

HOUSE BILL NO. 95

INTRODUCED BY E. BUTTREY

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS; REVISING WHOLESALER LAWS; REVISING REQUIREMENTS BY THE DEPARTMENT OF REVENUE; REMOVING REFERENCES TO MALT LIQUORS; REVISING LAWS RELATING TO THE CONVEYANCE OF ALCOHOLIC BEVERAGES; REVISING LAWS RELATING TO PAYMENT BY RETAIL LICENSEES TO BREWERS, BEER IMPORTERS, OR WHOLESALERS; UPDATING LANGUAGE RELATING TO REFILLING LIQUOR BOTTLES; REVISING LAWS RELATING TO RAFFLES OR AUCTIONS; REVISING LAWS RELATING TO REFERENCING APPLICABLE FEDERAL LAWS; REVISING LAWS RELATING TO SHIPMENTS BY COMMON CARRIERS; REVISING LAWS RELATING TO TABLE WINE; AMENDING SECTIONS 16-3-101, 16-3-103, 16-3-104, 16-3-106, 16-3-230, 16-3-233, 16-3-243, 16-3-301, 16-3-306, 16-3-308, 16-3-316, 16-3-401, 16-3-411, AND 16-6-314, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 16-3-101, MCA, is amended to read:

"16-3-101. Alcoholic beverage transactions -- only in accordance with code. (1) A person who manufactures, imports, distributes, wholesales, or sells alcoholic beverages or the person's agent may not give or sell to any person within the state any alcoholic beverage except as may be permitted by and in accordance with the provisions of this code.

(2) (a) Except as otherwise provided by this code, a person or the person's agent may not ship, transport, or consign or cause to be shipped, transported, or consigned:

(i) any alcoholic beverage to any person in this state ~~who does not hold a valid wholesaler's license or connoisseur's license issued by the department;~~ or

(ii) any liquor except to the state liquor warehouse.

(b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by telephone, computer, or other device, ~~except by persons holding a valid connoisseur's license provided for in 16-4-901.~~

~~(3) Except as otherwise provided by this code, alcoholic beverages shipped, transported, or consigned pursuant to subsection (2)(a) and intended for sale to any person not licensed under this code must be distributed by the licensed wholesaler to a licensed retailer for sale to the ultimate consumer."~~

Section 2. Section 16-3-103, MCA, is amended to read:

"16-3-103. Unlawful sales solicitation or advertising -- exceptions. (1) A person within the state may not:

(a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless permitted to do so under rules that are promulgated by the department to govern the activities;

(b) canvass for or solicit orders for the purchase or sale of any beer ~~or malt liquor~~ except in the case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

(c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of advertisement or any other announcement, publication, or price list of or concerning liquor or where or from whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department and then only in accordance with the rules.

(2) This section does not apply to:

(a) the department, any act of the department, any agency liquor store;

~~(b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post office employee in the ordinary course of employment as the agent, operator, or employee;~~

~~(e)(b)~~ the sale and serving of beer in the grandstand and bleacher area of a county fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to 16-4-111 or 16-4-204; or

~~(d)(c)~~ the sale of alcohol at a sporting event conducted at a Montana university as provided in 16-4-

1 112."

2

3 **Section 3.** Section 16-3-104, MCA, is amended to read:

4 **"16-3-104. Common carriers to purchase beer from brewer, beer importer, or wholesaler.** ~~It shall~~
5 ~~be unlawful for the~~ The operator of any common carrier or its employees to make sale of may not sell or
6 dispose of any beer or malt liquors except such as shall have beer that has been lawfully acquired or
7 purchased from a ~~duly~~ licensed brewer, beer importer, or wholesaler."

8

9 **Section 4.** Section 16-3-106, MCA, is amended to read:

10 **"16-3-106. Conveyance of liquors, table wines, and beer alcoholic beverages -- opening**
11 **alcoholic beverages during transit forbidden.** (1) ~~It is lawful to carry or convey liquor or table wine to any~~
12 ~~agency liquor store and to and from the state liquor warehouse or any depot established by the department for~~
13 ~~the purposes of this code, and when permitted to do so by this code and the rules promulgated under this code,~~
14 ~~it is lawful for any common carrier or other person to carry or convey liquor or table wine sold by a vendor from~~
15 ~~an agency liquor store or to carry or convey beer, when lawfully sold by a brewer, from the premises where the~~
16 ~~beer was manufactured or from premises where the beer may be lawfully kept and sold to any place to which~~
17 ~~the liquor, table wine, or beer may be lawfully delivered under this code and the rules promulgated under this~~
18 ~~code~~ It is lawful to carry or convey alcoholic beverages to any place to which the alcoholic beverages may be
19 lawfully delivered under this code and the rules of the department.

20 (2) ~~A common carrier or any other person may not~~ It is unlawful to:

21 (a) open, break, or allow to be opened or broken any package or vessel containing an alcoholic
22 beverage; or

23 (b) drink or use or allow to be drunk or used any alcoholic beverage while it is being carried or
24 conveyed."

