

HOUSE BILL NO. 272

INTRODUCED BY S. KERNS, E. BUTTREY, D. ZOLNIKOV, W. MCKAMEY, C. HINKLE, T. SMITH, J. BERGSTROM

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL SALES LAWS RELATED TO CONTRIVED EVENTS AND EMPLOYEES OR LICENSEES; PROVIDING THAT EMPLOYEES OF LICENSEES OR CONCESSIONAIRES MAY BE ISSUED VIOLATIONS OF THE ALCOHOL CODE OR CHARGED WITH CRIMES FOR FAILING CONTRIVED EVENTS ONLY AFTER CERTAIN CIRCUMSTANCES; AND AMENDING SECTIONS 16-4-406, 16-6-305, AND 16-6-314, MCA."

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

Section 1. Section 16-4-406, MCA, is amended to read:

"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating circumstances -- contrived events. (1) The department shall, upon a written, verified complaint of a person, request that the department of justice investigate the action and operation of a brewer, winery, wholesaler, domestic distillery, table wine distributor, beer or wine importer, retailer, concessionaire, or any other person or business licensed or registered under this code.

(2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the department, after reviewing admissions of either the licensee or concessionaire or receiving the results of the department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that a licensee or concessionaire has violated a provision of this code or a rule of the department, it may, in its discretion and in addition to the other penalties prescribed:

(a) reprimand a licensee or concessionaire or both;

(b) proceed to revoke the license of the licensee or the concession agreement of the concessionaire or both only if the violations jeopardize health, welfare, and safety or there is not a proposed cure in place;

(c) suspend the license or the concession agreement or both for a period of not more than 3

1 months;

2 (d) refuse to grant a renewal of the license or concession agreement or both after its expiration
3 only if the violations jeopardize health, welfare, and safety or there is not a proposed cure in place; or

4 (e) impose a civil penalty not to exceed \$1,500.

5 (3) The department shall consider mitigating circumstances and may adjust penalties within
6 penalty ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances
7 are:

8 (a) there have been no violations by the licensee or concessionaire or both within the past 3 years;

9 (b) there have been good faith efforts by the licensee or concessionaire or both to prevent a
10 violation;

11 (c) written policies exist that govern the conduct of the licensee's employees or the
12 concessionaire's employees or both;

13 (d) there has been cooperation in the investigation of the violation that shows that the licensee or
14 concessionaire or both or an employee or agent of the licensee or concessionaire or both accepts
15 responsibility; or

16 (e) the licensee or concessionaire or both have provided responsible alcohol server training to all
17 of their employees.

18 (4) The department shall consider aggravating circumstances and may adjust penalties within
19 penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating
20 circumstances are:

21 (a) prior warnings about compliance problems;

22 (b) prior violations within the past 3 years;

23 (c) lack of written policies governing employee conduct;

24 (d) multiple violations during the course of the investigation;

25 (e) efforts to conceal a violation;

26 (f) the intentional nature of the violation; or

27 (g) involvement of more than one patron or employee in a violation.

28 (5) (a) The department may not issue a violation to a licensee or a concessionaire provided the

1 investigation was not based on complaints or on observed misconduct but was based solely on a contrived
 2 event by the investigating authority or another designated organization creating the opportunity for a violation.
 3 The department may issue a violation only if the licensee or concessionaire fails more than two contrived event
 4 investigations within a 3-year period beginning with the first failure. For purposes of this section, the first two
 5 violations resulting from a contrived event investigation within a 3-year period do not constitute a violation of
 6 this code, and the department may not consider these violations in considering any mitigating circumstances
 7 and penalties as provided in this section.

8 (b) For purposes of this subsection (5), the terms "licensee" or "concessionaire" include employees
 9 of a licensee or concessionaire. Civil or criminal penalties may only be imposed on an employee of a licensee
 10 or concessionaire who fails more than two contrived event investigations within a 3-year period beginning with
 11 the first failure of a contrived event."

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13 **Section 2.** Section 16-6-305, MCA, is amended to read:

14 **"16-6-305. Age limit for sale or provision of alcoholic beverages -- liability of provider.** (1) (a)

15 Except in the case of an alcoholic beverage provided in a nonintoxicating quantity to a person under 21 years of
 16 age by the person's parent or guardian, physician or dentist for medicinal purposes, a licensed pharmacist upon
 17 the prescription of a physician, or an ordained minister or priest in connection with a religious observance, a
 18 person may not sell or otherwise provide an alcoholic beverage to a person under 21 years of age.

19 (b) (i) A parent, guardian, or other person may not knowingly sell or otherwise provide an alcoholic
 20 beverage in an intoxicating quantity to a person under 21 years of age.

21 (ii) Except as provided in 16-4-406(5), a licensee or concessionaire, including employees of a
 22 licensee or concessionaire, may not be charged with a violation of this subsection (1)(b) if the conduct giving
 23 rise to the violation is the result of a contrived event.

24 (c) For the purposes of this section, "intoxicating quantity" means a quantity of an alcoholic
 25 beverage that is sufficient to produce:

26 (i) a blood, breath, or urine alcohol concentration in excess of 0.05; or

27 (ii) substantial or visible mental or physical impairment.

28 (2) A person is guilty of a misdemeanor who:

1 (a) invites a person under the age of 21 years into a public place where an alcoholic beverage is
2 sold and treats, gives, or purchases an alcoholic beverage for the person;

3 (b) permits the person in a public place where an alcoholic beverage is sold to treat, give, or
4 purchase alcoholic beverages for the person; or

5 (c) holds out the person to be 21 years of age or older to the owner of the establishment or to the
6 owner's employee.

7 (3) It is unlawful for any person to fraudulently misrepresent the person's age to any dispenser of
8 alcoholic beverages or to falsely procure any identification card or to alter any of the statements contained in
9 any identification card, including a tribal identification card.

10 (4) A person 21 years of age or older who violates the provisions of subsection (1)(b) is, in addition
11 to applicable criminal penalties, subject to civil liability for damages resulting from a tortious act committed by
12 the person to whom the intoxicating substance was sold or provided if the act is judicially determined to be the
13 result of the intoxicated condition created by the violation. (See compiler's comments for contingent termination
14 of certain text.)"

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16 **Section 3.** Section 16-6-314, MCA, is amended to read:

17 **"16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by**
18 **underage person.** (1) A person who violates a provision of this code is guilty of a misdemeanor punishable as
19 provided in 46-18-212, except as otherwise provided in this section.

20 (2) (a) If a retail licensee is convicted of an offense under this code, the licensee's license must be
21 immediately revoked or, in the discretion of the department, another sanction must be imposed as provided
22 under 16-4-406.

23 (b) Except as provided in 16-4-406(5), a licensee or concessionaire, including employees of a
24 licensee or concessionaire, may not be charged with any crime as provided in this code if the conduct giving
25 rise to the crime is the result of a contrived event.

26 (3) A person under 21 years of age who violates 16-3-301(5) or 16-6-305(3) is subject to the
27 penalty provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

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