



BROAD OVERVIEW OF SELECTED STATE ALCOHOL LAWS

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Purposes of Presentation

- Serve as a supplement to the February 2020, EAIC handout
- Briefly explain the legal and historical basis for differing state approaches to alcohol law
- Convey an overview of differing state approaches to alcohol licensing law
- Explain that although states use similar terms, application of alcohol laws makes direct comparison difficult
- Present an overview on the complexity of state alcohol law through a Montana example



In other words, provide a 30,000 foot level review

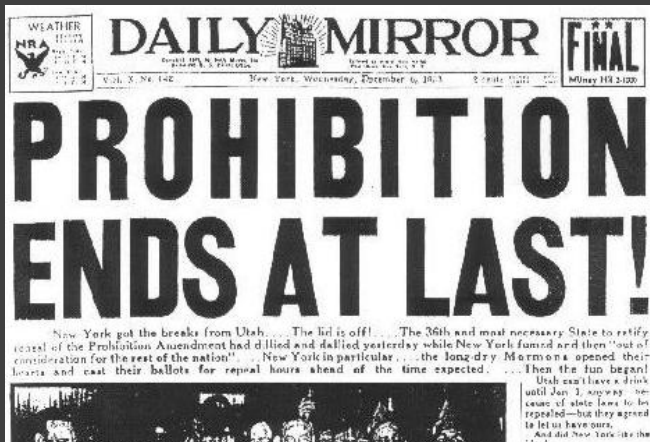
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Legal and Historical
Basis for Varied
State Alcohol Law

- Although state alcohol regulation predated prohibition, Section 2 of the 21st Amendment, U.S. Constitution, generally reserves each state complete control over their respective alcohol laws:

The transportation or importation into any State, Territory, or Possession of the United States for delivery or use therein of intoxicating liquors, in violation of the laws thereof, is hereby prohibited.

The 21st Amendment repealed the 18th Amendment, effectively ending prohibition.



Historical Facts of Interest:

- The 18th Amendment, establishing Prohibition, was ratified on January 16, 1919.
- Montana became the first state to repeal the enforcement of Prohibition in 1926.
- Ratification of the 21st Amendment was complete on December 5, 1933, effectively ending Prohibition.
- Montana was the last state to ratify the 21st Amendment on August 6, 1934.

State Regulation and the Three-Tier System

State alcohol regulation generally focuses on governing the three tiers of the system.

What are the three tiers?

Manufacturing/
Importation

First Tier



Wholesale/
Distribution


Second Tier






Retail Sales

Third Tier



Montana's regulatory scheme, generally passed in 1933, expressly identifies the three-tiered system as it seeks to regulate the "manufacture, sale, importation, and distribution of alcoholic beverages".



16-1-101. Citation — declaration of policy — subject matters of regulation.

(1) Chapters 1 through 4 and 6 of this title may be cited as the "Montana Alcoholic Beverage Code".

(2) It is the policy of the state of Montana to effectuate and ensure the entire control of the manufacture, sale, importation, and distribution of alcoholic beverages within the state subject to the authority of the state acting through the department.

(3) This code is an exercise of the police power of the state for the protection of the welfare, health, peace, morals, and safety of the people of the state and of the state's power under the 21st amendment to the United States constitution to control the transportation and importation of alcoholic beverages into the state. The overall purposes of this code under the 21st amendment to the United States constitution are to promote temperance, create orderly markets, and aid in the collection of taxes. The provisions of this code must be broadly construed to accomplish these purposes.

16-1-104. Intent and construction of code.

(1) The purpose and intent of this code are to:

(a) establish a state licensing system to control the transportation and importation of alcoholic beverages into Montana and the manufacture, sale, transportation, and distribution of alcoholic beverages within the state of Montana; and

(b) prohibit transactions in alcoholic beverages within the state of Montana except under state control as specifically provided by this code.

(2) Every section and provision of this code must be construed according to subsection (1).

Generally,
Montana law
does not
permit license
ownership
between tiers.

