

1 HOUSE BILL NO. 164
2 INTRODUCED BY D. HARVEY, B. CARTER
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 CATERING ENDORSEMENTS; ALLOWING BEER AND WINE LICENSEES TO OBTAIN A CATERING
7 ENDORSEMENT WITHOUT HAVING TO BE ENGAGED PRIMARILY IN THE BUSINESS OF PROVIDING
8 MEALS; PROVIDING THAT CONCESSIONAIRES MAY NOT SPONSOR CATERED EVENTS; AMENDING
9 SECTIONS 16-1-106, 16-4-111, AND 16-4-204, MCA; AND 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.
- 17 (2) "Agency liquor store" means a store operated under an agency franchise agreement in
18 accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises
19 consumption.
- 20 (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.
- 21 (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink
22 that contains more than 0.5% of alcohol by volume.
- 23 (5) (a) "Beer" means:
24 (i) a malt beverage containing not more than 8.75% of alcohol by volume; or
25 (ii) an alcoholic beverage containing not more than 14% alcohol by volume:
26 (A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both,
27 in potable brewing water, of malted cereal grain; and

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- 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

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1 community for census purposes; and

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

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

5 (11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-
6 312.

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

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

11 (14) (a) "Guest ranch" means a business or organization that provides guests with overnight
12 lodging, dining, and onsite outdoor recreational activities typical of western ranching for the purposes of
13 vacation or recreation. Recreational activities offered by a guest ranch must be composed of at least 50
14 contiguous acres. The premises must be located entirely outside the license quota area of an incorporated city
15 or an incorporated town as determined under 16-4-105(1) or 16-4-201. The premises of a guest ranch may
16 include restaurants, sporting and recreational equipment shops, event venues, arenas, and other facilities that
17 may be used by other persons in addition to the overnight guests.

18 (b) The term does not include premises used as rehabilitation centers, group homes, clinics,
19 nursing homes, church or other religious campgrounds, or other similar uses.

20 ~~(14)~~(15) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
21 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of
22 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

23 ~~(15)~~(16) "Immediate family" means a spouse, dependent children, or dependent parents.

24 ~~(16)~~(17) "Import" means to transfer beer or table wine from outside the state of Montana into the state
25 of Montana.

26 ~~(17)~~(18) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
27 caffeinated or stimulant-enhanced malt beverage.

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1 ~~(18)~~(19) "Malt beverage" means:

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

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

9 ~~(19)~~(20) (a) "Original package" means the sealed container in which a manufacturer packages its
10 product for retail sale.

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

12 (i) bottles;

13 (ii) cans; and

14 (iii) kegs.

15 ~~(20)~~(21) "Package" means a container or receptacle used for holding an alcoholic beverage.

16 ~~(21)~~(22) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
17 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
18 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of
19 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor
20 stores, and a 20% markup.

21 ~~(22)~~(23) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and
22 sealed with a lid, for consumption at a place other than the licensee's premises.

23 ~~(23)~~(24) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that
24 contains 50% of alcohol by volume.

25 ~~(24)~~(25) "Public place" means a place, building, or conveyance to which the public has or may be
26 permitted to have access and any place of public resort.

27 ~~(25)~~(26) "Retail price" means the price established by an agent for the sale of liquor to persons who do

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1 not hold liquor licenses. The retail price may not be less than the department's posted price.

2 ~~(26)~~(27) "Rules" means rules adopted by the department or the department of justice pursuant to this
3 code.

4 ~~(27)~~(28) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of
5 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious
6 purposes.

7 ~~(28)~~(29) "Special event", as it relates to an application for a beer and wine special permit, means a
8 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

9 ~~(29)~~(30) "State liquor warehouse" means a building owned or under control of the department for the
10 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

11 ~~(30)~~(31) "Storage depot" means a building or structure owned or operated by a brewer at any point in
12 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with
13 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
14 permitted by this code.

15 ~~(31)~~(32) "Subwarehouse" means a building or structure owned or operated by a licensed beer
16 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or
17 table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and
18 distribution of beer or table wine as permitted by this code.

19 ~~(32)~~(33) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
20 cider.

