

1 HOUSE BILL NO. 534
2 INTRODUCED BY E. BUTTREY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LICENSE LAWS RELATING
5 TO BREWERS AND BREWERIES; ALLOWING LICENSED BREWERS TO HOLD A RETAIL LICENSE;
6 ALLOWING A HOLDER OF A RETAIL LICENSE TO HOLD A BREWER LICENSE; REVISING THE
7 DEFINITION OF BEER TO INCLUDE CERTAIN PRODUCTS; REVISING LAWS RELATING TO
8 AGREEMENTS BETWEEN BREWERS, BEER IMPORTERS, AND WHOLESALERS; AMENDING SECTIONS
9 16-1-102, 16-1-106, 16-3-213, 16-3-322, 16-3-241, 16-3-242, 16-3-244, AND 16-4-401, MCA; AND
10 PROVIDING AN EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. Section 1. Additional license allowed. (1) A licensed brewer may purchase or hold
15 complete ownership of a license issued pursuant to 16-4-104 or 16-4-201.

16 (2) A person who holds a license issued pursuant to 16-4-104 or 16-4-201 may purchase or hold
17 complete ownership of a brewer license.

18 (3) A person that holds a brewer license and a license issued pursuant to 16-4-104 or 16-4-201:

19 (a) shall maintain both licenses on the same premises, as approved by the department, and may
20 hold:

21 (i) additional brewer licenses; or

22 (ii) up to two additional licenses issued pursuant to 16-4-104 or 16-4-201;

23 (b) may not provide samples pursuant to 16-3-213 for the brewery located at the same premises as
24 the license issued pursuant to 16-4-104 or 16-4-201, and all retail sales must be conducted through the license
25 issued pursuant to 16-4-104 or 16-4-201;

26 (c) may operate pursuant to 16-3-214 with the exception of 16-3-214(1)(b); and

27 (d) is not subject to the limitations of 16-3-241, 16-3-242, 16-3-244, or 16-4-401 when the prohibited
28 acts are conducted by a brewer in the operation of its license issued pursuant to 16-4-104 or 16-4-201.

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Section 2. Section 16-1-102, MCA, is amended to read:

"16-1-102. Policy as to sale of beer. It is the policy of the state of Montana that the manufacture, transportation, distribution, sale, and possession of "beer", as that term is defined in this code, must be controlled and regulated as provided under this code. Unless defined as beer in 16-1-106(5)(a)(ii) or (5)(a)(iii), beer, porter, ale, stout, and malt liquors containing more than 8.75% alcohol by volume and that are defined as "liquor" are subject to the regulations and controls provided for liquor."

Section 3. Section 16-1-106, MCA, is amended to read:

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

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

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

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

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

(5) (a) "Beer" means:

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

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

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

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

(iii) for purposes of this code, unless context otherwise requires otherwise, low-proof spirit beverages and wine-based beverages that contain not more than 14% alcohol by volume manufactured by fermentation or distillation mixed in solution with one or more of the following ingredients:

1 (A) potable water;

2 (B) fruit juices;

3 (C) fruit adjuncts;

4 (D) sugar;

5 (E) carbonation; or

6 (F) preservatives.

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

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

9 (7) "Brewer" means a person who produces malt beverages.

10 (8) "Caffeinated or stimulant-enhanced malt beverage" means:

11 (a) a beverage:

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

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

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

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

19 (b) a beverage:

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

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

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

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

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

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

- 1 (9) "Community" means:
- 2 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 3 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
- 4 community for census purposes; and
- 5 (c) in a consolidated local government, the area of the consolidated local government not otherwise
- 6 incorporated.
- 7 (10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.
- 8 (11) "Department" means the department of revenue, unless otherwise specified, and includes the
- 9 department of justice with respect to receiving and processing, but not granting or denying, an application under
- 10 a contract entered into under 16-1-302.
- 11 (12) "Growler" means any refillable, resealable container complying with federal law.
- 12 (13) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
- 13 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of
- 14 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.
- 15 (14) "Immediate family" means a spouse, dependent children, or dependent parents.
- 16 (15) "Import" means to transfer beer or table wine from outside the state of Montana into the state of
- 17 Montana.
- 18 (16) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
- 19 caffeinated or stimulant-enhanced malt beverage.
- 20 (17) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
- 21 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their
- 22 parts or their products and with or without other malted cereals and with or without the addition of unmalted or
- 23 prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other
- 24 wholesome products suitable for human food consumption.
- 25 (18) "Package" means a container or receptacle used for holding an alcoholic beverage.
- 26 (19) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses as
- 27 fixed and determined by the department and in addition an excise and license tax as provided in this code. In
- 28 the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the

1 department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores,
2 and a 20% markup.

3 (20) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains
4 50% of alcohol by volume.

5 (21) "Public place" means a place, building, or conveyance to which the public has or may be
6 permitted to have access and any place of public resort.

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

9 (23) "Rules" means rules adopted by the department or the department of justice pursuant to this
10 code.

11 (24) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol
12 by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious
13 purposes.

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

16 (26) "State liquor warehouse" means a building owned or under control of the department for the
17 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

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

22 (28) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler
23 or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine
24 distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of
25 beer or table wine as permitted by this code.

26 (29) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
27 cider.

28 (30) "Table wine distributor" means a person importing into or purchasing in Montana table wine or

1 sacramental wine for sale or resale to retailers licensed in Montana.

2 (31) "Warehouse" means a building or structure located in Montana that is owned or operated by a
3 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
4 wine as permitted by this code.

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

12

13 **Section 4.** Section 16-3-213, MCA, is amended to read:

14 **"16-3-213. ~~Brewers or beer importers not to retail beer -- small brewery exceptions~~ Brewery**
15 **sample room.** ~~(1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer or~~
16 ~~breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the~~
17 ~~intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This~~
18 ~~section does not prohibit breweries from selling and delivering beer manufactured by them, in original~~
19 ~~packages, at either wholesale or retail.~~

20 ~~(2)~~ ~~(a)~~ (1) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual
21 nationwide production of not less than 100 barrels or more than 60,000 barrels, including:

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

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

24 (b) A small brewery may, at one location for each brewery license and at no more than three locations
25 including affiliated manufacturers, provide samples of beer that were brewed and fermented on the premises in
26 a sample room located on the licensed premises. The samples may be provided with or without charge
27 between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to
28 each individual customer during a business day. No more than 2,000 barrels may be provided annually for on-

1 premises consumption including all affiliated manufacturers. This subsection (1) does not apply to a brewery
2 that holds complete ownership of a license issued pursuant to 16-4-104 or 16-4-201.

3 ~~(3)~~(2) For the purposes of this section, "affiliated manufacturer" means a manufacturer of beer:

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

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

9 (c) of which the brand names, products, recipes, merchandise, trade name, trademarks, labels, or
10 logos are identical or nearly identical."
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12 **Section 5.** Section 16-3-222, MCA, is amended to read:

13 **"16-3-222. Mandatory provisions of brewer-wholesaler or beer importer-wholesaler contracts,**
14 **agreements, and franchises. (1)** All contracts, agreements, or franchises between a brewer and a wholesaler
15 or a beer importer and a wholesaler must specifically set forth or contain the following:

16 ~~(+)~~(a) that the brewer or beer importer or any officer, agent, or representative of any brewer or beer
17 importer and the wholesaler involved mutually shall determine the size or extent of the area in which the
18 wholesaler may sell or distribute the products of the brewer or beer importer to the retail licensees. The territory
19 must be the territory agreed upon between the wholesaler and brewer or the wholesaler and beer importer and
20 may not be changed without the mutual consent of both the wholesaler and brewer or the wholesaler and beer
21 importer.

