

HOUSE BILL NO. 69

INTRODUCED BY T. FALK

BY REQUEST OF THE DEPARTMENT OF REVENUE

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

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

Section 1. 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~~ 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

- 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

1 various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor
2 licenses and to all other persons at the retail price established by the agent.

3 (ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor
4 store may place a liquor order with the department at its state liquor warehouse in the manner to be established
5 by the department.

6 (B) The agency liquor store's purchase price is the department's posted price less the agency
7 liquor store's commission rate. The commission rates constitute the only compensation the department
8 provides to agency liquor stores and reflect that agency liquor stores sell at retail and wholesale and must
9 provide the discount in 16-2-201.

10 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for
11 within 60 days of the date on which the department invoices the liquor to the agency liquor store.

12 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

13 (3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with
14 populations over 3,000.

15 (4) (a) ~~Beginning February 1, 2016, each agency liquor store's commission rate is equal to the~~
16 ~~agency liquor store's combined commission rate on December 31, 2015, plus 1/3 of the difference between the~~
17 ~~agency liquor store's commission rate as determined in subsection (4)(b) and the agency liquor store's~~
18 ~~combined commission rate on December 31, 2015. Beginning February 1, 2017, each agency liquor store's~~
19 ~~commission rate is equal to the agency liquor store's combined commission rate on December 31, 2015, plus~~
20 ~~2/3 of the difference between the agency liquor store's commission rate as determined in subsection (4)(b) and~~
21 ~~the agency liquor store's combined commission rate on December 31, 2015. Beginning February 1, 2018, each~~
22 ~~agency liquor store's commission rate is determined as in subsection (4)(b).~~

23 (b) ~~Agency liquor stores must receive an annual commission rate based on the total posted price of~~
24 ~~liquor purchased in the previous calendar year, as follows:~~

25 (i) 16% commission for stores that purchased not more than \$250,000;

26 (ii) 15.5% commission for stores that purchased more than \$250,000 but not more than \$500,000;

27 (iii) 15% commission for stores that purchased more than \$500,000 but not more than \$720,000;

28 (iv) 14.5% commission for stores that purchased more than \$720,000 but not more than \$950,000;

- 1 (v) 14% commission for stores that purchased more than \$950,000 but not more than \$1.525
 2 million;
- 3 (vi) 13.5% commission for stores that purchased more than \$1.525 million but not more than \$1.85
 4 million;
- 5 (vii) 13% commission for stores that purchased more than \$1.85 million but not more than \$2.25
 6 million;
- 7 (viii) 12.75% commission for stores that purchased more than \$2.25 million but not more than \$3.25
 8 million;
- 9 (ix) 12.5% commission for stores that purchased more than \$3.25 million but not more than \$7
 10 million; or
- 11 (x) 12.15% commission for stores that purchased more than \$7 million.
- 12 ~~(e)(b)~~ For commissions determined under subsection (4)~~(b)(a)~~, the department shall by February 1 of
 13 each year:
- 14 (i) calculate purchases based on all liquor invoiced to the agency liquor store during the previous
 15 calendar year;
- 16 (ii) notify agency liquor stores of their commission rate to be applied for the period beginning
 17 February 1 and ending January 31; and
- 18 (iii) adjust the dollar values for purchase amounts under subsection (4)~~(b)(a)~~ based on the
 19 consumer price index for the prior calendar year and notify all agency liquor stores of the adjustment.
- 20 ~~(d)(c)~~ New stores must receive a commission established by competitive bidding, which is
 21 guaranteed for 3 calendar years, after which time the agency liquor store's commission is subject to subsection
 22 (4)~~(b)(a)~~.
- 23 (5) An agency franchise agreement must:
- 24 (a) be effective for a 10-year period, renewable for additional 10-year periods, if the requirements
 25 of the agency franchise agreement have been satisfactorily performed;
- 26 (b) require the agent to maintain comprehensive general liability insurance and liquor liability
 27 insurance throughout the term of the agency franchise agreement in an amount established by the department
 28 of administration. The insurance policy must:

- 1 (i) declare the department as an additional insured; and
- 2 (ii) hold the state harmless and agree to defend and indemnify the state in a cause of action
- 3 arising from or in connection with the agent's negligent acts or activities in the execution and performance of the
- 4 agency franchise agreement.
- 5 (c) provide that upon termination by the department for cause or upon mutual termination, the
- 6 agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time,
- 7 the department may immediately repossess all liquor inventory, wherever located.
- 8 (d) specify the reasonable service and space requirements that the agent will provide throughout
- 9 the term of the agency franchise agreement.
- 10 (6) The liability insurance requirement may be reviewed every 3 years at the request of either the
- 11 agent or the department. If the agent concurs, the department may adjust the requirements to be effective
- 12 during the remaining term of the agency franchise agreement if the adjustments adequately protect the state
- 13 from risks associated with the agent's negligent acts or activities in the execution and performance of the
- 14 agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum
- 15 requirements of the department of administration.
- 16 (7) (a) The department may terminate an agency franchise agreement if the agent has not
- 17 satisfactorily performed the requirements of the agency franchise agreement because the agent:
- 18 (i) charges retail prices that are less than the department's posted price for liquor, sells liquor to
- 19 persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the
- 20 discount provided for in 16-2-201 to persons who hold liquor licenses;
- 21 (ii) fails to maintain sufficient liability insurance;
- 22 (iii) has not maintained a quantity and variety of product available for sale commensurate with
- 23 demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to
- 24 purchase special orders;
- 25 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has
- 26 operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the
- 27 purpose of making purchases of liquor; or
- 28 (v) fails to comply with the express terms of the agency franchise agreement.

1 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency
 2 franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and
 3 request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend
 4 its termination order until after a final decision has been made pursuant to the Montana Administrative
 5 Procedure Act.

6 (c) In the case of failure to make timely payments to the department for liquor purchased, the
 7 department may terminate the agency franchise agreement and immediately repossess any liquor purchased
 8 and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the
 9 termination and request a hearing within 30 days of the department's repossession of the liquor. The agency
 10 liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the
 11 Montana Administrative Procedure Act.

12 (8) An agency franchise agreement may be terminated upon mutual agreement by the agent and
 13 the department.

14 (9) An agent may assign an agency franchise agreement to a person who, upon approval of the
 15 department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities
 16 of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the
 17 department of an intent to assign the agency franchise agreement 60 days before the intended effective date of
 18 the assignment. The department may not unreasonably withhold approval of an assignment request.

19 (10) A person or entity may not hold an ownership interest in more than one agency liquor store.

20 (11) The department shall maintain sufficient inventory in the state warehouse in order to meet a
 21 monthly service level of at least 97%.

22 ~~(12) For the purposes of this section, the term "combined commission rate" means the agency liquor~~
 23 ~~store's weighted average discount rate plus the discount rate provided for sales volume plus the agency liquor~~
 24 ~~store's commission rate that existed on December 31, 2015."~~

25

26 **Section 3.** Section 16-2-103, MCA, is amended to read:

27 **"16-2-103. Duplicate invoices of sales required.** (1) An agency liquor store shall, ~~upon~~on each sale
 28 of liquor ~~or table wine~~ to any licensee, issue a duplicate invoice of the liquor ~~or table wine~~ purchased, as

1 provided by the department, a copy of which must be delivered to the licensee and one copy retained at the
2 store.

3 (2) The invoice must show the date of purchase, the name of the employee making the sale, the
4 quantity of each kind of liquor ~~or table wine~~ purchased, the price paid for the liquor ~~or table wine~~, the name of
5 the licensee, and the number of the license, with any other information that may be required by the department.

6 (3) The licensee shall keep and retain the duplicate invoice of all purchases made from an agency
7 liquor store, which must at all times be subject to inspection by the duly authorized officers, agents, and
8 employees of the department."

9

10 **Section 4.** Section 16-2-104, MCA, is amended to read:

11 **"16-2-104. Hours.** (1) Agency liquor stores may remain open during the period between 8 a.m. and 2
12 a.m. The stores must be closed for the transaction of business on legal holidays and between the close of
13 normal business Saturday ~~afternoon~~ up to the opening of normal business Tuesday morning.

14 (2) (a) An agency liquor store may be open on Mondays that are not legal holidays if 51% of the
15 all-beverages licensees within the agency liquor store's immediate market area sign a petition agreeing that
16 agency liquor stores located within the immediate market area may be open on Mondays. The petition must be
17 on a form prescribed by the department. The department shall verify the validity of the signatures on the
18 petition. If the department determines that the petition contains sufficient valid signatures, all agency liquor
19 stores within the designated market area must be allowed to transact business on Mondays that are not legal
20 holidays. To determine the number of signatures needed, the department shall round up to the nearest whole
21 number any fractional number of all-beverages licensees.

22 (b) For the purposes of subsection (2)(a), immediate market area means:

23 (i) the city limits for stores located in incorporated cities or towns; and

24 (ii) the area contained within a 5-mile radius from a store or stores located in unincorporated cities
25 or towns or in a consolidated local government."

26

27 **Section 5.** Section 16-2-203, MCA, is amended to read:

28 **"16-2-203. Sales to licensees.** Agency liquor stores may sell to licensees licensed under this code all

1 kinds of liquor ~~and table wine~~ at the posted price. All sales must be ~~made on a cash basis~~ paid for at the time of
2 sale."

3

4 NEW SECTION. Section 6. Effective date. [This act] is effective on passage and approval.

5

- END -