

**Amendment - 1st Reading-white - Requested by: Jason Small - (S) Business, Labor, and Economic Affairs**

- 2023

68th Legislature 2023

Drafter: Jameson Walker, 406-444-3722

HB0305.002.002

1 HOUSE BILL NO. 305  
2 INTRODUCED BY E. BUTTREY, K. ZOLNIKOV, L. JONES, M. HOPKINS, C. SPRUNGER  
3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LICENSE LAWS RELATING  
5 TO MANUFACTURERS AND RETAILERS; ALLOWING A LIMITED EXCEPTION FOR LICENSED BREWERS,  
6 DISTILLERS, AND WINERIES TO HOLD RETAIL LICENSES; ALLOWING A LIMITED EXCEPTION FOR  
7 RETAIL LICENSEES TO HOLD A BREWER, DISTILLER, OR WINERY LICENSE; PROVIDING LIMITATIONS;  
8 PROVIDING DEFINITIONS; AMENDING SECTIONS 16-3-213, 16-3-214, 16-3-241, 16-3-242, 16-3-244, 16-3-  
9 311, 16-3-411, 16-4-311, AND 16-4-401, MCA; AND PROVIDING AN EFFECTIVE DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 **Section 1.** Section 16-3-213, MCA, is amended to read:

14 **"16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.** (1) Except  
15 as provided for small breweries in subsection (2) and except as provided in 16-4-401(10), it is unlawful for any  
16 brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It  
17 is the intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer.  
18 This section does not prohibit breweries from selling and delivering beer manufactured by them, in original  
19 packages, at either wholesale or retail.

20 (2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual  
21 nationwide production of not less than 100 barrels or more than 60,000 barrels, including:

- 22 (i) the production of all affiliated manufacturers; and  
23 (ii) beer purchased from any other beer producer to be sold by the brewery.

24 (b) A small brewery may, at one location for each brewery license and at no more than three  
25 locations including affiliated manufacturers, provide samples of beer that were brewed and fermented on the  
26 premises in a sample room located on the licensed premises. The samples may be provided with or without  
27 charge between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or

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1            (iii) must provide and serve through the ~~colocated~~ retail license alcohol produced by other  
2 manufacturers that are not affiliated or financially interested, either directly or indirectly, in the conduct or  
3 operation of the business in which the license was issued pursuant to ~~16-4-104~~ 16-4-105 and 16-4-201, or the  
4 licensed brewery, winery, or distillery.

5            (e) Colocated licensees may transfer beer manufactured, liquor distilled, or wine produced by the  
6 licensee between the colocated manufacturing licenses LICENSE and THE retail licenses LICENSE without it being  
7 considered distributed or delivered as provided in this code.

8            (f) For the purposes of this code, the following definitions apply:

9            (i) "Colocated license" means a manufacturing license and a retail license owned completely by a  
10 person-LICENSEE and that are operated at one premises.

11            (ii) "Colocated premises" means a premises where a manufacturing license and a retail license are  
12 both located."

15            COORDINATION SECTION. Section 10. Coordination instruction. If House Bill No. 242, Senate  
16 Bill No. 75, and [this act] are passed and approved and all contain a section that amends 16-4-401, then the  
17 sections amending 16-4-401 are void and 16-4-401 must be amended as follows:

18            **"16-4-401. License as privilege -- criteria for decision on application -- ~~restrictions -- colocated~~**  
19 **~~licenses.~~** (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to  
20 which any applicant is entitled.

