

1 HOUSE BILL NO. 92

2 INTRODUCED BY E. BUTTREY

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LAW REGULATION;
6 CORRECTING ERRATA; AMENDING SECTIONS 16-1-302, 16-3-233, 16-3-301, 16-4-414, AND 16-4-801,
7 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 16-1-302, MCA, is amended to read:

12 **"16-1-302. Functions, powers, and duties of department.** The department has the following
13 functions, duties, and powers:

- 14 (1) to buy, import, have in its possession for sale, and sell liquors;
- 15 (2) to control the possession, sale, and delivery of liquors in accordance with the provisions of this
16 code;
- 17 (3) to determine the municipalities where agency liquor stores are to be established throughout the
18 state and the situation of the stores within these municipalities;
- 19 (4) to lease, furnish, and equip any building or land required to administer its duties under this
20 code;
- 21 (5) to buy or lease plants and equipment necessary to administer its duties under this code;
- 22 (6) to employ the necessary employees required to administer this code and to dismiss them,
23 assign them their title, and define their respective duties and powers and to contract with the department of
24 justice for investigative services and to receive and process, but not grant or deny, applications or to contract
25 for the services of experts and persons engaged in the practice of a profession, if appropriate. If the department
26 contracts for the receipt and processing of an application by the department of justice, the application must
27 state that it is to be filed with the department of justice.
- 28 (7) to determine the nature, form, and capacity of all packages to be used for containing alcoholic

- 1 beverages kept or sold under this code;
- 2 (8) to grant and issue licenses, registrations, and permits under this code;
- 3 (9) to place special restrictions and allowances on the use of a particular license, which must be
- 4 endorsed on the face of the license, if the special restrictions and allowances are made pursuant to a hearing
- 5 held in connection with the issuance of the license or if the special restrictions and allowances are agreed to by
- 6 the licensee;
- 7 (10) without limiting or being limited by the foregoing, to do all things necessary to administer this
- 8 code or rules."
- 9

10 **Section 2.** Section 16-3-233, MCA, is amended to read:

11 **"16-3-233. Sales to public by wholesaler unlawful.** ~~Except as provided in 16-3-316, a~~ A wholesaler

12 may not give, sell, deliver, or distribute any beer purchased or acquired by the wholesaler to the public."

13

14 **Section 3.** Section 16-3-301, MCA, is amended to read:

15 **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age. (1)**

16 Except as allowed in 16-4-213(8), it is unlawful for a licensed retailer to:

- 17 (a) purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler
- 18 licensed under the provisions of this code;
- 19 (b) purchase or acquire table wine from anyone except a liquor store agent or winery or table wine
- 20 distributor licensed under the provisions of this code;
- 21 (c) purchase or acquire wine from anyone except a liquor store agent or winery;
- 22 (d) transport alcoholic beverages from one licensed premises or other facility to any other licensed
- 23 premises owned by the licensee; or
- 24 (e) purchase or acquire liquor from anyone except an agency liquor store.
- 25 (2) It is unlawful for a licensed distributor or wholesaler to purchase beer, table wine, or wine from
- 26 anyone except a brewery, winery, or wholesaler licensed or registered under this code.
- 27 (3) It is unlawful for a liquor store agent to purchase table wine or sacramental wine from anyone
- 28 except a table wine distributor or winery licensed under this code.

1 (4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or
2 give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

3 (a) any person under 21 years of age; or

4 (b) any person actually, apparently, or obviously intoxicated.

5 (5) Any person under 21 years of age or any other person who knowingly misrepresents the
6 person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with
7 the licensee and, on conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section
8 may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of
9 any federal law.

10 (6) All licensees shall display in a prominent place in their premises a placard, issued by the
11 department, stating fully the consequences for violations of the provisions of this code by persons under 21
12 years of age.