Example: Retail License

16-4-401. License as privilege — criteria for decision on application. (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

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

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

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

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

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

[...]

Differing State
Approaches to
Alcohol
Licensing Laws



Although each state generally has laws focusing on the three tiers of the system, the distinctions between state laws can be found immediately after that.

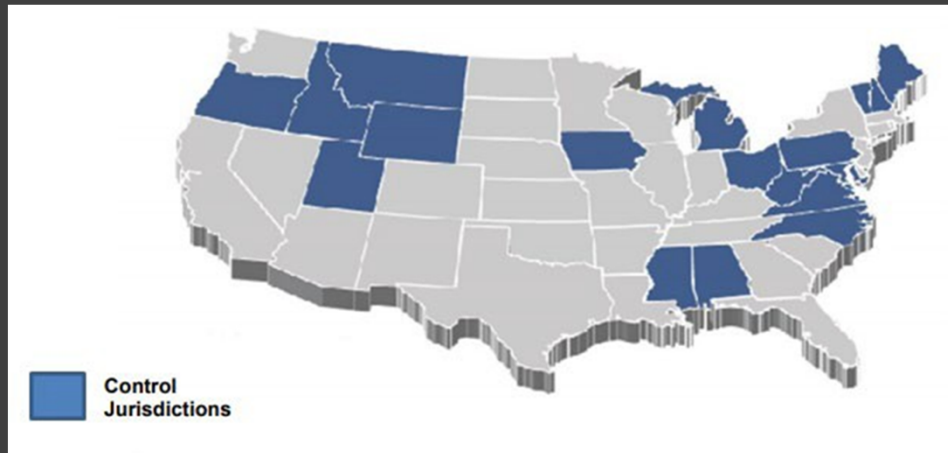
Major Distinction: Control State or License State

- Control States:

Conceived as a public monopoly, control states generally, and with many exceptions, operate the distribution tier and may participate in the retail tier through state-run liquor stores. In addition, control states may also license alcohol sales, consumption, manufacturing, and distribution.

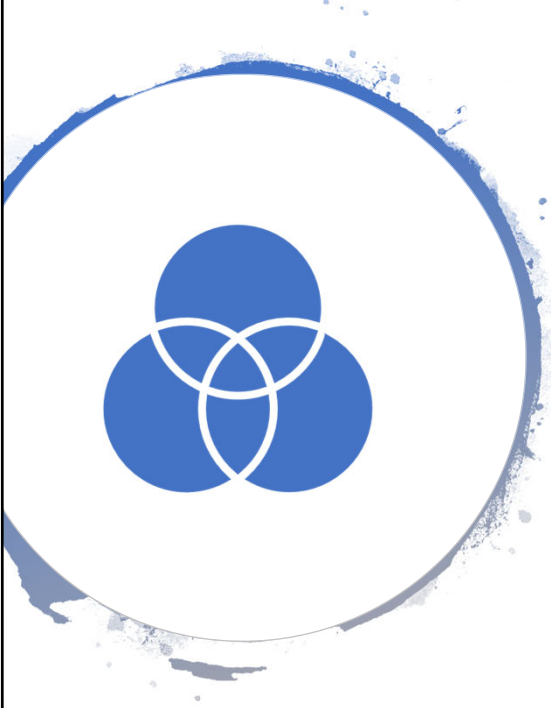
- License States:

Generally, license states regulate the three tiers through licensure. Distinctions within the tiers generally exist, an example being the distinctions between a beer brewer, distiller, or wine producer.




Control Jurisdictions

Alabama, Idaho, Iowa, Maine, Michigan, Mississippi, Montana, New Hampshire, North Carolina, Ohio, Oregon, Pennsylvania, Utah, Vermont, Virginia, West Virginia, and Wyoming.