22 ~~(2)~~(b) the agreed-upon brands of the brewer or beer importer to be sold by the wholesaler;

23 ~~(3)~~(c) that the brewer or beer importer recognizes that the wholesaler is free to manage the
24 wholesaler's business in the manner that the wholesaler considers best and that this prerogative vests in the
25 wholesaler the exclusive right to establish selling prices, to select the brands that the wholesaler wishes to
26 handle, and to determine the effort and resources that the wholesaler will exert to develop and promote the sale
27 of the brewer's or beer importer's products handled by the wholesaler;

28 ~~(4)~~(d) a procedure for the review of alleged wholesaler deficiencies asserted by the brewer or beer

1 importer to constitute just cause as provided in 16-3-221, including the submission in writing to the wholesaler
2 by the brewer or beer importer of the deficiencies, if the deficiencies are susceptible of correction and if the
3 wholesaler desires to correct the deficiencies, and that a reasonable period of time must be given the
4 wholesaler for rectification of the deficiencies prior to any notice of intent to terminate;

5 ~~(5)(e)~~ a termination clause providing that the brewer or beer importer shall deliver, in writing, to the
6 wholesaler a 60-day notice of intent to terminate the agreement, contract, or franchise;

7 ~~(6)(f)~~ that all agreements between a brewer and a wholesaler are interpreted and governed by the
8 laws of Montana and that those laws must be liberally construed to effectuate the remedial purpose of the
9 protections of the beer franchise law contained in 16-3-221 through 16-3-226;

10 ~~(7)(g)~~ that in any dispute resulting in litigation between a brewer or a beer importer and a wholesaler,
11 the litigation must occur in a Montana court, either federal or state, unless that forum would create an
12 unreasonable burden on any party, as determined by the court in which the litigation is commenced;

13 ~~(8)(h)~~ that all agreements between a brewer or a beer importer and a wholesaler must recognize the
14 constitutional right to a jury trial as set forth in Article II, section 26, of the Montana constitution.

15 (2) For purposes of this section, the terms "brewer" or "beer importer" include a manufacturer of low-
16 proof spirit beverages and wine-based beverages as provided in 16-1-106(5)(a)(iii)."

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18 **Section 6.** Section 16-3-241, MCA, is amended to read:

19 **"16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer**
20 **importers, and wholesalers unlawful -- exceptions.** (1) (a) ~~Except as provided in [section 1],~~ it is unlawful
21 for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures,
22 equipment, or any other advertising matter or any other property to a retail licensee, used or to be used in the
23 dispensation of beer in and about the interior of the place of business of the licensed retailer, or to furnish, give,
24 or pay for any repairs, improvements, or painting on or within the premises.

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

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

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

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

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

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

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

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

16 (3) For purposes of this section, the terms "brewer" or "beer importer" include a manufacturer of low-
 17 proof spirit beverages and wine-based beverages as provided in 16-1-106(5)(a)(iii)."

18

19 **Section 7.** Section 16-3-242, MCA, is amended to read:

20 **"16-3-242. Financial interest in retailers prohibited.** (1) A Except as provided in [section 1], a
 21 brewer, beer importer, or wholesaler may not:

22 (a) advance, or loan, or furnish money to ~~or furnish money for or pay for or on behalf of any retailer~~
 23 ~~any license or tax that may be required to be paid for any by the retailer. A brewer, beer importer, or wholesaler~~
 24 ~~may not; or~~

25 (b) be financially interested, either directly or indirectly, in the conduct or operation of the business of
 26 a retailer.