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26 **Section 5.** Section 16-3-230, MCA, is amended to read:

27 **"16-3-230. Beer required to be shipped to wholesaler.** Except as provided in 16-3-214 and 16-4-
28 901, all beer that is to be distributed in Montana, whether manufactured outside of or within the state of

1 ~~Montana~~, must be consigned to and shipped, either directly or via a licensed storage depot, to a licensed
2 wholesaler and unloaded into the wholesaler's warehouse in ~~Montana~~ or subwarehouse in Montana. A brewer
3 or beer importer ~~may sell only to wholesalers from a storage depot in Montana and~~ shall maintain records of all
4 beer, including the name or kind received, on hand, and sold. The records may at any time be inspected by a
5 representative of the department. The wholesaler shall distribute the beer from the warehouse or
6 subwarehouse and shall keep records at the wholesaler's principal place of business of all beer, including the
7 name or kind received, on hand, sold, and distributed. The records may be inspected by a representative of the
8 department at any time."

9
10 **Section 6.** Section 16-3-233, MCA, is amended to read:

11 **"16-3-233. Sales to public by wholesaler unlawful.** ~~A~~ Except as provided in 16-3-316, a wholesaler
12 may not give, sell, deliver, or distribute any beer purchased or acquired by the wholesaler to the public."

13
14 **Section 7.** Section 16-3-243, MCA, is amended to read:

15 **"16-3-243. Seven-day credit limitation.** ~~(1) No sale or delivery of beer shall be made to any retail~~
16 ~~licensee except for cash paid within 7 days after the delivery thereof, A brewer, beer importer, or beer~~
17 ~~wholesaler may not sell or deliver beer unless a retail licensee pays within 7 days of the delivery and in no~~
18 ~~event shall any brewer, beer importer, or wholesaler may not~~ extend more than 7 days' credit ~~on account of~~
19 ~~such for payment for the beer to a the retail licensee, nor shall any retail licensee accept or receive delivery of~~
20 ~~such beer without agreement to pay in cash therefor~~

21 (2) A retail licensee shall pay a brewer, beer importer, or beer wholesaler in full for beer within 7
22 days from the date of delivery thereof and may not accept more than 7 days' credit from a brewer, beer
23 importer, or beer wholesaler. A correctly dated check which is honored upon presentment shall be considered
24 as cash within the meaning of this code. Failure to pay in full within 7 days from the date of delivery is
25 considered an impermissible acceptance of credit.

26 (3) Any extension or acceptance of credit in violation hereof shall be regarded and construed as of
27 this section is considered rendering or receiving of financial assistance, ~~and the licenses of brewers, Brewers,~~
28 ~~beer importers, beer wholesalers, and retail licensees involved in violation hereof shall be suspended or~~

1 ~~revoked, as determined by the department in its discretion~~ who violate this section are subject to the penalty
2 provisions of 16-4-406."

3
4 **Section 8.** Section 16-3-301, MCA, is amended to read:

5 **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1) ~~It~~

6 Except as allowed in 16-4-213(8), it is unlawful for a licensed retailer to:

7 (a) purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler
8 licensed under the provisions of this code ~~except as allowed in 16-4-213 (8);~~

9 (b) purchase or acquire table wine from anyone except a liquor store agent or winery or table wine
10 distributor licensed under the provisions of this code;

11 (c) purchase or acquire wine from anyone except a liquor store agent or winery;

12 ~~(2)(d)~~ It is unlawful for a licensed retailer to transport beer or wine alcoholic beverages from one
13 licensed premises or other facility to any other licensed premises owned by the licensee ~~except as allowed in~~
14 ~~16-4-213 (8); or~~

15 ~~(3)(e)~~ It is unlawful for a licensed retailer to purchase or acquire liquor from anyone except an agency
16 liquor store ~~except as allowed in 16-4-213 (8).~~

17 ~~(4)(2)~~ It is unlawful for a licensed distributor or wholesaler to purchase beer, table wine, or wine from
18 anyone except a brewery, winery, or wholesaler licensed or registered under this code.

19 (3) It is unlawful for a liquor store agent to purchase beer, table wine, or sacramental wine from
20 anyone except a table wine distributor licensed under this code.

21 ~~(5)(4)~~ It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or
22 give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

23 (a) any person under 21 years of age; or

24 (b) any person actually, apparently, or obviously intoxicated.

25 ~~(6)(5)~~ Any person under 21 years of age or any other person who knowingly misrepresents the
26 person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with
27 the licensee and, upon on conviction, is subject to the penalty provided in 45-5-624. However, nothing in this
28 section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in

violation of any federal law.

~~(7)~~(6) All licensees shall display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.

~~(8)~~(7) For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

(a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

(b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and

(c) the sale was made in good faith and in reasonable reliance ~~upon~~ on the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See compiler's comments for contingent termination of certain text.)"

Section 9. Section 16-3-306, MCA, is amended to read:

"16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) through (4), a retail license may not be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation ~~upon~~ on the department's licensing authority.

