

## HOUSE BILL NO. 97

INTRODUCED BY E. BUTTREY

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS; ~~REMOVING GLASSWARE AND CUPS FROM PROHIBITIONS ON THE FURNISHING OF FIXTURES OR ADVERTISING MATERIALS TO RETAILERS; ALLOWING LOCAL ORDINANCES TO RESTRICT THE TYPE OR VARIETY OF ALCOHOLIC BEVERAGES SOLD IN A JURISDICTION; REVISING LAWS RELATED TO PRICE REDUCTION FOR QUANTITY SALES OF LIQUOR;~~ REVISING ALCOHOL LICENSES PERTAINING TO GOLF COURSES; REVISING LAWS RELATED TO LIQUOR STORE AGENTS AND TABLE WINE; REVISING DEFINITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-1-411, 16-2-201, 16-3-213, ~~16-3-233~~, ~~16-3-241~~, 16-3-302, ~~16-3-309~~, 16-3-316, AND 16-3-411, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**SECTION 1. SECTION 16-1-411, MCA, IS AMENDED TO READ:**

**"16-1-411. Tax on wine and hard cider -- penalty and interest.** (1) (a) A tax of 27 cents per liter is imposed on sacramental wine and table wine, except hard cider, imported by a table wine distributor and on table wine shipped directly to consumers or licensed retailers by a winery registered or licensed pursuant to 16-4-107.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor and on hard cider shipped directly to licensed retailers by a winery licensed pursuant to 16-4-107.

(2) The tax imposed in subsection (1) must be paid as follows:

(a) A winery registered pursuant to 16-4-107 that sells more than 1,000 liters of sacramental wine, table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or before the 15th day of each month during the following period that begins

1 October 1 and ends September 30.

2 (b) A winery registered pursuant to 16-4-107 that sells 1,000 liters or less of sacramental wine,  
3 table wine, or hard cider, in any combination, to consumers in the state during a period beginning October 1  
4 and ending September 30 shall electronically file a wine tax return or a hard cider tax return, or both, and pay  
5 the tax on or before October 15 of the following period that begins October 1 and ends September 30.

6 (c) A winery licensed pursuant to 16-4-107 that sells sacramental wine, table wine, or hard cider to  
7 consumers or licensed retailers in the state or that sells table wine to agency liquor stores for sale to consumers  
8 in the state shall electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a  
9 monthly basis on or before the 15th of each month for sales in the previous month.

10 (d) A table wine distributor that sells sacramental wine, table wine, or hard cider in the state shall  
11 electronically file a wine tax return or a hard cider tax return, or both, and pay the tax on a monthly basis on or  
12 before the 15th day of each month for sales in the previous month.

13 (3) Failure to electronically file a tax return or failure to pay the tax required by this section subjects  
14 the winery or the table wine distributor to the penalties and interest provided for in 15-1-216.

15 (4) The tax paid by a winery or by a table wine distributor in accordance with subsection (2) must,  
16 in accordance with the provisions of 17-2-124, be distributed as follows:

17 (a) 69% to the state general fund; and

18 (b) 31% to the state special revenue fund to the credit of the department of public health and  
19 human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

20 (5) The tax computed and paid in accordance with this section is the only tax imposed by the state  
21 or any of its subdivisions, including cities and towns.

22 (6) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not  
23 include hard cider."

24

25 **SECTION 2. SECTION 16-2-201, MCA, IS AMENDED TO READ:**

26 **"16-2-201. Reduction for quantity sales of liquor.** A reduction of 8% of the posted price of liquor  
27 sold at an agency liquor store must be made for sales of liquor to a licensee purchasing liquor in unbroken case  
28 lots. This reduction is limited to liquor designated by the department as regular product as defined by

1 administrative rule. No other reduction below the posted price may be made for sales of liquor."

2

3 **Section 3.** Section 16-3-213, MCA, is amended to read:

4 **"16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.** (1) Except  
5 as provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to  
6 have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit  
7 brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries  
8 from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

9 (2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual  
10 nationwide production of not ~~less than 100 barrels or~~ LESS THAN 200 GALLONS OR more than 60,000 barrels,  
11 including:

12 (i) the production of all affiliated manufacturers; and

13 (ii) beer purchased from any other beer producer to be sold by the brewery.

14 (b) A small brewery may, at one location for each brewery license and at no more than three  
15 locations including affiliated manufacturers, provide samples of beer that were brewed and fermented on the  
16 premises in a sample room located on the licensed premises. The samples may be provided with or without  
17 charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or  
18 given to each individual customer during a business day for consumption on the premises or in prepared  
19 servings through curbside pickup, provided that the 48-ounce limit may not in any way limit a small brewery's  
20 sales as provided in 16-3-214(1)(a)(iii). No more than 2,000 barrels may be provided annually for on-premises  
21 consumption including all affiliated manufacturers.

22 (3) For the purposes of this section, "affiliated manufacturer" means a manufacturer of beer:

23 (a) that one or more members of the manufacturing entity have more than a majority share interest  
24 in or that controls directly or indirectly another beer manufacturing entity;

25 (b) for which the business operations conducted between or among entities are interrelated or  
26 interdependent to the extent that the net income of one entity cannot reasonably be determined without  
27 reference to operations of the other entity; or

28 (c) of which the brand names, products, recipes, merchandise, trade name, trademarks, labels, or

logos are identical or nearly identical."

