

SENATE BILL NO. 320

INTRODUCED BY E. BOLDMAN

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE ALCOHOL DELIVERY SERVICE LICENSE; PROVIDING DELIVERY REQUIREMENTS; PROVIDING LICENSING CRITERIA; PROVIDING DELIVERY SERVICE DRIVER REQUIREMENTS; PROVIDING ENFORCEMENT PROVISIONS; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTIONS 16-3-101, 16-3-103, 16-4-203, 16-4-1003, AND 16-4-1005, MCA."

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

NEW SECTION. Section 1. Delivery service license -- rulemaking. (1) The department shall issue an alcohol delivery service license to any alcohol delivery service that meets the requirements of this section.

(2) An alcohol delivery service delivers or facilitates delivery of alcoholic beverages to customers who are 21 years of age or older through alcohol delivery service drivers. An alcohol delivery service and alcohol delivery service drivers may not sell alcoholic beverages to customers and may not hold any license under this code other than an alcohol delivery service license. An alcohol delivery service and alcohol delivery service driver may not store alcoholic beverages.

(3) Alcoholic beverages delivered by an alcohol delivery service and alcohol delivery service driver must:

(a) be sold to the customer by an entity licensed under this code to sell alcoholic beverages for off-premises consumption and subject to the restrictions on each license type, including but not limited to agency liquor stores or any retailer, distillery, brewery, and winery; and

(b) be delivered:

(i) within 50 miles of the licensed premises from which the customer purchased the alcoholic beverages to the customer's delivery location;

(ii) within this state; and

(iii) between 8 a.m. and 2 a.m.

1 (4) (a) An alcohol delivery service shall offer technology that provides software or an application for
2 connecting customers and entities licensed to sell alcoholic beverages to an alcohol delivery service driver.

3 (b) An alcohol delivery service does not include an entity that only provides software or an application
4 that is used by another entity licensed under this section.

5 (5) An alcohol delivery service shall apply to the department for an alcohol delivery service license.
6 The department shall determine that the issuance of the license is required by public convenience and
7 necessity pursuant to 16-4-203. An alcohol delivery service license shall comply with the license criteria in 16-4-
8 401. Alcohol delivery service drivers shall complete server training required by the Responsible Alcohol Sales
9 and Service Act, Title 16, chapter 4, part 10. A licensed alcohol delivery service or any of its alcohol delivery
10 service drivers may not hold a class E motor carrier transportation network carrier certificate as provided in 69-
11 12-340. An alcohol delivery service shall pay an application fee and an annual fee as prescribed by the
12 department through rule.

13 (6) An alcohol delivery service shall retain transaction records for 3 years. The records must be
14 available for inspection by the department. The transaction records must include:

15 (a) the alcoholic beverages purchased by the customer, including specific product information and
16 quantity;

17 (b) the licensed entity that sold the alcoholic beverages to the customer, including the licensed entity's
18 location;

19 (c) the customer's name, address, and driver's license number;

20 (d) the time and location of the delivery; and

21 (e) information relating to the alcohol delivery service driver who delivered the alcoholic beverages.

22 (7) An alcohol delivery service may be subject to fines, suspension, or revocation of its license by the
23 department for conduct of an alcohol delivery service or any of its alcohol delivery service drivers as provided in
24 this code. An entity licensed to sell alcoholic beverages for off-premises consumption is not subject to fines,
25 suspension, or revocation for conduct of an alcohol delivery service driver or customer after the driver picks up
26 alcoholic beverages from the licensed entity.

27 (8) The department may promulgate rules to implement this section.

28 (9) This section does not apply to:

1 (a) a motor carrier or freight forwarder as defined in 49 U.S.C. 13102;

2 (b) an air carrier as defined in 49 U.S.C. 40102;

3 (c) deliveries of beer by breweries under 16-3-214; and

4 (d) deliveries by agency liquor stores under 16-2-106.

5 (10) For purposes of this section, the following definitions apply:

6 (a) (i) "Alcohol delivery service" means an entity that uses a digital network or software application
7 service to connect customers to delivery services provided by alcohol delivery service drivers. An alcohol
8 delivery service may not be considered to control, direct, or manage the personal vehicles or alcohol delivery
9 service drivers that connect to its digital network, except as agreed to by written contract.

10 (ii) An alcohol delivery service does not constitute a "common carrier" as provided under this code.

11 (b) "Alcohol delivery service driver" or "driver" means an individual who:

12 (i) receives connections to potential customers and related services from an alcohol delivery service
13 in exchange for payment of a fee to the alcohol delivery service;

14 (ii) uses a personal vehicle to provide a prearranged transportation of alcoholic beverages upon
15 connection through a digital network controlled by an alcohol delivery service in return for compensation or
16 payment of a fee;

17 (iii) has a valid driver's license;

18 (iv) is 21 years of age or older;

19 (v) has not been convicted of:

20 (A) a crime involving the sale and distribution of alcohol or driving under the influence within the
21 previous 5 years; or

22 (B) any felony within the previous 5 years.

23 (c) "Alcoholic beverage" has the same meaning as in 16-1-106, but must be in its original sealed
24 packaging.

25 (d) "Customer" means an individual who is 21 years of age or older that uses an alcohol delivery
26 service's digital network or software application service to connect with an alcohol delivery service driver who
27 provides prearranged transportation of alcoholic beverages in the driver's personal vehicle to a location chosen
28 by the customer.