21            (2) Except as provided in 16-4-311 and subsection ~~(6)~~(5) of this section and subject to subsection  
22 (8), ~~in the case of a license that permits on-premises consumption,~~ the department shall find in every case in  
23 which it makes an order for the issuance of a new license, ~~or~~ for the approval of the transfer of a license, or the  
24 renewal of a license that:

25            (a) if the applicant is an individual:

26            ~~(i) and the application is approved, the applicant will not possess an ownership interest in more than~~  
27 ~~three establishments licensed under this chapter for all beverages sales. However, resort retail all beverages~~

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1 ~~licenses issued under 16-4-213 do not count toward this limit.~~

2 ~~(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-~~

3 ~~106;~~

4 ~~(iii) the applicant or any member of the applicant's immediate family is without financing from or any~~

5 ~~affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an applicant's~~

6 ~~spouse may possess an ownership interest in one or more manufacturer licenses;~~

7 ~~(iv)(i)~~ the applicant's past record and present status as a purveyor of alcoholic beverages and as a

8 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance

9 with all applicable laws of the state and local governments; ~~however, nothing in this subsection (2)(a)(iv)~~

10 ~~authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax~~

11 ~~protestor when renewing the license;~~

12 ~~(v)(ii)~~ the applicant has not been convicted of a felony or, if the applicant has been convicted of a

13 felony, the applicant's rights have been restored; and

14 ~~(vi)(iii)~~ the applicant is not under 19 years of age;

15 (b) if the applicant is a publicly traded corporation:

16 (i) ~~each owner of 15% or more of the outstanding stock meets the requirements for an individual~~

17 ~~applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the~~

18 applicant shall designate two or more officers or board members, each of whom must meet the requirements

19 for an individual applicant listed in subsection (2)(a);~~i~~

20 (ii) each individual who has control over the operation of the license meets the requirements for an

21 individual applicant listed in subsection (2)(a); and

22 ~~(iii) each person who shares in the profits or liabilities of a license meets the requirements for an~~

23 ~~individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a~~

24 ~~corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of~~

25 ~~subsection (8) apply.~~

26 ~~(iv)(iii)~~ the corporation is authorized to do business in Montana;

27 (c) if the applicant is a privately held corporation, all of the following must apply:

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1 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
2 applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the  
3 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
4 for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet  
5 the requirements of subsection (2)(a).

6 (ii) each individual who has control over the operation of the license meets the requirements for an  
7 individual applicant listed in subsection (2)(a);

8 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
9 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a  
10 corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of  
11 subsection ~~(8)(7)~~ apply.

12 (iv) the corporation is authorized to do business in Montana;

13 (d) if the applicant is a general partnership, each partner must meet the requirements of  
14 subsection (2)(a);

15 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and  
16 all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the  
17 requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all  
18 limited partners must meet the requirements of subsection (2)(a).

19 (f) if the applicant is a limited liability company, ~~;~~

20 (i) all managing members and those members whose ownership interest in the company equals  
21 or exceeds 15% must meet the requirements of subsection (2)(a). If no single member's interest equals or  
22 exceeds 15%, then 51% of all members must meet the requirements of subsection (2)(a).

23 (ii) the limited liability company is authorized to do business in Montana;

24 (g) if the applicant is a trust, the trustee must meet the requirements of subsection (2)(a);

25 (h) if the applicant is a nonprofit organization;

26 (i) the applicant shall designate two or more officers or board members, each of whom must meet  
27 the requirements for an individual applicant listed in subsection (2)(a); and

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1 (ii) the nonprofit organization is authorized to do business in Montana;  
2 (i) if the applicant is a cooperative association:  
3 (i) the applicant shall designate two or more officers or board members, each of whom must meet  
4 the requirements for an individual applicant listed in subsection (2)(a); and  
5 (ii) the cooperative association is authorized to do business in Montana.  
6 ~~(3) In the case of a license that permits only off-premises consumption and subject to subsection (8),~~  
7 ~~the department shall find in every case in which it makes an order for the issuance of a new license or for the~~  
8 ~~approval of the transfer of a license that:~~  
9 ~~(a) if the applicant is an individual:~~  
10 ~~(i) and the application is approved, the applicant will not possess an ownership interest in more than~~  
11 ~~three establishments licensed under this chapter for all beverages sales;~~  
12 ~~(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-~~  
13 ~~106;~~  
14 ~~(iii) the applicant or any member of the applicant's immediate family is without financing from or any~~  
15 ~~affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;~~  
16 ~~(iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,~~  
17 ~~the applicant's rights have been restored;~~  
18 ~~(v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a~~  
19 ~~business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance~~  
20 ~~with all applicable laws of the state and local governments; however, nothing in this subsection (3)(a)(v)~~  
21 ~~authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax~~  
22 ~~protestor when renewing the license; and~~  
23 ~~(vi) the applicant is not under 19 years of age;~~  
24 ~~(b) if the applicant is a publicly traded corporation:~~  
25 ~~(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual listed~~  
26 ~~in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall~~  
27 ~~designate two or more officers or board members, each of whom must meet the requirements for an individual~~