License Types in Selected States

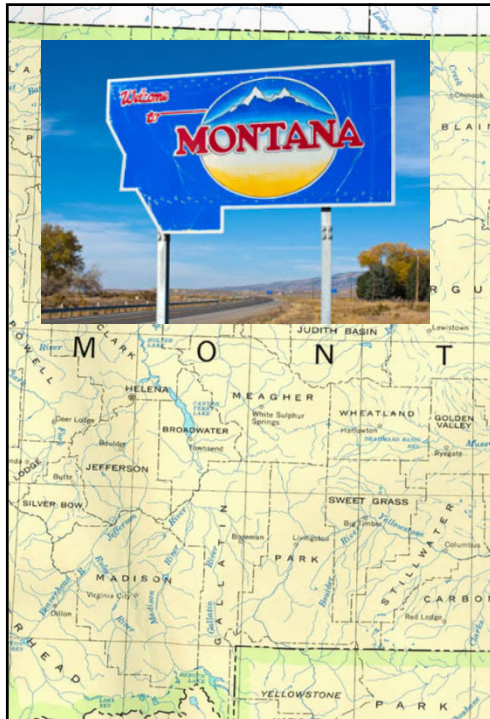
- The information was retrieved from the state’s respective alcohol licensing division.
- The license types reflect differing alcohol licenses provided in the state.
- The license types may not reflect the full distinctions among license types in that particular state (i.e. license endorsements).



Manufacturing	Retail	Wholesale/Distributing
In-State Producer Out-of-State Producer Out-of-state Craft Distiller Limited out-of-state Winery Out-of-State Farm winery Out-of-State Microbrewery In-state Microbrewery In-state craft distiller	Government license (county city, town, state university, stadium) Bar Beer and Wine Conveyance (airline, railroad, or boat) Liquor store Beer and Wine store Hotel/Motel Restaurant Private club Special event Festival/Fair (farm winery or craft distillery) Remote tasting room (wineries and distilleries) Alternating proprietorship (2 or more farm winery licenses to operate in one licensed premises) Custom Crush (agreement between a "host" farm winery and a "tenant" farm winery to produce wine on behalf of the tenant)	Wholesaler Direct-to-Consumer wine shipment



Manufacturing	Retail	Wholesale/Distributing
Manufacturer (brewery, distillery & rectifier)	Art gallery permit Arts Bed and breakfast permit Beer and wine Brew pub Club license Distillery pub Hotel and restaurant Importer's Limited winery Liquor-licensed drugstore Liquor-licensed drugstore manager's permit Lodging and entertainment Nonresident manufacturers and importers of malt liquor Optional premises Public transportation system Racetrack license Removal of vinous liquor from licensed premises Retail gaming tavern Retail liquor store license Tavern Vintner's restaurant Wine festival permit Wine packaging permit 3.2% Beer	Wholesaler



Manufacturing	Retail	Wholesale/Distributing
Domestic Distiller License	All-Alcoholic Beverages License All-Alcoholic Beverages with Catering	Wholesale Beer License
Foreign Brewery/Importer License	Endorsement License All-Alcoholic Beverages Gaming Restricted License All-Alcoholic Beverages Non-Transferable Veterans License All-Alcoholic Beverages Non-Transferable Fraternal License All-Alcoholic Beverages Airport License	Wholesale Beer Sub-Warehouse License
Brewery Storage Depot License	All-Alcoholic Beverages Transferable Veterans License All-Alcoholic Beverages Transferable Fraternal License	Wine Distributor License
Domestic Brewery License Academic Brewer License	All-Alcoholic Beverages Resort License All-Alcoholic Beverages Floater License All-Alcoholic Beverages Airlines Carrier License All-Alcoholic Beverages Railroad Carrier License	Wine Distributor Sub- Warehouse License
Foreign Winery/Importer Registration	All-Alcoholic Beverages Floater Gaming Restricted License All-Alcoholic Beverages Officers Club License Vendor & Vendor Representative License Retail On-Premises Consumption Beer License Retail On-Premises Consumption Beer with Catering Endorsement License (Restaurant Only) Retail Off-Premises Consumption Beer License	Wholesale Beer and Wine Distributor License
Out Of State Winery License	Retail On-Premises Consumption Beer Veterans License Retail On-Premises Consumption Beer Fraternal License Retail On-Premises Consumption Beer Gaming Restricted License	Wholesale Beer and Wine Distributor Sub- Warehouse License
Domestic Winery License	Retail On-Premises Consumption Beer Gaming Restricted with Catering Endorsement License Retail On-Premises Consumption Beer Officers Club License	




