

## 1 SENATE BILL NO. 210

2 INTRODUCED BY M. BLASDEL

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

8

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

10

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

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

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

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

23 (b) delivered:

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

26 (ii) within this state; and

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

28 (4) An alcohol delivery service shall provide technology that provides software or an application for  
29 connecting customers and entities licensed to sell alcoholic beverages to an alcohol delivery service driver. An  
30 alcohol delivery service does not include an entity that only provides software or an application that is used by

1 another entity licensed under this section.

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

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

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

14 (b) the licensed entity that sold the alcoholic beverages to the customer, including licensed entity  
15 location;

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

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

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

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

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

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

26 (a) "Alcohol delivery service" means an entity that uses a digital network or software application service  
27 to connect customers to delivery services provided by alcohol delivery service drivers. An alcohol delivery service  
28 may not be considered to control, direct, or manage the personal vehicles or alcohol delivery service drivers that  
29 connect to its digital network, except as agreed to by written contract. An alcohol delivery service does not  
30 constitute a "common carrier" as provided under this code.

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

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

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

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

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

9 (v) has not been convicted of:

10 (A) a crime involving the sale and distribution of alcohol or driving under the influence within the previous  
11 5 years; or

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

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

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

18 (10) This section does not apply to:

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

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

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

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

23

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

25 **"16-3-101. Alcoholic beverage transactions -- only in accordance with code.** (1) A person who  
26 manufactures, imports, distributes, or sells alcoholic beverages or the person's agent may not give or sell to any  
27 person within the state any alcoholic beverage except as may be permitted by and in accordance with the  
28 provisions of this code.

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

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

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

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

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

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

12

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

14 **"16-3-103. Unlawful sales solicitation or advertising -- exceptions.** (1) A person within the state may  
 15 not:

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

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

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

25 (2) This section does not apply to:

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

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

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

1 16-4-111 or 16-4-204; or  
 2 (d) a licensed alcohol delivery service under [section 1] that:  
 3 (i) only provides for the transport of alcoholic beverages; and  
 4 (ii) publishes prices on a computer or other device in accordance with the department and agency liquor  
 5 store price list for the purchase and transport of alcoholic beverages."  
 6

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

8 **"16-4-203. Determination of public convenience and necessity.** (1) An original license issued  
 9 pursuant to 16-4-104, 16-4-201, 16-4-202, ~~or~~ 16-4-208, or [section 1] or the transfer of location of an on-premises  
 10 retail license may be approved if the department does not receive the minimum number of protests required for  
 11 a public convenience and necessity determination pursuant to 16-4-207, in which case the application must be  
 12 regarded as a prima facie showing of public convenience and necessity and no further determination of public  
 13 convenience and necessity is allowed.

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

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

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

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

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

29 (iv) the approval of the application for the premises at the proposed location is consistent with adopted  
 30 or pending planning, annexation, and zoning ordinances of local governments that confer or will confer jurisdiction

1 over business and developments such as the proposed license in the quota area where the proposed premises  
2 is located and in quota areas adjacent to the quota area where the proposed premises is located.

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

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

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

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

14 (a) "Confer or will confer jurisdiction" means the power or authority that a local government or an  
15 appointed subsidiary of a local government has or may obtain within 1 year from the date of the hearing to  
16 consider and adopt planning, annexation, or zoning ordinances.

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

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

22

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

24 **"16-4-1003. Definition.** As used in this part, "licensee" means a person or entity licensed by the  
25 department to sell alcoholic beverages at retail for either on-premises or off-premises consumption. The term also  
26 includes any license issued to an alcohol service delivery driver under [section 1]."

27

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

29 **"16-4-1005. Licensees required to ensure training.** A licensee shall:

30 (1) require each employee who is authorized to sell or serve alcoholic beverages in the normal course

1 of employment and the employee's immediate supervisor to successfully complete training to ensure compliance  
2 with state law regarding the sale and service of alcoholic beverages. The training must be completed within 60  
3 days of the employee's date of hire and every 3 years after the employee's initial training.

4 (2) maintain employment records verifying employee completion of the training required in subsection  
5 (1).

6 (3) An alcohol service delivery driver licensed under [section 1] shall comply with subsection (1) of this  
7 section except that the training must be completed before the driver delivers alcohol under the driver's license."

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

11 - END -