

HOUSE BILL NO. 164

INTRODUCED BY D. HARVEY, B. CARTER

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO CATERING ENDORSEMENTS; ALLOWING BEER AND WINE LICENSEES TO OBTAIN A CATERING ENDORSEMENT WITHOUT HAVING TO BE ENGAGED PRIMARILY IN THE BUSINESS OF PROVIDING MEALS; PROVIDING THAT CONCESSIONAIRES MAY NOT SPONSOR CATERED EVENTS; AMENDING SECTIONS 16-1-106, 16-4-111, AND 16-4-204, 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.
- (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

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:

(i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;

(ii) that contains at least 0.5% of alcohol by volume;

(iii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or

(b) a beverage:

(i) that contains at least 0.5% of alcohol by volume;

(ii) that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

(iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

(iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;

(v) for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

(vi) that is not exempt pursuant to 27 CFR 25.55(f).

(9) "Community" means:

(a) in an incorporated city or town, the area within the incorporated city or town boundaries;

(b) in an unincorporated city or area, the area identified by the federal bureau of the census as a

community for census purposes; and

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

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

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

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

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

(14) (a) "Guest ranch" means a business or organization that provides guests with overnight lodging, dining, and onsite outdoor recreational activities typical of western ranching for the purposes of vacation or recreation. Recreational activities offered by a guest ranch may include but are not limited to horseback riding, wagon or sleigh rides, shooting, and working with livestock. The property of a guest ranch must be composed of at least 50 contiguous acres. The property must be located entirely outside the license quota area of an incorporated city or an incorporated town as determined under 16-4-105(1) or 16-4-201. The premises of a guest ranch may include restaurants, sporting and recreational equipment shops, event venues, arenas, and other facilities that may be used by other persons in addition to the overnight guests.

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

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

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

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

~~(17)(18)~~ "Liquor" means an alcoholic beverage except beer and table wine. The term includes a

1 caffeinated or stimulant-enhanced malt beverage.

2 ~~(18)~~(19) "Malt beverage" means:

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

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

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

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

13 (i) bottles;

14 (ii) cans; and

15 (iii) kegs.

16 ~~(20)~~(21) "Package" means a container or receptacle used for holding an alcoholic beverage.

17 ~~(24)~~(22) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
18 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
19 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of
20 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor
21 stores, and a 20% markup.

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

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

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

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68th Legislature

Drafter: Erin Sullivan, 406-444-3594

HB0164.002.002

1 ~~(25)(26)~~ "Retail price" means the price established by an agent for the sale of liquor to persons who do
2 not hold liquor licenses. The retail price may not be less than the department's posted price.

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

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

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

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

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

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

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

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

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

27 ~~(35)(36)~~ "Wine" means an alcoholic beverage made from or containing the normal alcoholic

1 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except
2 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not
3 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and
4 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other
5 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as
6 wine in accordance with federal regulations are also wine."

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

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

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

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

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

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HB0164.002.002

(3) ~~A-With the exception of a guest ranch catering endorsement, a~~ licensee who holds a catering endorsement may not cater an event in which the licensee or the concessionaire of the licensee is the sponsor. The catered event must be within 100 miles of the licensee's ~~regular place of business~~ licensed premises measured in a straight line from the nearest entrance of the licensed premises to the nearest boundary of the catered event.

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

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

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

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

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

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

(8) A LICENSEE MAY SELL AND SERVE BEER AND WINE IN THE GRANDSTANDS AND BLEACHER AREA OF THE PREMISES, AS WELL AS FROM A BOOTH, STAND, OR OTHER FIXED PLACED ON THE PREMISES WHEN THE CATERED EVENT

Amendment - 1st Reading/2nd House-blue Requested by: Bob Carter - (S) Business, Labor & Economic Affairs

68th Legislature

Drafter: Erin Sullivan, 406-444-3594

HB0164.002.002

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

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

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

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

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

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

(A) by more than 33%; or

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

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

Amendment - 1st Reading/2nd House-blue Requested by: Bob Carter - (S) Business, Labor & Economic Affairs

68th Legislature

Drafter: Erin Sullivan, 406-444-3594

HB0164.002.002

(b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a competitive bidding process is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

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

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

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

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

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

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

~~(e)(d) An~~ With the exception of a guest ranch catering endorsement, an all-beverages licensee who holds ~~an endorsement granted under this subsection (5)~~ a catering endorsement may not cater an event in which the licensee or the concessionaire of the licensee is the sponsor. The catered event must be within 100

Amendment - 1st Reading/2nd House-blue Requested by: Bob Carter - (S) Business, Labor & Economic Affairs

68th Legislature

Drafter: Erin Sullivan, 406-444-3594

HB0164.002.002

1 miles of the licensee's ~~regular place of business~~ licensed premises measured in a straight line from the nearest
2 entrance of the licensed premises to the nearest boundary of the catered event.

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

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

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

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

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

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

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

Amendment - 1st Reading/2nd House-blue Requested by: Bob Carter - (S) Business, Labor & Economic Affairs

68th Legislature

Drafter: Erin Sullivan, 406-444-3594

HB0164.002.002

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

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

10 (6) The department may adopt rules to implement this section."
11

12 NEW SECTION. Section 4. Effective date. [This act] is effective on passage and approval.
13

- END -