27 (2) A brewer, beer importer, or wholesaler is considered to have a financial interest within the
 28 meaning of this section if:

- 1 ~~(1)(a)~~ the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage
- 2 against the retailer or the retailer's premises;
- 3 ~~(2)(b)~~ the brewer, beer importer, or wholesaler is under any contract with a retailer concerning future
- 4 purchases or the sale of merchandise by one from or to the other; or
- 5 ~~(3)(c)~~ any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."
- 6

7 **Section 8.** Section 16-3-244, MCA, is amended to read:

8 "**16-3-244. Beer advertising limitations.** ~~It~~(1) Except as provided in subsection (2), it is lawful to

9 advertise beer, as defined and regulated, subject to the restrictions on brewers and beer importers contained in

10 16-3-241 ~~of this code~~ and subject to the following restrictions on retailers. A retail licensee may not display or

11 permit to be displayed on the exterior portion or surface of the retailer's place of business or on the exterior

12 portion or surface of any building of which the place of business is a part or on any premises adjacent to the

13 place of business, whether any of the premises are owned or leased by the retailer, any sign, poster, or

14 advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the

15 manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer, unless it is on a

16 marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days

17 per display period.

18 (2) A person that holds a brewer license and a license issued pursuant to 16-4-104 or 16-4-201 under

19 [section 1] is not subject to the restrictions in subsection (1) for products manufactured by the person."

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21 **Section 9.** Section 16-4-401, MCA, is amended to read:

22 "**16-4-401. License as privilege -- criteria for decision on application -- exceptions.** (1) A license

23 under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is

24 entitled.

25 (2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in

26 the case of a license that permits on-premises consumption, the department shall find in every case in which it

27 makes an order for the issuance of a new license or for the approval of the transfer of a license that:

28 (a) if the applicant is an individual:

Amendment - 1st Reading - Requested by: Edward Buttrey

1 (i) and the application is approved, the applicant will not possess an ownership interest in more than
2 three establishments licensed under this chapter for all-beverages sales. However, resort retail all-beverages
3 licenses issued under 16-4-213 do not count toward this limit.

4 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
5 106;

6 (iii) except as provided in subsections (9) and (10), the applicant or any member of the applicant's
7 immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of
8 alcoholic beverages;

9 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
10 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
11 with all applicable laws of the state and local governments; and

12 (v) the applicant is not under 19 years of age;

13 (b) if the applicant is a publicly traded corporation:

14 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
15 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the
16 applicant shall designate two or more officers or board members, each of whom must meet the requirements
17 for an individual applicant listed in subsection (2)(a).

18 (ii) each individual who has control over the operation of the license meets the requirements for an
19 individual applicant listed in subsection (2)(a);

20 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an
21 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a
22 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of
23 subsection (8) apply.

24 (iv) the corporation is authorized to do business in Montana;

25 (c) if the applicant is a privately held corporation:

26 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
27 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the
28 applicant shall designate two or more officers or board members, each of whom must meet the requirements

1 for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet
2 the requirements of subsection (2)(a).

3 (ii) each individual who has control over the operation of the license meets the requirements for an
4 individual applicant listed in subsection (2)(a);

5 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an
6 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a
7 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of
8 subsection (8) apply.

9 (iv) the corporation is authorized to do business in Montana;

10 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
11 (2)(a);

12 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
13 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the
14 requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all
15 limited partners must meet the requirements of subsection (2)(a).

16 (f) if the applicant is a limited liability company, all managing members and those members whose
17 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If
18 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
19 subsection (2)(a).

20 (3) In the case of a license that permits only off-premises consumption and subject to subsection (8),
21 the department shall find in every case in which it makes an order for the issuance of a new license or for the
22 approval of the transfer of a license that:

23 (a) if the applicant is an individual:

24 (i) and the application is approved, the applicant will not possess an ownership interest in more than
25 three establishments licensed under this chapter for all-beverages sales;

26 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
27 106;

28 (iii) the applicant or any member of the applicant's immediate family is without financing from or any

1 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

2 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
3 the applicant's rights have been restored;

4 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
5 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
6 with all applicable laws of the state and local governments; and

7 (vi) the applicant is not under 19 years of age;

8 (b) if the applicant is a publicly traded corporation:

9 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
10 in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
11 designate two or more officers or board members, each of whom must meet the requirements for an individual
12 applicant listed in subsection (3)(a).

