

1 HOUSE BILL NO. 969
2 INTRODUCED BY K. ZOLNIKOV, B. MITCHELL
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A THIRD-PARTY DELIVERY LICENSE FOR
5 ALCOHOL; ALLOWING ~~AN OFF-PREMISES RETAIL A~~ LICENSEE TO HAVE A THIRD-PARTY DELIVERY
6 LICENSEE DELIVER BEER OR TABLE WINE; REQUIRING THE SALE OF ALCOHOL TO THE END
7 CONSUMER; PROVIDING LICENSURE REQUIREMENTS; PROVIDING REQUIREMENTS FOR THE THIRD-
8 PARTY DELIVERY LICENSEE; REVISING LAWS RELATING TO RESPONSIBLE SERVER TRAINING;
9 PROVIDING FOR LICENSURE AND FEES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS ~~16-3-~~
10 ~~214,~~ 16-4-115, 16-4-501, AND 16-4-1005, MCA."

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

13
14 NEW SECTION. Section 1. Third-party delivery license -- definitions. (1) ~~The off-premises retail A~~
15 licensee subject to this section shall sell the beer or table wine to the end consumer. The third-party delivery
16 licensee may not sell beer or table wine to the end consumer. ~~The off-premises retail A~~ licensee must have the
17 exclusive authority to determine which beer or table wine is available for delivery and set the prices for these
18 beverages.

19 (2) (a) The department may issue a third-party delivery license to a third-party delivery licensee if
20 the following requirements are met:

21 (i) the owners and officers of the third-party delivery licensee meet the requirements for an off-
22 premises retail licensee under 16-4-401 to hold a license; and

23 (ii) the third-party delivery licensee submits an application and pays the initial license fee as
24 provided in 16-4-501.

25 (b) Third-party delivery licenses may be renewed annually if:

26 (i) the owners and officers of the third-party delivery licensee continue to meet the requirements
27 for an off-premises retail licensee under 16-4-401 to hold a license; and

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1 (ii) the third-party delivery licensee submits a renewal form and the annual renewal fee as
2 provided in 16-4-501.

3 (3) A third-party delivery licensee may only deliver beer or table wine through drivers who meet the
4 following requirements:

5 (a) are an employee or independent contractor of the third-party delivery licensee;

6 (b) are at least 21 years of age;

7 (c) have a valid driver's license;

8 (d) have not been convicted of a felony or an alcohol-related offense; and

9 (e) have completed a training program under Title 16, chapter 4, part 10, prior to their first delivery.

10 (4) Drivers are subject to the penalties described in Title 16, chapter 4, part 10.

11 (5) Any beer or table wine sold by ~~an off-premises retail~~ a licensee for delivery by a third-party
12 delivery licensee must be removed from the ~~off-premises retail~~ licensee's licensed premises only during the
13 hours in which the ~~off-premises retail~~ licensee is permitted to sell alcoholic beverages. The delivery must be
14 completed before the time that the ~~off-premises retail~~ licensee is required to end off-premises sales of alcoholic
15 beverages.

16 (6) Any beer or table wine unable to be delivered for any reason must be immediately returned to
17 the licensed premises of the ~~off-premises retail~~ licensee that sold the beer or table wine. The third-party delivery
18 licensee must document and maintain a record of the delivery attempt.

19 (7) The person to whom the delivery is made must be at least 21 years of age. The driver shall
20 verify the age and identity of the recipient at the time of delivery.

21 (8) Deliveries may not be made to anyone who is actually, apparently, or obviously intoxicated.

22 (9) A licensee under this section that delivers alcoholic beverages shall maintain books and
23 records reflecting the date, time, address, and recipient of the alcohol delivery for each delivery, the name and
24 business address of the person making the delivery, and the name and license number of the ~~off-premises~~
25 ~~retail~~ licensee selling the alcoholic beverage. Records must be maintained either in hard copy or electronic
26 format for 3 years. Licensees shall make these books and records available to the department and its
27 investigators on reasonable notice from the department.

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1 (10) ~~An off-premises retail~~A licensee may utilize the services of a third-party delivery licensee by
2 means of the telephone, the internet, a mobile application, or other electronic means to facilitate the ordering or
3 delivery of beer or table wine from inventory located at the ~~off-premises retail~~ licensee's licensed premises.