21 ~~(33)~~(34) "Table wine distributor" means a person importing into or purchasing in Montana table wine or
22 sacramental wine for sale or resale to retailers licensed in Montana.

23 ~~(34)~~(35) "Warehouse" means a building or structure located in Montana that is owned or operated by a
24 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table
25 wine as permitted by this code.

26 ~~(35)~~(36) "Wine" means an alcoholic beverage made from or containing the normal alcoholic
27 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except

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1 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
2 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
3 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
4 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
5 wine in accordance with federal regulations are also wine."
6

7 **Section 2.** Section 16-4-111, MCA, is amended to read:

8 **"16-4-111. Catering endorsement for beer and wine licensees.** (1) (a) A person who is engaged
9 primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer
10 and wine at retail for on-premises consumption may, ~~upon~~on the approval of the department, be granted a
11 catering endorsement to the license to allow the catering and sale of beer or beer and wine to persons
12 attending a special event ~~upon~~on premises not otherwise licensed for the sale of beer or beer and wine for on-
13 premises consumption. The beer or wine must be consumed on the premises where the event is held.

14 (b) A person who is licensed pursuant to 16-4-420 to sell beer at retail or beer and wine at retail for
15 on-premises consumption may, ~~upon~~on the approval of the department, be granted a catering endorsement to
16 the license to allow the catering and sale of beer and wine to persons attending a special event ~~upon~~on
17 premises not otherwise licensed for the sale of beer or beer and wine, along with food equal in cost to 65% of
18 the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be
19 consumed on the premises where the event is held.

20 (c) A person licensed under 16-4-105 to sell beer and wine at retail for on-premises consumption
21 at a guest ranch may, on the approval of the department, be granted a guest ranch catering endorsement to the
22 license to allow the catering and sale of beer and wine to guests of the guest ranch for events at locations on
23 the guest ranch other than the licensed premises. These events do not need to be special events. The beer and
24 wine must be consumed where the event is held.

25 (2) ~~A written~~ An application for a catering endorsement and an annual fee of \$200 must be
26 submitted to the department for its approval.

27 (3) A~~With the exception of a guest ranch catering endorsement, a~~ licensee who holds a catering

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1 endorsement may not cater an event in which the licensee or the concessionaire of the licensee is the sponsor.
2 The catered event must be within 100 miles of the licensee's regular place of business licensed premises
3 measured in a straight line from the nearest entrance of the licensed premises to the nearest boundary of the
4 catered event.

5 (4) EXCEPT AS PROVIDED IN SUBSECTION (8), THE STORAGE OF ALCOHOLIC BEVERAGES MAY OCCUR ON
6 THE PREMISES OF THE CATERED EVENT 1 DAY PRIOR TO THE CATERED EVENT UNTIL 1 DAY FOLLOWING THE
7 CONCLUSION OF THE CATERED EVENT IF THE ALCOHOLIC BEVERAGES ARE IN A SECURED LOCATION THAT PREVENTS
8 ACCESS BY ANYONE OTHER THAN THE LICENSEE OR THE LICENSEE'S EMPLOYEES.

9 ~~(4)(5)~~ The ~~With the exception of a guest ranch catering endorsement, the~~ licensee shall notify the
10 local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A
11 LOCAL GOVERNMENT MAY CHARGE A fee of \$35 ~~must accompany the notice.~~

12 ~~(5)(6)~~ The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
13 provisions of 16-6-103.

14 ~~(6)(7)~~ The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
15 provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of
16 beer or beer and wine on premises where the event is to be held.

17 ~~(7) (a) A catering endorsement issued for the purpose of selling and serving beer or beer and wine~~
18 ~~at a special event conducted on the premises of a county fairground or public sports arena authorizes the~~
19 ~~licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well~~
20 ~~as from a booth, stand, or other fixed place on the premises.~~

21 ~~(b) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at~~
22 ~~a sporting event conducted on the premises of a Montana university as provided in 16-4-112 authorizes the~~
23 ~~licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well~~
24 ~~as from a booth, stand, or other fixed place on the premises.~~

