

1 HOUSE BILL NO. 735

2 INTRODUCED BY S. FITZPATRICK

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LICENSE LAWS; PROVIDING
5 DEFINITIONS; PROVIDING LICENSED ENTITIES THAT MUST HAVE APPLICANTS SUBMIT
6 FINGERPRINTS; AMENDING SECTIONS 16-1-106 AND 16-4-414, MCA; AND PROVIDING AN IMMEDIATE
7 EFFECTIVE DATE."

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

10
11 **Section 1.** Section 16-1-106, MCA, is amended to read:

12 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

13 (1) "Agency franchise agreement" means an agreement between the department and a person
14 appointed to sell liquor as a commission merchant rather than as an employee.

15 (2) "Agency liquor store" means a store operated under an agency franchise agreement in
16 accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises
17 consumption.

18 (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

19 (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink
20 that contains more than 0.5% of alcohol by volume.

21 (5) (a) "Beer" means:

22 (i) a malt beverage containing not more than 8.75% of alcohol by volume; or

23 (ii) an alcoholic beverage containing not more than 14% alcohol by volume:

24 (A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both,
25 in potable brewing water, of malted cereal grain; and

26 (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived
27 from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

28 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

1 (6) "Beer importer" means a person other than a brewer who imports malt beverages.

2 (7) "Beer wholesaler" means a person importing into or purchasing in Montana beer for sale or
3 resale to retailers licensed in Montana.

4 (8) "Board member" means an individual serving on the governing board of a corporation, nonprofit
5 corporation, cooperative association, or similar business entity.

6 ~~(8)~~ (9) "Brewer" means a person who produces malt beverages.

7 (10) "Business entity" means any organization formed under the laws of this state or another
8 jurisdiction, including but not limited to a corporation, limited liability company, partnership, limited partnership,
9 limited liability partnership, sole proprietorship, trust, nonprofit corporation, cooperative association, or any other
10 legal entity recognized by law.

11 ~~(9)~~ (11) "Caffeinated or stimulant-enhanced malt beverage" means:

12 (a) a beverage:

13 (i) that is fermented in a manner similar to beer and from which some or all of the fermented
14 alcohol has been removed and replaced with distilled ethyl alcohol;

15 (ii) that contains at least 0.5% of alcohol by volume;

16 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
17 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

18 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
19 and taurine; or

20 (b) a beverage:

21 (i) that contains at least 0.5% of alcohol by volume;

22 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
23 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

24 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

25 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
26 and taurine;

27 (v) for which the producer is required to file a formula for approval with the United States alcohol
28 and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

1 (vi) that is not exempt pursuant to 27 CFR 25.55(f).

2 ~~(10)~~ (12) "Community" means:

3 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

4 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
5 community for census purposes; and

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

8 ~~(11)~~ (13) "Concessionaire" means an entity that has a concession agreement with a licensed
9 entity.

10 (14) "Cooperative association" means an entity organized under Title 35, chapter 15, or equivalent
11 laws of another jurisdiction, operating on a cooperative basis for the mutual benefit of its members.

12 (15) "Corporation" means an entity organized under Title 35, chapter 14, or any other corporate
13 entity organized under the laws of another jurisdiction and authorized to do business in Montana.

14 ~~(12)~~ (16) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements
15 of 16-3-312.

16 ~~(13)~~ (17) "Department" means the department of revenue, unless otherwise specified, and
17 includes the department of justice with respect to receiving and processing, but not granting or denying, an
18 application under a contract entered into under 16-1-302.

19 (18) "General partner" means a partner in a partnership who has management authority and
20 personal liability for the obligations of the partnership.

21 (19) "General partnership" means a partnership formed under Title 35, chapter 10, or a partnership
22 organized under the laws of another jurisdiction.

23 ~~(14)~~ (20) "Growler" means any fillable, sealable container complying with federal law.

24 ~~(15)~~ (21) (a) "Guest ranch" means a business or organization that provides guests with overnight
25 lodging, dining, and onsite outdoor recreational activities typical of western ranching for the purposes of
26 vacation or recreation. Recreational activities offered by a guest ranch may include but are not limited to
27 horseback riding, wagon or sleigh rides, shooting, and working with livestock. The property of a guest ranch
28 must be composed of at least 50 contiguous acres. The property must be located entirely outside the license

1 quota area of an incorporated city or an incorporated town as determined under 16-4-105(1) or 16-4-201. The
2 premises of a guest ranch may include restaurants, sporting and recreational equipment shops, event venues,
3 arenas, and other facilities that may be used by other persons in addition to the overnight guests.