4 (11) ~~An off-premises retail~~A licensee is not subject to violations of this code that arise out of the
5 delivery of beer or table wine delivered by a third-party delivery licensee if:

6 (a) the purchaser affirmed to the ~~off-premises retail~~ licensee or the third-party delivery licensee that
7 the purchaser and recipient are not under 21 years of age;

8 (b) the beer and table wine are in original packaging and are packaged in a manner that clearly
9 discloses to the driver that the delivery contains beer or table wine, or the third-party delivery licensee's driver
10 packages the order containing the beer and table wine; and

11 (c) the ~~off-premises retail~~ licensee discloses to the third-party delivery licensee that the order to be
12 delivered contains beer or table wine.

13 (12) Any violation of this code by a third-party delivery licensee or its drivers are subject to penalties
14 as provided in 16-4-406.

15 (13) Nothing in this section may be construed to require a technology services company to obtain a
16 third-party delivery license if the company does not employ or contract with delivery drivers and instead
17 provides software or an application that connects consumers and ~~off-premises retail~~ licensees for the delivery
18 of beer or table wine from the ~~off-premises retail~~ licensee.

19 (14) A third-party delivery license is not required for a common carrier lawfully transporting or
20 shipping alcoholic beverages.

21 (15) As used in this section, the following definitions apply:

22 (a) "Licensee" means an off-premises retail licensee or a brewery licensed under 16-3-214.

23 (b) "Third-party delivery license" means a license issued by the department to a third-party delivery
24 licensee for the delivery of beer or table wine.

25 ~~(b)(c)~~ "Third-party delivery licensee" means a person who offers a service to deliver, but not to buy or
26 sell, beer or table wine in original packaging from ~~an off-premises retail~~a licensee ~~issued a license under 16-4-~~
27 ~~115~~ and enters into a written agreement with the ~~off-premises retail~~ licensee for the purpose of delivering beer

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1 or table wine sold by the ~~off-premises retail~~ licensee.

2

3 **Section 2.** Section 16-3-214, MCA, is amended to read:

4 **"16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and
5 restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon
6 payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the
7 department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of
8 this code and rules prescribed by the department, to:

9 (a) sell and deliver beer from its storage depot or brewery to:

10 (i) a wholesaler;

11 (ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to
12 deliver the beer and if:

13 (A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a
14 day to each licensed retailer; and

15 (B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels
16 a year; ~~or~~

17 (iii) the public, including curbside pickup between 8 a.m. and 2 a.m. in original packaging or
18 growlers; or

19 (iv) subject to [section 1], the public through a third-party delivery licensee that delivers beer
20 manufactured by the brewery in original packaging or growlers. A brewery that uses a third-party delivery
21 licensee shall apply to the department and pay a fee for a license endorsement to use a third-party delivery
22 service;

23 (b) provide its own products for consumption on its licensed premises without charge or, if it is a
24 small brewery, provide its own products at a sample room as provided in 16-3-213; or

25 (c) do any one or more of the acts of sale and delivery of beer as provided in this code.

26 (2) A brewery may not use a common carrier for delivery of the brewery's product to the public or
27 to licensed retailers.

1 (3) A brewery may import or purchase, upon terms and conditions the department may require,
2 necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing
3 purposes.

4 (4) An additional license fee may not be imposed on a brewery providing its own products on its
5 licensed premises for consumption on the premises.

6 (5) This section does not prohibit a licensed brewer from shipping and selling beer directly to a
7 wholesaler in this state under the provisions of 16-3-230."

8

9 **Section 3.** Section 16-4-115, MCA, is amended to read:

10 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
11 or table wine, or both, in the original packages for off-premises consumption may be issued only to a person,
12 firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer or
13 table wine, or both. If the premises proposed for licensing are operated in conjunction with another business,
14 that business must be a grocery store or drugstore licensed as a pharmacy. The number of licenses that the
15 department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in
16 the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or
17 deny an application for any license or suspend or revoke any license for cause.

18 (2) Upon receipt of a completed application for a license under this section, accompanied by the
19 necessary license fee as provided in 16-4-501, the department shall request that the department of justice
20 make a background investigation of all matters relating to the application.

21 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
22 subsection (1), the department shall determine whether:

23 (a) the applicant is qualified to receive a license;

24 (b) the applicant's premises are suitable for the carrying on of the business; and

25 (c) the requirements of this code and the rules promulgated by the department are met and
26 complied with.