25 (8) A LICENSEE MAY SELL AND SERVE BEER AND WINE IN THE GRANDSTANDS AND BLEACHER AREA OF THE
26 PREMISES, AS WELL AS FROM A BOOTH, STAND, OR OTHER FIXED PLACED ON THE PREMISES WHEN THE CATERED EVENT
27 IS HELD ON THE PREMISES OF A COUNTY FAIRGROUND, PUBLIC SPORTS ARENA, OR MONTANA UNIVERSITY AS DEFINED IN

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1 16-4-112. IF THE LICENSEE HAS A WRITTEN AGREEMENT WITH THE STATE OF MONTANA, A POLITICAL SUBDIVISION OF
2 THE STATE, OR A MONTANA UNIVERSITY TO SELL AND SERVE BEER AND WINE FOR MULTIPLE CATERED EVENTS AT THE
3 PREMISES, THE LICENSEE MAY STORE BEER AND WINE TO BE USED FOR THE CATERED EVENTS ON THE PREMISES OF THE
4 FAIRGROUND, PUBLIC SPORTS ARENA, OR MONTANA UNIVERSITY FOR THE LENGTH OF THE WRITTEN AGREEMENT IF THE
5 BEER AND WINE CAN BE STORED IN A SECURE LOCATION THAT PREVENTS ACCESS BY ANYONE OTHER THAN THE
6 LICENSEE OR THE LICENSEE'S EMPLOYEES. EACH CATERED EVENT HELD AT THE PREMISES IS SUBJECT TO THE
7 REQUIREMENT IN SUBSECTION (5) AND MUST BE INDIVIDUALLY REPORTED TO THE DEPARTMENT.

8 ~~(8)~~(9) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the
9 catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana
10 university as provided in 16-4-112, or a qualified entity under section 501(c) of the Internal Revenue Code, 26
11 U.S.C. 501(c), as amended."
12

13 **Section 3.** Section 16-4-204, MCA, is amended to read:

14 **"16-4-204. Transfer -- catering endorsement for all-beverages licensees -- competitive bidding -**
15 **- rulemaking.** (1) (a) Except as provided in subsection (3), a license may be transferred to a new owner and to
16 a location outside the quota area where the license is currently located only when the following criteria are met:

17 (i) the total number of all-beverages licenses in the current quota area exceeded the quota for that
18 area by at least 25% in the most recent census prescribed in 16-4-502;

19 (ii) the total number of all-beverages licenses in the quota area to which the license would be
20 transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the
21 most recent census prescribed in 16-4-502:

22 (A) by more than 33%; or

23 (B) in an incorporated city of more than 10,000 inhabitants and within 5 miles of its corporate limits,
24 by more than 43%; ~~or~~ and

25 (iii) the department finds, after a public hearing, that the public convenience and necessity would
26 be served by a transfer.

27 (b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a competitive

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1 bidding process is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

2 (2) When the department determines that a license may be transferred from one quota area to
3 another under subsection (1), the department shall use a competitive bidding process as provided in 16-4-430
4 to determine the party afforded the opportunity to purchase and transfer a license.

5 (3) A license within an incorporated quota area may be transferred to a new owner and to a new
6 unincorporated location within the same county on application to and with consent of the department when the
7 total number of all-beverages licenses in the current quota area, exclusive of those issued under 16-4-209(1)(a)
8 and (1)(b), exceeds the quota for that area by at least 25% in the most recent census and will not fall below that
9 level because of the transfer.

10 (4) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota
11 area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

12 (5) (a) Any all-beverages licensee is, ~~upon~~on the approval and in the discretion of the department,
13 entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of
14 alcoholic beverages to persons attending a special event on premises not otherwise licensed for the sale of
15 alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the
16 premises where the event is held.

17 (b) ~~A written~~ An application for a catering endorsement and an annual fee of \$250 must be
18 submitted to the department for its approval.

19 (c) An all-beverages license issued under 16-4-201 to a guest ranch is, on the approval and in the
20 discretion of the department, entitled to a guest ranch catering endorsement to the licensee's all-beverages
21 license to allow the catering and sale of alcoholic beverages to persons attending an event on the guest ranch
22 other than at the licensed premises. These events do not need to be special events. The alcoholic beverages
23 must be consumed where the event is held.