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1 ~~applicant listed in subsection (3)(a).~~

2 ~~(ii) the corporation is authorized to do business in Montana;~~

3 ~~(c) if the applicant is a privately held corporation:~~

4 ~~(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual~~

5 ~~applicant listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the~~

6 ~~applicant shall designate two or more officers or board members, each of whom must meet the requirements~~

7 ~~for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet~~

8 ~~the requirements of subsection (3)(a).~~

9 ~~(ii) the corporation is authorized to do business in Montana;~~

10 ~~(d) if the applicant is a general partnership, each partner must meet the requirements of subsection~~

11 ~~(3)(a);~~

12 ~~(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all~~

13 ~~limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the~~

14 ~~requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all~~

15 ~~limited partners must meet the requirements of subsection (3)(a).~~

16 ~~(f) if the applicant is a limited liability company, all managing members and those members whose~~

17 ~~ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (3)(a). If~~

18 ~~no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of~~

19 ~~subsection (3)(a).~~

20 ~~(4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or~~

21 ~~wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the~~

22 ~~issuance of a new license or for the approval of the transfer of a license that:~~

23 ~~(a) if the applicant is an individual:~~

24 ~~(i) the applicant has no ownership interest in any establishment licensed under this chapter for retail~~

25 ~~alcoholic beverages sales;~~

26 ~~(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-~~

27 ~~406;~~

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1 ~~(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,~~  
2 ~~the applicant's rights have been restored;~~

3 ~~(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a~~  
4 ~~business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance~~  
5 ~~with all applicable laws of the state and local governments; however, nothing in this subsection (4)(a)(iv)~~  
6 ~~authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax~~  
7 ~~protestor when renewing the license;~~

8 ~~(v) the applicant is not under 19 years of age; and~~

9 ~~(vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or~~  
10 ~~controlled by a manufacturer of an alcoholic beverage;~~

11 ~~(b) if the applicant is a publicly traded corporation:~~

12 ~~(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual listed~~  
13 ~~in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall~~  
14 ~~designate two or more officers or board members, each of whom must meet the requirements for an individual~~  
15 ~~applicant listed in subsection (4)(a).~~

16 ~~(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or~~  
17 ~~controlled by a manufacturer of an alcoholic beverage; and~~

18 ~~(iii) the corporation is authorized to do business in Montana;~~

19 ~~(c) if the applicant is a privately held corporation:~~

20 ~~(i) each owner of 15% or more of the outstanding stock meets the requirements for an individual~~  
21 ~~applicant listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the~~  
22 ~~applicant must designate two or more officers or board members, each of whom must meet the requirements~~  
23 ~~for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet~~  
24 ~~the requirements of subsection (4)(a).~~

25 ~~(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or~~  
26 ~~controlled by a manufacturer of an alcoholic beverage; and~~

27 ~~(iii) the corporation is authorized to do business in Montana;~~

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1 ~~(d) if the applicant is a general partnership, each partner must meet the requirements of subsection~~  
2 ~~(4)(a);~~

3 ~~(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all~~  
4 ~~limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the~~  
5 ~~requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all~~  
6 ~~limited partners must meet the requirements of subsection (4)(a).~~