4 (b) The term does not include premises used as rehabilitation centers, group homes, clinics,
5 nursing homes, church or other religious campgrounds, or other similar uses.

6 ~~(16)~~ (22) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation
7 of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than
8 8.5% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

9 ~~(17)~~ (23) "Immediate family" means a spouse, dependent children, or dependent parents.

10 ~~(18)~~ (24) "Import" means to transfer beer or table wine from outside the state of Montana into the
11 state of Montana.

12 (25) "Limited liability company" means an entity organized under Title 35, chapter 8, or any other
13 limited liability company organized under the laws of another jurisdiction and authorized to do business in
14 Montana.

15 (26) "Limited liability partnership" means a partnership registered under Title 35, chapter 10, part 7,
16 or the equivalent laws of another jurisdiction, where partners have limited liability for the partnership's
17 obligations.

18 (27) "Limited partner" means a partner in a limited partnership whose liability is limited to their
19 investment in the partnership and who does not participate in management.

20 (28) "Limited partnership" means a partnership formed under Title 35, chapter 12, or the equivalent
21 laws of another jurisdiction, consisting of one or more general partners and one or more limited partners.

22 ~~(19)~~ (29) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
23 caffeinated or stimulant-enhanced malt beverage.

24 ~~(20)~~ (30) "Location manager" means a person who provides general oversight of the alcoholic
25 beverage operations and ensures compliance with alcoholic beverage laws and regulations. A location
26 manager may be an owner of a license, an employee of the licensee, or ~~an~~ a business entity that contracts to
27 provide services for the licensee.

28 ~~(24)~~ (31) "Malt beverage" means:

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

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

8 (32) "Managing member" means a member of a limited liability company who is designated to
9 manage the company under its operating agreement or applicable law.

10 (33) "Member" means an owner of a limited liability company.

11 (34) "Nonprofit corporation" means a corporation organized under Title 35, chapter 2, or any similar
12 laws of another jurisdiction that does not distribute income to its members, directors, or officers except as
13 permitted by law.

14 (35) "Officer" means an individual elected or appointed to manage the daily operations of a
15 business entity as provided in its governing documents or applicable law.

16 ~~(22)~~ (36) (a) "Original package" means the sealed container in which a manufacturer packages
17 its product for retail sale.

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

19 (i) bottles;

20 (ii) cans; and

21 (iii) kegs.

22 ~~(23)~~ (37) "Package" means a container or receptacle used for holding an alcoholic beverage.

23 (38) "Partner" means a person who shares ownership in a partnership, whether in a general
24 partnership, limited partnership, or limited liability partnership.

25 (39) "Partnership" means an association of two or more persons to carry on as co-owners of a
26 business for profit, including a general partnership, limited partnership, or limited liability partnership.

27 ~~(24)~~ (40) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor
28 licenses as fixed and determined by the department and in addition an excise and license tax as provided in

1 this code. In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the
2 sum of the department's cost to acquire the sacramental wine, the department's current freight rate to agency
3 liquor stores, and a 20% markup.

4 ~~(25)~~ (41) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale
5 and sealed with a lid, for consumption at a place other than the licensee's premises.

6 ~~(42)~~ "Privately held corporation" means a corporation that is not a publicly traded corporation and
7 whose ownership interests are not offered or traded on a public market.

8 ~~(26)~~ (43) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
9 contains 50% of alcohol by volume.

10 ~~(27)~~ (44) "Public place" means a place, building, or conveyance to which the public has or may
11 be permitted to have access and any place of public resort.

12 ~~(45)~~ "Publicly traded corporation" means a corporation whose securities are listed on a national
13 securities exchange or otherwise traded in a public market.

14 ~~(28)~~ (46) "Retail price" means the price established by an agent for the sale of liquor to persons
15 who do not hold liquor licenses. The retail price may not be less than the department's posted price.

16 ~~(29)~~ (47) "Rules" means rules adopted by the department or the department of justice pursuant
17 to this code.

18 ~~(30)~~ (48) "Sacramental wine" means wine that contains more than 0.5% but not more than 24%
19 of alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other
20 religious purposes.

21 ~~(34)~~ (49) "Special event", as it relates to an application for a beer and wine special permit,
22 means a short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

23 ~~(32)~~ (50) "State liquor warehouse" means a building owned or under control of the department
24 for the purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

25 ~~(33)~~ (51) "Storage depot" means a building or structure owned or operated by a brewer at any
26 point in the state of Montana off and away from the premises of a brewery, which building or structure is
27 equipped with refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or
28 distribute beer as permitted by this code.