**Section 2.** Section 16-3-233, MCA, is amended to read:

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

**Section 3.** Section 16-3-241, MCA, is amended to read:

**"16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer**  
**importers, and wholesalers unlawful -- exceptions.** (1) (a) It is unlawful for any brewer, beer importer, or  
wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures, equipment, or any other  
advertising matter or any other property to a retail licensee, used or to be used in the dispensation of beer in  
and about the interior of the place of business of the licensed retailer, or to furnish, give, or pay for any repairs,  
improvements, or painting on or within the premises.

(b) ~~It is lawful for a~~ A brewer, beer importer, or wholesaler to may furnish, give, or loan to a retail  
licensee:

(i) ~~bottle openers, can openers, trays, tap handles, menus, apparel, coasters, glassware, cups,~~  
~~napkins, or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any~~  
~~one retail establishment for display use within the interior of the retail establishment;~~

(ii) ~~not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each~~  
~~brand of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place~~  
~~of business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name,~~  
~~trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture.~~  
~~Any beer advertised must be available for sale on the retailer's premises at the time the displays are used~~  
~~unless the displays are the property of the retailer or, if supplied by a brewer, beer importer, or wholesaler, a~~  
~~display has been in the retailer's possession for more than 9 months.~~

(iii) ~~permanent or temporary advertising matter of a decorative nature, excluding items described in~~  
~~subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and~~

(iv) ~~maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.~~

~~(2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and dispensing of beer to a special permittee or a retailer for use:~~

~~(a) in catering an event that is off the permittee's or retailer's regular premises; or~~

~~(b) up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours."~~

**Section 4.** Section 16-3-302, MCA, is amended to read:

**"16-3-302. Sale by retailer for consumption on premises.** (1) It is lawful for a licensed retailer to sell and serve beer, either on ~~draught~~ draft or in containers, to the public to be consumed on the premises of the retailer.

(2) It is lawful for a licensee who has an all-beverages license that the licensee uses at a golf course to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109 to sell beer and wine:

(a) in the building or other structural premises constituting the clubhouse or primary indoor recreational quarters of the golf course; ~~and~~

(b) UPON DEPARTMENT APPROVAL AND SUBMISSION OF A FEE, in an additional building or other structure, one per 18-9 holes of the golf course, that is designed to serve golfers during the course of play; and

(c) at any place within the boundaries of the golf course, from a portable satellite vehicle or other movable satellite device that is moved from place to place, ~~whether inside or outside of a building or other structure.~~

(3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the boundaries of the golf course, whether inside or outside of a building or other structure."

**Section 5.** Section 16-3-309, MCA, is amended to read:

**"16-3-309. Sales prohibited by ordinance.** (1) ~~An incorporated city may enact an ordinance defining certain areas in its incorporated limits where alcoholic beverages may or may not be sold. The ordinance may limit by type or variety of alcoholic beverage.~~

(2) ~~— A county may enact an ordinance or resolution defining certain areas in the county, not within the incorporated limits of a city, where alcoholic beverages may or may not be sold. The ordinance may limit by type or variety of alcoholic beverage.~~

(3) ~~— In enacting such an ordinance or resolution under subsection (1) or (2), the county or city may provide that the provisions of 16-3-306(1) do not apply within the jurisdictional area of the ordinance or resolution. If a county or city has supplanted the provisions of 16-3-306(1), upon on request of the department the governing body of the county or city must certify to the department whether or not the person or individual identified in the request may lawfully sell alcoholic beverages under the terms of the ordinance or resolution. The department is bound by the determination set forth in the certification.~~

(4) ~~— No county or incorporated city may by ordinance restrict the number of licenses that the department may issue."~~

**Section 5.** 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) 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

1 licensed under the provisions of this code, ~~excluding a restaurant beer and wine licensee;~~

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

4 (c) received by the organization as a donation at no cost to the organization from any other person  
5 ~~except one licensed as a wholesaler or distributor under this code~~ EXCEPT ONE LICENSED AS A WHOLESALER OR  
6 DISTRIBUTOR UNDER THIS CODE.

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

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

13 (7) As used in this section:

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

17 (b) "raffle" means an event in which a nonprofit or tax-exempt organization sells tickets and each  
18 ticket gives the purchaser of the ticket the chance to win a prize, which may include alcoholic beverages, with  
19 the winner determined by a random drawing."  
20

21 **Section 6.** Section 16-3-411, MCA, is amended to read:

22 **"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

23 (a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;

24 (b) sell table wine it produces at wholesale to table wine distributors or liquor store agents;

25 (c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off  
26 the premises;

27 (d) provide, without charge, wine it produces for consumption at the winery;

28 (e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine

1 it produces;

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

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

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

7 (i) obtain a direct shipment endorsement to ship table wine as provided in Title 16, chapter 4, part  
8 11, directly to an individual in Montana who is at least 21 years of age; or

9 (j) offer wine in its original packaging, prepared servings, or growlers for curbside pickup between  
10 8 a.m. and 2 a.m.

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

13 (i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine  
14 delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 9-liter cases a year;

15 (ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the  
16 retailer or liquor store agent; or

17 (iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer or liquor  
18 store agent and:

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

21 (B) individual shipments delivered by common carrier are limited to three cases a day for each  
22 licensed retailer or liquor store agent; and

23 (C) the shipments delivered by common carrier do not exceed 4,500 9-liter cases a year.

24 (b) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors,  
25 ~~and-retailers,~~ and liquor store agents, the shipment must be:

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

28 (ii) delivered to the premises of a licensed table wine distributor, ~~or licensed retailer who is in good~~

1 ~~standing, or liquor store agent~~; and

2 (iii) signed for by the wine distributor, ~~or~~ liquor store agent, or by its employee or agent.

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

10

11 NEW SECTION. **Section 7. Effective date.** [This act] is effective on passage and approval.

12

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