

1 HOUSE BILL NO. 69
2 INTRODUCED BY T. FALK
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO
6 AGENCY STORES; REVISING LAWS RELATED TO TABLE WINE; ELIMINATING THE PHASING OUT OF
7 COMMISSION RATES; CLARIFYING HOURS OF OPERATION; REVISING LAWS RELATED TO PAYMENT
8 FOR SALES; AMENDING SECTIONS 16-1-106, 16-2-101, 16-2-103, 16-2-104, AND 16-2-203, MCA; AND
9 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

10
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
12

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

14 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

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

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

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

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

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

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

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

- 1 (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived
2 from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.
- 3 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.
- 4 (6) "Beer importer" means a person other than a brewer who imports malt beverages.
- 5 (7) "Brewer" means a person who produces malt beverages.
- 6 (8) "Caffeinated or stimulant-enhanced malt beverage" means:
- 7 (a) a beverage:
- 8 (i) that is fermented in a manner similar to beer and from which some or all of the fermented
9 alcohol has been removed and replaced with distilled ethyl alcohol;
- 10 (ii) that contains at least 0.5% of alcohol by volume;
- 11 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
12 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 13 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
14 and taurine; or
- 15 (b) a beverage:
- 16 (i) that contains at least 0.5% of alcohol by volume;
- 17 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
18 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 19 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 20 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng,
21 and taurine;
- 22 (v) for which the producer is required to file a formula for approval with the United States alcohol
23 and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 24 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 25 (9) "Community" means:
- 26 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 27 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
28 community for census purposes; and

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

3 (10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

4 (11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-
5 312.

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

9 (13) "Growler" means any fillable, sealable container complying with federal law.

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

13 (15) "Immediate family" means a spouse, dependent children, or dependent parents.

14 (16) "Import" means to transfer beer or table wine from outside the state of Montana into the state of
15 Montana.

16 (17) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
17 caffeinated or stimulant-enhanced malt beverage.

18 (18) "Malt beverage" means:

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

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

26 (19) (a) "Original package" means the sealed container in which a manufacturer packages its
27 product for retail sale.

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

1 (i) bottles;

2 (ii) cans; and

3 (iii) kegs.

4 (20) "Package" means a container or receptacle used for holding an alcoholic beverage.

5 (21) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
6 as fixed and determined by the department and in addition an excise and license tax as provided in this code.

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

10 (22) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and
11 sealed with a lid, for consumption at a place other than the licensee's premises.

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

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

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

18 (26) "Rules" means rules adopted by the department or the department of justice pursuant to this
19 code.

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

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

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

27 (30) "Storage depot" means a building or structure owned or operated by a brewer at any point in
28 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with

1 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
2 permitted by this code.

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

7 (32) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
8 hard cider.

9 (33) "Table wine distributor" means a person importing into or purchasing in Montana table wine or
10 sacramental wine for sale or resale to retailers licensed in Montana.

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

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

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

23 **"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement --**
24 **kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate
25 agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

26 (2) (a) The department may from time to time fix the posted prices at which the various classes,
27 varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

28 (b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the