1

2 **Section 2.** Section 16-3-101, MCA, is amended to read:

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

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

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

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

12 (b) The prohibition in subsection (2)(a) includes alcoholic beverages ordered or purchased by
13 telephone, computer, or other device, except by persons holding a valid connoisseur's license provided for in
14 16-4-901.

15 (c) The prohibition in subsection (2)(a) does not include a prohibition of purchasing alcoholic
16 beverages by telephone, computer, or any other device through a licensed alcohol delivery service under
17 [section 1] for transport by an alcohol delivery service driver to a customer located in the state.

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

21

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

23 **"16-3-103. Unlawful sales solicitation or advertising -- exceptions.** (1) A person within the state
24 may not:

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

28 (b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the case

1 of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this code;

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

6 (2) This section does not apply to:

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

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

10 (c) the sale and serving of beer in the grandstand and bleacher area of a county fairground or public
11 sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement issued pursuant to
12 16-4-111 or 16-4-204; or

13 (d) a licensed alcohol delivery service under [section 1] that:

14 (i) only provides for the transport of alcoholic beverages; and

15 (ii) publishes prices on a computer or other device in accordance with the department and agency
16 liquor store price list for the purchase and transport of alcoholic beverages."

17
18 **Section 4.** Section 16-4-203, MCA, is amended to read:

19 **"16-4-203. Determination of public convenience and necessity.** (1) An original license issued
20 pursuant to 16-4-104, 16-4-201, 16-4-208, ~~or~~ 16-4-213 or [section 1] or the transfer of location of an on-
21 premises retail license may be approved if the department does not receive the minimum number of protests
22 required for a public convenience and necessity determination pursuant to 16-4-207, in which case the
23 application must be regarded as a prima facie showing of public convenience and necessity and no further
24 determination of public convenience and necessity is allowed.

25 (2) (a) If the department receives at least the minimum number of protests required for a public
26 convenience and necessity determination, as provided in 16-4-207, an application must be approved when
27 evidence indicates that the issuance of an original license or transfer of location will materially promote the
28 public's ability to engage in the licensed activity.

(b) The issuance of an original license or a transfer of location will materially promote the public's ability to engage in the licensed activity if:

(i) the applicant's history and experience demonstrate the capacity to operate the proposed license in a lawful manner;

(ii) the approval of the application for the premises at the proposed location is consistent with the public's demand or probable demand for the licensed activity that presently exists or is reasonably expected to exist within the next 5 years in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located;

(iii) the approval of the application for the premises at the proposed location contributes to the public's ability to participate in the licensed activity throughout the quota area where the proposed premises is located and quota areas adjacent to the quota area where the proposed premises is located;

(iv) the approval of the application for the premises at the proposed location is consistent with adopted or pending planning, annexation, and zoning ordinances of local governments that confer or will confer jurisdiction over business and developments such as the proposed license in the quota area where the proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is located.

(3) When determining whether or not an application is justified by public convenience and necessity, the department may:

(a) receive evidence at the public hearing specified in 16-4-207 only from the applicant, any protestors whose protests the department has accepted pursuant to 16-4-207, and any other person summoned or called by either a protestor or applicant;

(b) find that the application is justified by public convenience and necessity if the applicant has provided substantial credible evidence as provided for in this subsection (3) that shows that the department's approval of the application will materially promote the public's ability to engage in the licensed activity. The substantial credible evidence required must include a consideration of each of the components of materially promoting the public's ability to engage in the licensed activity as provided in subsection (2)(b).

(4) For the purposes of this section, the following definitions apply:

(a) "Confer or will confer jurisdiction" means the power or authority that a local government or an

1 appointed subsidiary of a local government has or may obtain within 1 year from the date of the hearing to
2 consider and adopt planning, annexation, or zoning ordinances.

3 (b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in a
4 business licensed to sell alcoholic beverages at retail for on-premises consumption.

5 (c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local
6 government or an appointed subsidiary of a local government that were publicly considered within the year
7 preceding the date of the hearing or are presently being considered."
8

9 **Section 5.** Section 16-4-1003, MCA, is amended to read:

10 **"16-4-1003. Definition.** As used in this part, "licensee" means a person or entity licensed by the
11 department to sell alcoholic beverages at retail for either on-premises or off-premises consumption. The term
12 also includes any license issued to an alcohol service delivery driver under [section 1]."
13

14 **Section 6.** Section 16-4-1005, MCA, is amended to read:

15 **"16-4-1005. Licensees required to ensure training.** A licensee shall:

16 (1) require each employee who is authorized to sell, serve, or deliver alcoholic beverages in the
17 normal course of employment and the employee's immediate supervisor to successfully complete training to
18 ensure compliance with state law regarding the sale and service of alcoholic beverages. The training must be
19 completed within 60 days of the employee's date of hire and every 3 years after the employee's initial training.

20 (2) maintain employment records verifying employee completion of the training required in subsection
21 (1).

22 (3) if an alcohol service delivery driver licensed under [section 1], comply with subsection (1) of this
23 section except that the training must be completed before the driver delivers alcohol under the driver's license."
24

25 **NEW SECTION. Section 7. Codification instruction.** [Section 1] is intended to be codified as an
26 integral part of Title 16, and the provisions of Title 16 apply to [section 1].
27

- END -