

HOUSE BILL NO. 157

INTRODUCED BY W. RUSK

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO THE DEPARTMENT OF REVENUE'S OPERATIONS AND DUTIES; REVISING THE DEFINITION OF "TABLE WINE"; CLARIFYING LANGUAGE RELATING TO THE SALE OF LIQUOR; REVISING LAWS RELATING TO THE PREPARATION OF ALCOHOL; CLARIFYING LANGUAGE RELATING TO DEPARTMENT DUTIES; REVISING LAWS RELATING TO WITHDRAWAL OF LIQUOR FROM THE REGULAR WAREHOUSE INVENTORY; AMENDING SECTIONS 16-1-106, 16-1-201, 16-1-202, 16-1-302, AND 16-1-304, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

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

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

- (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,

- 1 in potable brewing water, of malted cereal grain; and
- 2 (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived
- 3 from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- 4 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- 5 (6) "Beer importer" means a person other than a brewer who imports malt beverages.
- 6 (7) "Brewer" means a person who produces malt beverages.
- 7 (8) "Caffeinated or stimulant-enhanced malt beverage" means:
- 8 (a) a beverage:
- 9 (i) that is fermented in a manner similar to beer and from which some or all of the fermented
- 10 alcohol has been removed and replaced with distilled ethyl alcohol;
- 11 (ii) that contains at least 0.5% of alcohol by volume;
- 12 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 13 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 14 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
- 15 and taurine; or
- 16 (b) a beverage:
- 17 (i) that contains at least 0.5% of alcohol by volume;
- 18 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
- 19 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 20 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 21 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
- 22 and taurine;
- 23 (v) for which the producer is required to file a formula for approval with the United States alcohol
- 24 and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 25 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 26 (9) "Community" means:
- 27 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 28 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a

1 community for census purposes; and

2 (c) in a consolidated local government, the area of the consolidated local government not
3 otherwise incorporated.

4 (10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

5 (11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-
6 312.

7 (12) "Department" means the department of revenue, unless otherwise specified, and includes the
8 department of justice with respect to receiving and processing, but not granting or denying, an application under
9 a contract entered into under 16-1-302.

10 (13) "Growler" means any fillable, sealable container complying with federal law.

11 (14) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
12 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of
13 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

14 (15) "Immediate family" means a spouse, dependent children, or dependent parents.

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

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

19 (18) "Malt beverage" means:

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

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

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

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

2 (i) bottles;

3 (ii) cans; and

4 (iii) kegs.

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

6 (21) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses

7 as fixed and determined by the department and in addition an excise and license tax as provided in this code.

8 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of

9 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor

10 stores, and a 20% markup.

11 (22) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and

12 sealed with a lid, for consumption at a place other than the licensee's premises.

13 (23) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that

14 contains 50% of alcohol by volume.

15 (24) "Public place" means a place, building, or conveyance to which the public has or may be

16 permitted to have access and any place of public resort.

17 (25) "Retail price" means the price established by an agent for the sale of liquor to persons who do

18 not hold liquor licenses. The retail price may not be less than the department's posted price.

19 (26) "Rules" means rules adopted by the department or the department of justice pursuant to this

20 code.

21 (27) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of

22 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious

23 purposes.

24 (28) "Special event", as it relates to an application for a beer and wine special permit, means a

25 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

26 (29) "State liquor warehouse" means a building owned or under control of the department for the

27 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

28 (30) "Storage depot" means a building or structure owned or operated by a brewer at any point in

the state of Montana off and away from the premises of a brewery, which building or structure is equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as permitted by this code.

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

(32) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes hard cider.

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

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

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

Section 2. Section 16-1-201, MCA, is amended to read:

"16-1-201. Acts not covered by code. (1) Nothing in this code prevents any brewer, distiller, or other person, licensed under the provisions of any statute of the United States of America for the manufacture of alcoholic beverages, from having or keeping alcoholic beverages in a place and in the manner authorized by or under any such statute.

(2) It is the policy of the state of Montana that the manufacture of alcoholic beverages, including

1 the distillation, rectification, bottling, and processing as these terms are defined under the provisions of the laws
2 of the United States, is authorized and permitted by any brewer, distiller, rectifier, or other person licensed
3 under any provision of any statute of the United States of America in a place and in the manner authorized by
4 or under any statute of the United States. The department may adopt rules that the department considers
5 necessary with respect to the manufacture of alcoholic beverages. The rules may not be inconsistent with this
6 code or with the statutes of the United States of America or regulations issued under the provisions of the
7 Federal Alcohol Administration Act, 27 U.S.C. 201 through 212, inclusive, or regulations issued under the
8 provisions of chapter 51 of the Internal Revenue Code.

9 (3) Nothing in this code prevents:

- 10 (a) the sale of liquor ~~or table wine~~ by any person to the department;
- 11 (b) the purchase, importation, and sale of liquor ~~and table wine~~ by the department for the purposes
12 of and in accordance with this code."
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14 **Section 3.** Section 16-1-202, MCA, is amended to read:

15 **"16-1-202. Preparations not subject to code.** (1) Subject to the provisions of this section, nothing in
16 this code, by reason only that a preparation contains alcohol, prevents the manufacture, sale, purchase, or
17 consumption of any:

- 18 (a) extract, essence, or tincture or other preparation containing alcohol that is prepared according
19 to a formula of the United States Pharmacopoeia ~~or according to a formula approved of by the department~~; or
20 (b) proprietary or patent medicine ~~prepared according to a formula approved of by the department~~.