27 (4) License applications submitted under this section are not subject to the provisions of 16-4-203

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1 and 16-4-207.

2 (5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in
3 original packaging.

4 (6) ~~An~~ Subject to [section 1], an off-premises retail licensee may use a third-party delivery licensee
5 to deliver beer and table wine in original packaging or may apply to the department and pay a fee for an
6 endorsement to, with the off-premises retail licensee's own employees who are 21 years of age or older, deliver
7 beer and table wine in original packaging."

8

9 **Section 4.** Section 16-4-501, MCA, is amended to read:

10 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine
11 only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise
12 specified in this section, the fee is an annual fee and is imposed as follows:

13 (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for
14 sale within the state, \$500;

15 (ii) for each storage depot, \$400;

16 (b) (i) each beer wholesaler, \$400; each winery, \$200; each table wine distributor, \$400;

17 (ii) for each subwarehouse, \$400;

18 (c) each beer retailer, \$200;

19 (d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer
20 license;

21 (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in
22 conjunction with beer, \$200;

23 (e) any unit of a nationally chartered veterans' organization, \$50.

24 (2) The permit fee under 16-4-301(1) is computed at the following rate:

25 (a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting
26 contests, other than those applied for pursuant to 16-4-301(1)(c); and

27 (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the

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1 provisions of 16-4-301(1)(c).

2 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the
3 sale of all alcoholic beverages.

4 (4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license
5 fee in the sum of \$300.

6 (5) The annual license fee for a license to sell wine on the premises, when issued as an
7 amendment to a beer-only license pursuant to 16-4-105, is \$200.

8 (6) The annual renewal fee for:

9 (a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is \$200;

10 (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license; and

11 (c) a continuing care retirement community limited all-beverages license is \$500 for each license.

12 (7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall
13 pay an annual license fee as follows:

14 (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities
15 and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans'
16 organization and \$400 for all other licensees;

17 (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000
18 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be
19 licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and
20 \$500 for all other licensees;

21 (c) for each license in incorporated cities with a population of more than 5,000 and less than
22 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to
23 be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization
24 and \$650 for all other licensees;

25 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance
26 of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
27 boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other

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1 licensees;

2 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated
3 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
4 boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles
5 of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations,
6 the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the
7 applicant. When the premises of the applicant to be licensed are situated within an incorporated town or
8 incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the
9 license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the
10 applicant.

11 (f) an applicant for the issuance of a resort retail all-beverages license shall pay a \$100,000
12 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another
13 location within the boundaries of the resort area or to another owner to be used at a location within the
14 boundaries of the resort area.

15 (8) The fee for one all-beverages license to a public airport is \$800. This license is
16 nontransferable.

17 (9) The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.

18 (10) The annual fee for a special beer and table wine license for a nonprofit arts organization under
19 16-4-303 is \$250.

20 (11) The annual fee for a distillery is \$600.

21 (12) The initial and annual fee for a third-party delivery license under [section 1] is \$500.

22 ~~(12)(13)~~ The license fees provided in this section are exclusive of and in addition to other license fees
23 chargeable in Montana for the sale of alcoholic beverages.

24 ~~(13)(14)~~ In addition to other license fees, the department of revenue may require a licensee to pay a
25 late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's
26 anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month
27 after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal

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1 year or 1 year and 2 months after the licensee's anniversary date.

2 ~~(14)~~(15) All license and permit fees collected under this section must be deposited as provided in 16-2-
3 108."

4

5 **Section 5.** Section 16-4-1005, MCA, is amended to read:

6 **"16-4-1005. Licensees required to ensure training.** A licensee shall:

7 (1) require each employee who is authorized to sell, serve, or deliver alcoholic beverages in the
8 normal course of employment and the employee's immediate supervisor to successfully complete training to
9 ensure compliance with state law regarding the sale and service of alcoholic beverages. ~~The~~ Except as
10 provided in [section 1], training must be completed within 60 days of the employee's date of hire and every 3
11 years after the employee's initial training.

12 (2) maintain employment records verifying employee completion of the training required in
13 subsection (1)."

14

15 NEW SECTION. **Section 6. Codification instruction.** [Section 1] is intended to be codified as an
16 integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

17

- END -