this code.

(3) A person may not be licensed under this section and hold a farm winery license under [section 1] or a winegrower license under [section 2]."

**NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified as an integral part of Title 80, and the provisions of Title 80 apply to [sections 1 and 2].

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