21 (2) The department, if of the opinion that any proprietary or patent medicine, extract, essence,
22 tincture, or preparation that contains alcohol or any other preparation of a solid, semisolid, or liquid nature that
23 contains alcohol can be used or that an extract from the substance can be used as a beverage or as the
24 ingredient of a beverage, may prohibit the retail sale or the possession of the substance for retail sale within the
25 state, except by an agency liquor store or by persons licensed by the department to keep and sell the
26 substance by retail in accordance with this code and the regulations made under this code.

27 (3) The department shall notify the manufacturer or vendor of the proprietary or patent medicine,
28 extract, essence, tincture, or preparation of the prohibition."

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Section 4. Section 16-1-302, MCA, is amended to read:

"16-1-302. Functions, powers, and duties of department. The department has the following functions, duties, and powers:

- (1) to buy, import, have in its possession for sale, and sell liquors;
- (2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this code;
- (3) to determine the municipalities where agency liquor stores are to be established throughout the state and the situation of the stores within these municipalities;
- (4) to lease, furnish, and equip any building or land required to administer its duties under this code;
- (5) to buy or lease plants and equipment necessary to administer its duties under this code;
- (6) to employ the necessary employees required to administer this code and to dismiss them, assign them their title, and define their respective duties and powers and to contract with the department of justice for investigative services and to receive and process, but not grant or deny, applications or to contract for the services of experts and persons engaged in the practice of a profession, if appropriate. If the department contracts for the receipt and processing of an application by the department of justice, the application must state that it is to be filed with the department of justice.
- (7) to determine the nature, form, and capacity of all packages to be used for containing ~~liquor~~ alcoholic beverages kept or sold under this code;
- (8) to grant and issue licenses and permits under this code;
- (9) to place special restrictions and allowances on the use of a particular license, which must be endorsed ~~upon~~ on the face of the license, if the special restrictions and allowances are made pursuant to a hearing held in connection with the issuance of the license or if the special restrictions and allowances are agreed to by the licensee;
- (10) without limiting or being limited by the foregoing, to do all things necessary to administer this code or rules."

1 **Section 5.** Section 16-1-304, MCA, is amended to read:

2 **"16-1-304. Prohibited acts.** (1) An employee of the department involved in the operation of the state
3 liquor warehouse, the issuance of licenses, or the collection of alcoholic beverages taxes or an employee of the
4 department of justice directly involved with license applications or the investigation of matters concerning the
5 manufacture, sale, and distribution of alcoholic beverages may not be directly or indirectly interested or
6 engaged in any other business or undertaking dealing in ~~liquor~~ alcoholic beverages, whether as owner, part
7 owner, partner, member of a syndicate, shareholder, agent, or employee for the employee's own benefit or in a
8 fiduciary capacity for some other person.

9 (2) An employee of the state, a state agent, or any person having any ownership interest in an
10 agency liquor store may not solicit or receive, directly or indirectly, any commission, remuneration, gift, or other
11 thing tangible or intangible of value from any person or corporation selling or offering liquor for sale to the state
12 pursuant to this code.

13 (3) A person selling or offering for sale to or purchasing liquor from the state may not directly or
14 indirectly offer to pay any commission, profit, or remuneration or make any gift to any employee of the state,
15 any state agent, or any person having any ownership interest in an agency liquor store or to anyone on behalf
16 of an employee.

17 (4) The prohibition contained in subsection (3) does not prohibit the state from receiving samples
18 of liquor for the purpose of chemical testing, subject to the following limitations:

19 (a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor or any
20 other person, firm, or corporation proposing to sell any liquor to the state of Montana shall submit at the request
21 of the department, without cost to the state prior to the original purchase, an analysis of each brand and may
22 submit a representative sample not exceeding 25 fluid ounces of the merchandise to the state.

23 (b) When a brand of liquor has been accepted for testing by the state, the state shall forward the
24 sample, unopened and in its entirety, to a qualified chemical laboratory for analysis.

25 (c) The state shall maintain written records of all samples received. The records must show the
26 brand name, amount and from whom received, date received, the laboratory or chemist to whom forwarded, the
27 state's action on the brand, and the person to whom delivered or other final disposition of the sample.

28 (5) Liquor may not be withdrawn from the regular warehouse inventory ~~or from the agency liquor~~

1 ~~stores for any purpose other than sale to persons who hold liquor licenses at the posted price and sale to the~~
2 ~~consumer at the retail price established by the agent~~ an agent of an agency liquor store, returning to the
3 supplier, or for destroying damaged or defective merchandise. The state shall maintain a written record
4 including the type, brand, container size, number of bottles or other units, signatures of witnesses, and method
5 of destruction or other disposition of damaged or defective warehouse merchandise.

6 (6) The state may not require a company that manufactured, distilled, rectified, bottled, or
7 processed and sold less than 200,000 proof gallons of liquor nationwide in the previous calendar year to
8 maintain minimum amounts of liquor in the state warehouse while the distiller retains ownership of the product."

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10 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

11 - END -