Retail (Continued)

- Retail On-Premises Consumption Census Beer Gaming Restricted License
- Retail Off-Premises Consumption Wine License
- Retail Off-Premises Consumption Sacramental Wine License Retail On-Premises Consumption Beer and Wine License
- Retail On-Premises Consumption Beer and Wine with Catering Endorsement License
- Retail Off-Premises Consumption Beer and Wine License Retail On-Premises Veterans Beer and Wine License
- Retail On-Premises Fraternal Beer and Wine License
- Retail On-Premises Consumption Airport Beer and Wine License
- Retail On-Premises Consumption Beer and Wine Gaming Restricted License
- Retail On-Premises Consumption Beer and Wine with Catering Endorsement Gaming Restricted License
- Retail On-Premises Consumption Golf Course Beer and Wine License
- Retail On-Premises Consumption Officers Club Beer and Wine License
- Retail On-Premises Consumption Census Beer and Wine Gaming Restricted License
- Retail On-Premises Consumption Arts Organization Beer and Wine License
- Retail On-Premises Consumption Golf Course Beer and Wine Gaming Restricted License
- Retail On-Premises Consumption Restaurant Beer and Wine License
- Retail On-Premises Consumption Restaurant Beer and Wine with Catering Endorsement License
- Retail On-Premises Consumption Beer Gaming Restricted Fairgrounds License
- Retail On-Premises Consumption Beer w/Catering Endorse Gaming Restricted Fairgrounds License
- Retail On-Premises Consumption Beer and Wine Gaming Restricted Fairgrounds License
- MT Retail On-Premises Consumption Beer and Wine w/Catering Endorse Gaming Restricted Fairgrounds License



Similar Alcohol
Terms,
Different State
Meanings

Although some states may use the same terms, a direct comparison is often difficult due to the unique nature of each state's alcohol licensing laws.



Brew Pub Example

- Colorado and New Hampshire statutorily provide for a brew pub license.
- Although both allow the licensee to manufacture and sell alcoholic beverages on premises, major differences exist.

Colorado Brew Pub

- Colorado allows a brewpub to manufacture malt liquors or fermented malt beverages upon its licensed premises and sell the beverages to the public.
- "Brew pub" means a retail establishment that manufactures not more than one million eight hundred sixty thousand gallons of malt liquor and fermented malt beverages on its licensed premises or licensed alternating proprietor licensed premises, combined, each calendar year.
- Brew pub licensees may sell only products of their own manufacture in sealed containers to go from 8:00 am until midnight.
- Brew pub licensees may sell alcohol beverages to be consumed on the premises, from 7:00 a.m. until 2:00 a.m., 365 days a year.
- At least 15% of the gross on-premises food and drink income of the business of the licensed premises is from the sale of food.