1 ~~(34)~~ (52) "Subwarehouse" means a building or structure owned or operated by a licensed
2 combined beer wholesaler and table wine distributor, located at a site in Montana other than the site of the
3 combined beer wholesaler's and table wine distributor's warehouse, and used for the receiving, storage, and
4 distribution of beer, table wine, or sacramental wine as permitted by this code.

5 ~~(35)~~ (53) "Table wine" means wine that contains not more than 16% of alcohol by volume and
6 includes hard cider.

7 ~~(36)~~ (54) "Table wine distributor" means a person importing into or purchasing in Montana table
8 wine or sacramental wine for sale or resale to retailers licensed in Montana and a person importing into or
9 purchasing in Montana table wine for sale or resale to agency liquor stores.

10 (55) "Trust" means a fiduciary relationship in which one person, the trustee, holds legal title to
11 property for the benefit of another person, the beneficiary.

12 (56) "Trustee" means a person or entity with legal responsibility to manage a trust's assets for the
13 benefit of its beneficiaries.

14 ~~(37)~~ (57) "Warehouse" means a building or structure located in Montana that is owned or
15 operated by a licensed combined beer wholesaler and table wine distributor for the receiving, storage, and
16 distribution of beer or table wine as permitted by this code.

17 ~~(38)~~ (58) "Wine" means an alcoholic beverage made from or containing the normal alcoholic
18 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
19 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
20 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
21 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
22 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
23 wine in accordance with federal regulations are also wine."
24

25 **Section 2.** Section 16-4-414, MCA, is amended to read:

26 **"16-4-414. Fingerprints required of applicants and location managers -- exceptions. (1) (a)**

27 Except as provided in subsection (2), an applicant for a license under this code, an individual who must meet
28 the requirements of 16-4-401 for the issuance of a new license or for the approval of the transfer of a license,

1 and any person employed by the applicant as a location manager shall submit their fingerprints with the
2 application to facilitate a fingerprint and background check by the department of justice and the federal bureau
3 of investigation. The results of the investigation must be used by the department in determining the applicant's
4 eligibility for a license.

5 (b) For purposes of this section, "a license under this code" means:

6 (i) a winery license issued pursuant to 16-3-411;

7 (ii) a brewery license issued pursuant to 16-4-101;

8 (iii) a beer and wine license issued pursuant to 16-4-105;

9 (iv) a golf course beer and wine license issued pursuant to 16-4-109;

10 (v) a beer and wine license for a tribal alcoholic beverages licensee or enlisted personnel,
11 noncommissioned officers', or officers' club issued pursuant to 16-4-110;

12 (vi) a combined beer wholesaler and table wine distributor license issued pursuant to 16-4-113;

13 (vii) a beer and wine license for off-premises consumption issued pursuant to 16-4-115;

14 (viii) an all-beverages license issued pursuant to 16-4-201;

15 (ix) an airport all-beverages license issued pursuant to 16-4-208;

16 (x) an all-beverages license for a tribal alcoholic beverages licensee or enlisted personnel,
17 noncommissioned officers', or officers' club issued pursuant to 16-4-209;

18 (xi) a resort retail all-beverages license issued pursuant to 16-4-213;

19 (xii) a passenger carrier license issued pursuant to 16-4-302;

20 (xiii) a special beer and table wine license for nonprofit arts organizations issued pursuant to 16-4-
21 303;

22 (xiv) a beer and wine license for Yellowstone airport issued pursuant to 16-4-304;

23 (xv) a Montana heritage retail alcoholic beverage license issue pursuant to 16-4-305;

24 (xvi) a distillery license issued pursuant to 16-4-311;

25 (xvii) a sacramental wine license issued pursuant to 16-4-313;

26 (xviii) an academic brewer license issued pursuant to 16-4-314;

27 (xix) a limited all-beverages license for continuing care retirement communities issued pursuant to
28 16-4-315; or

1 (xx) a restaurant beer and wine license issued pursuant to 16-4-420.

2 (2) (a) If the applicant is a publicly traded corporation, an officer and any person employed by the
3 applicant as a location manager are subject to the fingerprint and background check in subsection (1).

4 (b) If the applicant employs a business entity as a location manager, a person designated pursuant
5 to 16-4-419(3) is subject to the fingerprint and background check in subsection (1).

6 (c) A change in the form of a licensee's business entity that does not result in any person having a
7 new ownership interest in the business is not grounds for the department to require a fingerprint or background
8 check.

9 (3) Approved applicants may use a single background check and set of fingerprints for multiple
10 license applications within 5 years. Applicants must attest that no criminal charges have been filed since the
11 background check was last completed."

12

13 NEW SECTION. **Section 3.** **Effective date.** [This act] is effective on passage and approval.

14 - END -