13 (ii) the corporation is authorized to do business in Montana;

14 (c) if the applicant is a privately held corporation:

15 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
16 applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the
17 applicant shall designate two or more officers or board members, each of whom must meet the requirements
18 for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet
19 the requirements of subsection (3)(a).

20 (ii) the corporation is authorized to do business in Montana;

21 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
22 (3)(a);

23 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
24 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the
25 requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all
26 limited partners must meet the requirements of subsection (3)(a).

27 (f) if the applicant is a limited liability company, all managing members and those members whose
28 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If

1 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
2 subsection (3)(a).

3 (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or
4 wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the
5 issuance of a new license or for the approval of the transfer of a license that:

6 (a) if the applicant is an individual:

7 (i) except as provided in subsections (9) and (10), the applicant has no ownership interest in any
8 establishment licensed under this chapter for retail alcoholic beverages sales;

9 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
10 106;

11 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
12 the applicant's rights have been restored;

13 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
14 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
15 with all applicable laws of the state and local governments;

16 (v) the applicant is not under 19 years of age; and

17 (vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
18 controlled by a manufacturer of an alcoholic beverage;

19 (b) if the applicant is a publicly traded corporation:

20 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
21 in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
22 designate two or more officers or board members, each of whom must meet the requirements for an individual
23 applicant listed in subsection (4)(a).

24 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
25 controlled by a manufacturer of an alcoholic beverage; and

26 (iii) the corporation is authorized to do business in Montana;

27 (c) if the applicant is a privately held corporation:

28 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual

1 applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the
2 applicant must designate two or more officers or board members, each of whom must meet the requirements
3 for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet
4 the requirements of subsection (4)(a).

5 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
6 controlled by a manufacturer of an alcoholic beverage; and

7 (iii) the corporation is authorized to do business in Montana;

8 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
9 (4)(a);

10 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
11 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the
12 requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all
13 limited partners must meet the requirements of subsection (4)(a).

14 (f) if the applicant is a limited liability company, all managing members and those members whose
15 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If
16 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
17 subsection (4)(a).

18 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
19 apply separately to each class of stock.

20 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to
21 16-4-302.

22 (7) An applicant's source of funding must be from a suitable source. A lender or other source of
23 money or credit may be found unsuitable if the source:

24 (a) is a person whose prior financial or other activities or criminal record:

25 (i) poses a threat to the public interest of the state;

26 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or

27 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business;

28 or

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67th Legislature

Drafter: Jameson Walker, 406-444-3722

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1 (b) has been convicted of a felony offense within 5 years of the date of application or is on probation
2 or parole or under deferred prosecution for committing a felony offense.

3 (8) (a) An individual applying for an all-beverages license or having any ownership interest in an
4 entity applying for an all-beverages license may not, if the application were to be approved, own an interest in
5 more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

6 (b) If two or more individuals through business or family relationship share in the profits or liabilities of
7 all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not
8 exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-
9 beverages licenses will be held.

10 (9) Pursuant to [section 1]:

11 (a) a person licensed as a brewer may also hold a license issued pursuant to 16-4-104 and 16-4-201;

12 and

13 (b) a person who holds a license issued pursuant to 16-4-104 and 16-4-201 may hold a brewer
14 license.

15 (10) The prohibited acts described in subsections (2)(a)(iii) and (4)(a)(i) are not prohibited if the acts
16 are conducted by an applicant that holds a brewer and retail license pursuant to [section 1]."

17
18 **NEW SECTION. Section 10. Codification instruction.** [Section 1] is intended to be codified as an
19 integral part of Title 16, chapter 3, part 2, and the provisions of Title 16, chapter 3, part 2, apply to [section 1].

20
21 **NEW SECTION. Section 11. Saving clause.** [This act] does not affect rights and duties that
22 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

23
24 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 2021.

25 - END -