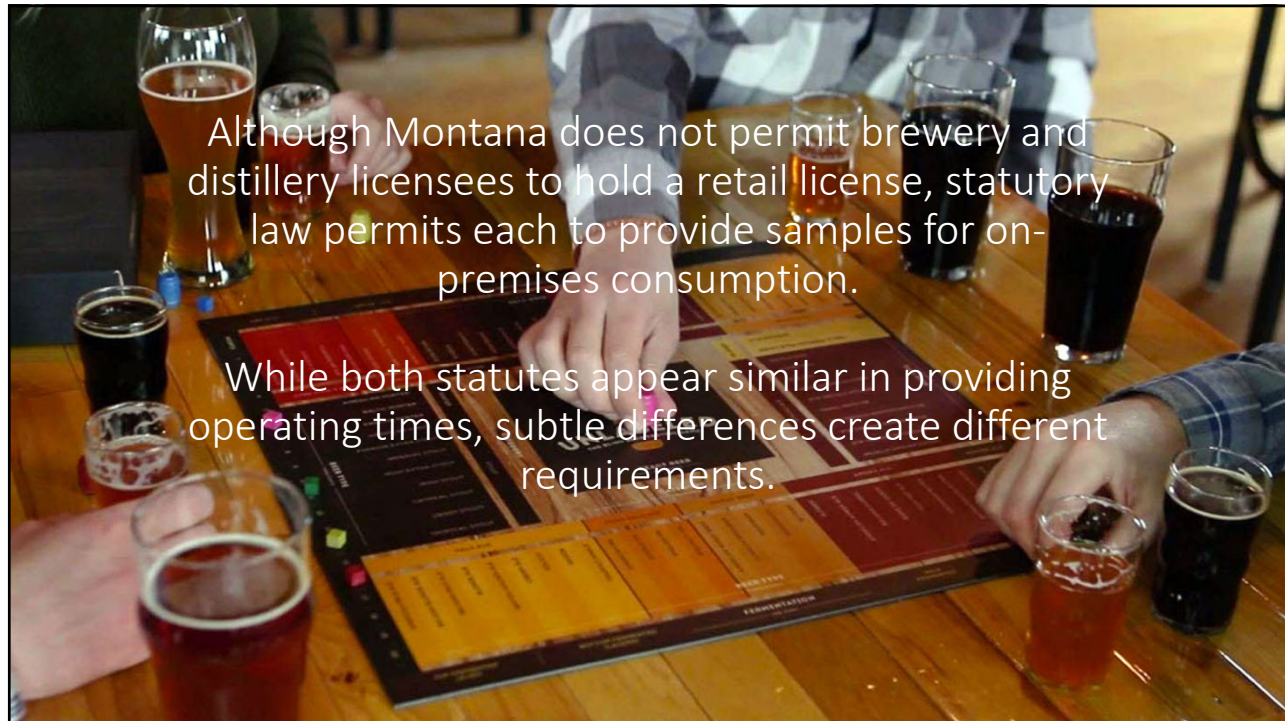
New Hampshire Brew Pub

- Allows the licensee to manufacture beer or cider in quantities not to exceed 2,500 barrels annually primarily for consumption on the licensed premises.
- Allows the licensee to sell beer or cider manufactured on the premises or manufactured by the licensee at a host brewer facility to individuals for on-premises and off-premises consumption.
- Requires a licensee to maintain a full service restaurant.
- Allows a licensee to transport the beverage it manufactures in barrels, kegs, bottles, or other closed containers within the state for sale to licensees and to the state border for transportation and sale outside the state.
- Allows the licensee to transport its products to a farmers' market and may allow the licensee to sell such products at retail in the original container.



Broad Overview Through a Montana Example: Complexity of State Alcohol Law

- Comparing state alcohol laws is often difficult.
- Major differences between license types may be expressed in the inclusion or omission of a few words in a statute.
- A good example is the statutory difference between Montana breweries and distilleries.



Statutory Language Relating to a Brewery (16-3-213 MCA)

- A Montana "small brewer" may provide samples of beer that were brewed and fermented on the premises in a sample room located on the licensed premises.
- A "small brewery" is a brewery that has an annual nationwide production of not less than 100 barrels or more than 60,000 barrels.
- The samples may be provided with or without charge 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 each individual customer during a business day.
- No more than 2,000 barrels may be provided annually for on-premises consumption including all affiliated manufacturers.




Statutory Language Relating to a Distillery (16-4-314 MCA)

- A microdistillery **may provide**, with or without charge, not more than 2 ounces of liquor that it produces at the microdistillery to consumers **for consumption on the premises between 10 a.m. and 8 p.m.**
- A microdistillery may not sell or give more than 2 ounces of liquor to an individual for on-premises consumption during a business day.
- A microdistillery may sell liquor that it produces at retail at the distillery directly to the consumer for off-premises consumption if not more than 1.75 liters a day is sold to an individual



The Difference?