13 (7) For purposes of 45-5-623 and this title, the establishment of the following facts by a person
14 making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of
15 innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

16 (a) the purchaser falsely represented and supported with documentary evidence that an ordinary
17 and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

18 (b) the appearance of the purchaser was such that an ordinary and prudent person would believe
19 the purchaser to be of legal age to purchase alcoholic beverages; and

20 (c) the sale was made in good faith and in reasonable reliance on the representation and
21 appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

22 (8) A licensed retailer may purchase beer and table wine from a licensed in-state retailer and
23 transport the purchased beer and table wine to the licensed retailer's premises. The department may penalize
24 retailers purchasing beer and table wine from out-of-state retailers subject to this code. Purchases under this
25 subsection are limited to a maximum of 6 gallons a day. (See compiler's comments for contingent termination of
26 certain text.)"

27

28 **Section 4.** Section 16-4-414, MCA, is amended to read:

1 **"16-4-414. Fingerprints required of applicants and location managers -- exceptions.** (1) Except
2 as provided in subsection (2), an applicant for a license under this code, an individual who must meet the
3 requirements of 16-4-401 for the issuance of a new license or for the approval of the transfer of a license, and
4 any person employed by the applicant as a location manager shall submit their fingerprints with the application
5 to facilitate a fingerprint and background check by the department of justice and the federal bureau of
6 investigation. The results of the investigation must be used by the department in determining the applicant's
7 eligibility for a license.

8 (2) ~~(a) If the applicant is a publicly traded corporation, an officer and any person employed by the~~
9 ~~applicant as a location manager are subject to the fingerprint and background check in subsection (1).~~

10 ~~(b)~~——If the applicant employs a business entity as a location manager, a person designated pursuant
11 to 16-4-419(3) is subject to the fingerprint and background check in subsection (1).

12 ~~(c)~~(b) A change in the form of a licensee's business entity that does not result in any person having a
13 new ownership interest in the business is not grounds for the department to require a fingerprint or background
14 check.

15 (3) Approved applicants may use a single background check and set of fingerprints for multiple
16 license applications within 5 years. Applicants must attest that no criminal charges have been filed since the
17 background check was last completed."
18

19 **Section 5.** Section 16-4-801, MCA, is amended to read:

20 **"16-4-801. Security interest in alcoholic beverage license -- definitions.** (1) (a) A security interest
21 in an alcoholic beverage license is an interest in the alcoholic beverage license that secures payment or
22 performance of an obligation. A contract for the sale of an alcoholic beverage license, including a provision
23 allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment
24 for the license, may, for the purposes of this section, be treated as a security interest.

25 (b) For the purposes of this section:

26 (i) "alcoholic beverage license" means a license issued under this chapter; and

27 (ii) "default" means that:

28 (A) the defaulting party has acknowledged in writing pursuant to the terms of a written security

1 agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights
2 to possess or control the alcoholic beverage license;

3 (B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's
4 interests in the license; or

5 (C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform
6 Commercial Code and the secured party has provided written proof of the sale to the department.

7 (2) The department, after review of the underlying documents creating the security interest, may
8 approve a transfer of ownership of an alcoholic beverage license subject to a security interest as provided in
9 subsection (1). A person holding a security interest may not have any control in the operation of the business
10 operated under a license subject to a security interest nor may that person share in the profits or the liabilities of
11 the business other than the payment or performance of the licensee's obligation under a security agreement.

12 (3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give
13 notice to the department of the licensee's default and either apply to have the license transferred to that person,
14 subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or
15 the person shall place the license on nonuse status. On receipt of an application to transfer the license, the
16 department may, pursuant to 16-4-433, grant the applicant temporary operating authority to operate the license.
17 If the person holding the license places the license on nonuse status, the person shall transfer ownership of the
18 license within 180 days from the date on which the notice of the default was given to the department. The
19 operation of a business under a license by a person holding a security interest for more than 7 days after
20 default of the licensee or without temporary operating authority issued by the department must be considered to
21 be a violation of this code and constitutes grounds for the department to either deny an application for transfer
22 of the license or for the revocation of the license pursuant to 16-4-406.