(2) ~~However, the~~ The department may renew a license, approve the transfer of ownership of a license, or allow the current licensee to apply for a new license type for any establishment located in violation of this section if the licensee does not relocate an entrance any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has supplanted the provisions of subsection (1) as provided in 16-3-309."

Section 10. Section 16-3-308, MCA, is amended to read:

"16-3-308. Refilling of liquor bottles prohibited. (1) ~~No~~ A person who sell or offers liquor for sale, or the an agent or employee of such the person, who sells or offers liquor for sale may not:

(a) place in any liquor bottle any liquor ~~whatsoever~~ other than that contained in ~~such the~~ bottle at the time of ~~stamping by the federal government~~ bottling by an alcoholic beverage manufacturer;

(b) possess any liquor bottle in which any liquor has been placed in violation of subsection (1)(a);

(c) by the addition of any substance ~~whatsoever~~ to any liquor bottle, in any manner alter or increase any portion of the original contents contained in ~~such the~~ bottle at the time of ~~stamping by the federal government~~ bottling by an alcoholic beverage manufacturer; or

(d) possess any liquor bottle, ~~any portion of the contents~~ of which any portion of its contents has been altered or increased in violation of subsection (1)(c).

(2) This section does not prohibit any reuse of liquor bottles ~~which that~~ which that is permitted under laws or regulations of the federal government."

Section 11. Section 16-3-316, MCA, is amended to read:

"16-3-316. Fundraising events for nonprofit and tax-exempt organizations. (1) A nonprofit organization governed under Title 35, chapter 2, or an organization designated as tax-exempt under the provisions of section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended, may raffle or auction alcoholic beverages at fundraising events. Any alcoholic beverage raffled or auctioned must be given by the organization to the raffle or auction winner sealed in its original package.

(2) If the fundraising event is held on the premises of a business licensed under this code or on

premises for which a permit has been issued under this code, the alcoholic beverage may not be consumed on the premises. An alcoholic beverage that is on a licensee's premises solely for a fundraising event under this section does not constitute a violation by the licensee of 16-3-301(1)(a) or 16-6-303.

(3) A nonprofit or tax-exempt organization may hold no more than four events per calendar year at which alcoholic beverages are raffled or auctioned. The duration of each event must be announced at the time any raffle tickets are sold or auction bids are received. Raffles and auctions held pursuant to this section must be to directly support bona fide charitable, nonprofit, or tax-exempt activities.

(4) An alcoholic beverage for raffle or auction must be:

(a) acquired, whether by purchase or donation, by the organization from a retailer or manufacturer licensed under the provisions of this code, ~~excluding a restaurant beer and wine licensee;~~

(b) ~~purchased~~ acquired by the organization, whether by purchase at not less than the posted price or by donation, from an agency liquor store ~~at not less than the posted price;~~ or

(c) received by the organization as a donation at no cost to the organization from any other person ~~except one licensed as a wholesaler or distributor under this code.~~

(5) No proceeds from the raffle or auction of alcoholic beverages may go to anyone who provided the alcoholic beverages to the organization for the raffle or auction.

(6) For a raffle or auction described in subsection (1), raffle tickets may not be sold to, and auction bids may not be solicited or received from, any person under 21 years of age. The organization raffling or auctioning alcoholic beverages may not sell, deliver, or give away any alcoholic beverage to a person under 21 years of age or to any person actually, apparently, or obviously intoxicated.

(7) As used in this section:

(a) "auction" means the sale of an item or items, which may include alcoholic beverages, whereby the item for sale is sold to the highest bidder at the bid price. An auctioned item or items may have a reserve price.

(b) "raffle" means an event in which a nonprofit or tax-exempt organization sells tickets and each ticket gives the purchaser of the ticket the chance to win a prize, which may include alcoholic beverages, with the winner determined by a random drawing."

Section 12. Section 16-3-401, MCA, is amended to read:

"16-3-401. Short title -- public policy -- purpose. (1) This part may be cited as the "Wine Distribution Act".

(2) The public policy of the state of Montana is to maintain a system to provide for, regulate, and control the acquisition, importation, and distribution of table wine.

(3) This part governs wineries, table wine distributors, and wine retailers.

(4) This code does not prohibit the manufacture of wine, for personal or family use and not intended for sale, that meets the exemptions of 26 U.S.C. 5042(a)(2) and regulations implementing that section, including the making of wine, for personal or family use, on premises other than those of the person making the wine.

Section 13. 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 table wine it produces at wholesale to table 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 no more than three special event permit-permits 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 9-liter 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 9-liter 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 report₁ 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."

Section 14. Section 16-6-314, MCA, is amended to read:

"16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by underage person. (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

(2) If a retail licensee is convicted of an offense under this code, the licensee's license must be immediately revoked or, in the discretion of the department, another sanction must be imposed as provided under 16-4-406.

(3) A person under 21 years of age who violates 16-3-301~~(5)~~(4) or 16-6-305(3) is subject to the penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

NEW SECTION. **Section 15. Effective date.** [This act] is effective on passage and approval.

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