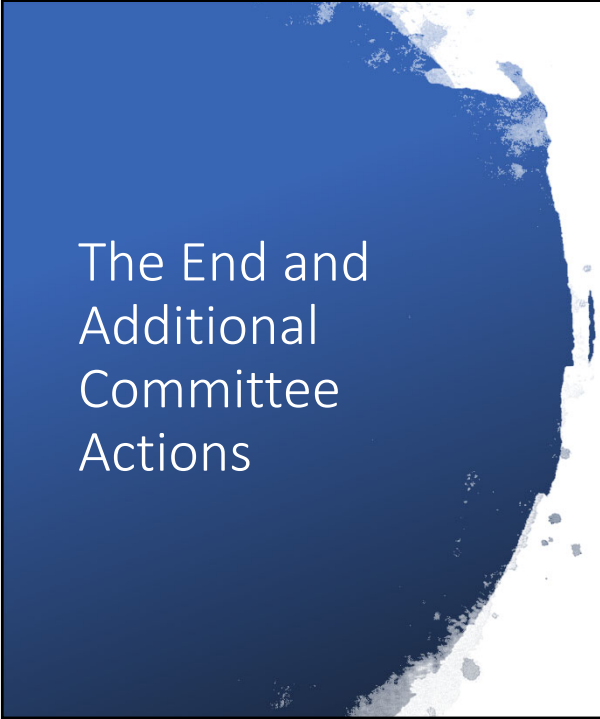
- Both statutes allow breweries and distilleries to provide samples between 10 a.m. and 8 p.m.
- Brewery customers that purchase beverages at 7:59 p.m. may consume the beverages on-premises after this point (i.e. after 8:00).
- However, the inclusion of the term “for consumption” in the distillery statute requires distillery customers to finish their beverages by 8:00 p.m.
- Distillery customers that purchase a beverage at 7:59 p.m. may not consume the drink on-premises after 8:00.



Compare this to a Montana Winery (16-3-411 MCA)

A winery located in Montana and licensed pursuant to 16-4-107 may:

- import in bulk, bottle, produce, blend, store, transport, or export wine it produces;
 - sell wine it produces at wholesale to wine distributors;
 - sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;
 - provide, without charge, wine it produces for consumption at the winery;
 - purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;
 - obtain a special event permit under 16-4-301 [...]
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The End and Additional Committee Actions

This presentation sought to:

- Briefly explain the legal and historical basis for differing state approaches to alcohol law
- Convey an overview of differing state approaches to alcohol licensing law
- Explain that although states use similar terms, application of alcohol laws makes direct comparison difficult
- Present an overview on the complexity of state alcohol law through a Montana example
- Serve as a springboard for additional committee investigation/actions

Additional Committee Actions?

See EAIC Handouts

Similarities to Texas 2018 Sunset Review:

- In 2018, Texas Alcohol Beverage Commission was reviewed by the Texas Sunset Advisory Commission. The commission made numerous recommendations that were ultimately passed by the Texas Legislature:
 - Continuing the agency for 12 years;
 - Increasing the size of the Commission board from three members to five;
 - Eliminating or combining unnecessary or redundant license/permits, reducing the number of license/permit types from 75 to 36;
 - Combining the beer and ale beverage designations into a single "malt beverage" designation and setting the same tax rates and regulations for those beverages; and
 - Eliminating the state review of malt beverage labels while allowing TABC to accept federal Certificate of Label Approval (COLA).
- Two major amendments were added to the TABC Sunset bill during the legislative process. One allowed brewery licensees to sell products in their tap rooms for off-premises consumption. The other removed the five-permit limit for package store permits. It also amended provisions allowing family members to combine permits through revising consanguinity requirements.

Similarities to 2018 Indiana Alcohol Code Revision Commission:

- Handout Page 4.
- Recommendations included revising alcohol beverage permit fees, penalties, sales clerk requirements, alcoholic beverage excise taxes, Sunday carryout sales, phasing out of the auctioning of permits, allowing patrons to carry wine into a restaurant with a corking fee, increasing the availability and use of permits, and amend the permit transfer process.

As always, EAIC staff is available to research alcohol issues further.