23 (b) If the person holding the security interest does not qualify for or cannot qualify for ownership of
24 an alcoholic beverage license under 16-4-401, the secured party shall transfer ownership of the alcoholic
25 beverage license within 180 days of the notice of the default of the licensee.

26 (c) The department, on a showing of good cause, may in its discretion extend the time for sale of
27 the license for an additional period of up to 180 days.

28 (4) (a) A regulated lender, as defined in 31-1-111, may obtain a security interest in an alcoholic

1 beverage license or in other assets of a business operating an alcoholic beverage license to secure a loan or a
2 guaranty of a loan. A regulated lender may use loan and collateral documentation and loan and collateral
3 structure consistent with that used by the regulated lender in commercial loans generally, and the
4 documentation and structure used by the lender do not create an undisclosed ownership interest in the
5 alcoholic beverage license or the licensee's business by a coborrower or guarantor if the department
6 determines the borrower, coborrower, guarantor, and owner or owners of the assets pledged as collateral meet
7 the requirements of 16-4-401. As used in this subsection (4), permissible loan and collateral structuring
8 includes but is not limited to permitting owners and nonowners of an alcoholic beverage license to:

9 (i) be coborrowers of a borrower's loan;

10 (ii) be guarantors of a borrower's loan, with or without a requirement that the regulated lender
11 exhaust remedies against the borrower before collecting from the guarantor; or

12 (iii) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan.

13 (b) A person claiming a security interest in an alcoholic beverage license may submit to the
14 department copies of documents evidencing the security interest, the license number, and a \$30 notification
15 fee. The department shall deposit the fee as provided in 16-2-108. The department may create and provide a
16 form to be used for this purpose.

17 (c) The department shall notify those that have filed information provided in subsection (4)(b):

18 (i) at least 20 days prior to issuance of an order of default for revocation, nonrenewal, or lapse of
19 a license; or

20 (ii) immediately after the department's office of dispute resolution has issued a decision to uphold
21 the department's revocation or nonrenewal of a license under 16-4-406 or lapse of a license under 16-3-310.

22 (5) When a licensee is the borrower, an owner of the licensee may make a payment on the
23 institutional loan. If a payment is made under this subsection (5):

24 (a) the party making the payment must be vetted and approved prior to making the payment;

25 (b) the licensee shall notify the department within 90 days that the payment was made and
26 designate whether the payment will be treated as a loan or an equity investment as follows:

27 (i) for a payment treated as a loan, the licensee shall memorialize the loan by a written
28 agreement, which must be provided to the department; or

1 (ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as
2 a result, the licensee shall follow department requirements for disclosing changes in ownership percentages;
3 and

4 (c) the funds used for the payment must be the party's own funds or funds borrowed from an
5 institutional lender.

6 (6) If a borrower, coborrower, or guarantor is not the licensee or an owner of the licensee, the
7 coborrower or guarantor may make a payment on the institutional loan, and the payment does not create an
8 undisclosed ownership interest in the alcoholic beverage license by the borrower, coborrower, or guarantor only
9 if:

10 (a) the licensee notifies the department within 90 days that the payment was made;

11 (b) the payment is made as a loan that is memorialized by a written agreement; and

12 (c) the funds used for the payment are the coborrower's or guarantor's own funds or funds
13 borrowed from an institutional lender.

14 (7) A regulated lender that obtains a security interest in an alcoholic beverage license or in other
15 assets of a business operating an alcoholic beverage license has no duty to ensure a coborrower's or
16 guarantor's compliance with the requirements of subsection (5) or (6) in connection with loan or guaranty
17 payments it may receive from the coborrower or guarantor.

18 (8) For the purposes of subsections (5) and (6), the term "borrower" means the party that is
19 primarily responsible for making payments and that receives the funds or on whose behalf the funds were paid."

20
21 NEW SECTION. **Section 6. Effective date.** [This act] is effective on passage and approval.

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