24 ~~(e)(d) An~~ With the exception of a guest ranch catering endorsement, an all-beverages licensee who
25 holds ~~an endorsement granted under this subsection (5)~~ a catering endorsement may not cater (5) an event in
26 which the licensee or the concessionaire of the licensee is the sponsor. The catered event must be within 100
27 miles of the licensee's ~~regular place of business~~ licensed premises measured in a straight line from the nearest

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1 entrance of the licensed premises to the nearest boundary of the catered event.

2 (D) EXCEPT AS PROVIDED IN SUBSECTION (5)(H), THE STORAGE OF ALCOHOLIC BEVERAGES MAY OCCUR
3 ON THE PREMISES OF THE CATERED EVENT 1 DAY PRIOR TO THE CATERED EVENT UNTIL 1 DAY FOLLOWING THE
4 CONCLUSION OF THE CATERED EVENT IF THE ALCOHOLIC BEVERAGES ARE IN A SECURED LOCATION THAT PREVENTS
5 ACCESS BY ANYONE OTHER THAN THE LICENSEE OR THE LICENSEE'S EMPLOYEES.

6 ~~(d)~~(E) The ~~With the exception of a guest ranch catering endorsement, the~~ licensee shall notify the
7 local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A
8 LOCAL GOVERNMENT MAY CHARGE A fee of \$35 must accompany the notice.

9 ~~(e)~~(E) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions
10 of 16-6-103.

11 ~~(f)~~(G) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions
12 of 16-3-306, unless entities named in 16-3-306 give their written approval.

13 ~~(g)~~— A catering endorsement issued for the purpose of selling and serving beer and wine at a
14 ~~special event conducted on the premises of a county fairground or public sports arena authorizes the licensee~~
15 ~~to sell and serve beer and wine~~ in the grandstand and bleacher area of the premises, as well as from a booth,
16 stand, or other fixed place on the premises.

17 ~~(h)~~— A catering endorsement issued for the purpose of selling and serving liquor or beer and wine at
18 ~~a sporting event conducted on the premises of a Montana university as provided in 16-4-112 authorizes the~~
19 ~~licensee to sell and serve liquor or beer and wine~~ in the grandstand and bleacher area of the premises, as well
20 as from a booth, stand, or other fixed place on the premises.

21 (H) A LICENSEE MAY SELL AND SERVE LIQUOR, BEER, AND WINE IN THE GRANDSTANDS AND BLEACHER
22 AREA OF THE PREMISES, AS WELL AS FROM A BOOTH, STAND, OR OTHER FIXED PLACED ON THE PREMISES WHEN THE
23 CATERED EVENT IS HELD ON THE PREMISES OF A COUNTY FAIRGROUND, PUBLIC SPORTS ARENA, OR MONTANA
24 UNIVERSITY AS DEFINED IN 16-4-112. IF THE LICENSEE HAS A WRITTEN AGREEMENT WITH THE STATE OF MONTANA, A
25 POLITICAL SUBDIVISION OF THE STATE, OR A MONTANA UNIVERSITY TO SELL AND SERVE LIQUOR, BEER, AND WINE FOR
26 MULTIPLE CATERED EVENTS AT THE PREMISES, THE LICENSEE MAY STORE LIQUOR, BEER, AND WINE TO BE USED FOR
27 THE CATERED EVENTS ON THE PREMISES OF THE FAIRGROUND, PUBLIC SPORTS ARENA, OR MONTANA UNIVERSITY FOR

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1 THE LENGTH OF THE WRITTEN AGREEMENT IF THE LIQUOR, BEER, AND WINE CAN BE STORED IN A SECURE LOCATION THAT
2 PREVENTS ACCESS BY ANYONE OTHER THAN THE LICENSEE OR THE LICENSEE'S EMPLOYEES. EACH CATERED EVENT
3 HELD AT THE PREMISES IS SUBJECT TO THE REQUIREMENT IN SUBSECTION (5)(E) AND MUST BE INDIVIDUALLY REPORTED
4 TO THE DEPARTMENT.

5 (i) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the
6 catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana
7 university as provided in 16-4-112, or a qualified entity under section 501(c) of the Internal Revenue Code, 26
8 U.S.C. 501(c), as amended.

9 (6) The department may adopt rules to implement this section."

10

11 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.

12

- END -