7 ~~(f) if the applicant is a limited liability company, all managing members and those members whose~~  
8 ~~ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (4)(a). If~~  
9 ~~no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of~~  
10 ~~subsection (4)(a).~~

11 ~~(3) The applicant and any individual of the applicant who must meet the requirements of (2)(a)~~  
12 ~~must be current on all tax filings, taxes, interest, and penalties due to the state; however, nothing in this~~  
13 ~~subsection authorizes the department to consider an applicant's tax status or whether the applicant was or is an~~  
14 ~~income tax protestor when renewing the license.~~

15 ~~(5)(4)~~ In the case of a corporate applicant, the requirements of subsections (2)(b), ~~(3)(b), and (4)(b) or~~  
16 ~~(2)(c)~~ apply separately to each class of stock.

17 ~~(6)(5)~~ The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant  
18 to 16-4-302 ~~or an applicant for registration under 16-4-101 or 16-4-107.~~

19 ~~(7)(6)~~ An applicant's source of funding must be from a suitable source. A lender or other source of  
20 money or credit may be found unsuitable if the source:

21 (a) is a person whose prior financial or other activities or criminal record:

22 (i) poses a threat to the public interest of the state;

23 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or

24 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed  
25 business; or

26 (b) has been convicted of a felony ~~offense within 5 years of the date of application or is on~~  
27 ~~probation or parole or under deferred prosecution for committing a felony offense.~~

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~~(8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity applying for an all-beverages license may not, if the application were to be approved, own an interest in more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.~~

~~(b) If two or more individuals through business or family relationship share in the profits or liabilities of all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages licenses will be held unless the person's rights have been restored.~~

~~(9)(7)~~ (a) Except as specifically provided in this code relating to financial interests in licenses, nothing in this section applies or otherwise prohibits an applicant or licensee from obtaining personal financing from a licensed financial institution, taking advantage of consumer credit, or using a personal credit card to make purchases on behalf of a licensed entity if the applicant or licensee is reimbursed by the licensed entity within 90 days. An applicant or individual may obtain multiple transactions up to an aggregate maximum of \$100,000 with each individual transaction not to exceed \$25,000 to be used on behalf of the licensed entity.

(b) A licensee's use of short-term financing of 90 days or less from institutional lenders and noninstitutional lenders does not constitute an undisclosed ownership interest in the license.

(c) It is the intent of this subsection ~~(9)(7)~~ to facilitate the efficient administration of an entity licensed under this code.

~~(8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity applying for an all-beverages license may not, if the application were to be approved, own an interest in more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.~~

~~(b) If two or more individuals through a business or family relationship share in the profits or liabilities of all-beverages licenses, the aggregate number of licenses in which they share in the profits or liabilities may not exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages licenses will be held.~~

~~(c) An applicant applying for an all-beverages license and any individual of the applicant who must meet the requirements of subsection (2)(a) may not, if the application were to be approved, possess an ownership interest in more than the limit established in 16-4-205 for establishments licensed under this chapter~~

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1 for all-beverages sales. However, resort retail all-beverages licenses issued under 16-4-213 do not count  
2 toward this limit.

3 (d) An applicant and any individual of the applicant who must meet the requirements of subsection  
4 (2)(a) may not possess an ownership interest in an agency liquor store as defined in 16-1-106.

5 (e) Except as provided in subsection (9), an applicant for an on-premises consumption license or  
6 any member of the applicant's immediate family must be without financing from and may not have any affiliation  
7 to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an applicant's spouse may  
8 possess an ownership interest in one or more manufacturer licenses. This prohibition also applies to any  
9 individual of the applicant who must meet the requirements of subsection (2)(a).

10 (f) An applicant for an off-premises consumption license or any member of the applicant's  
11 immediate family must be without financing from and may not have any affiliation to a manufacturer, importer,  
12 bottler, or distributor of alcoholic beverages. This prohibition also applies to any individual of the applicant who  
13 must meet the requirements of subsection (2)(a).

14 (g) Except as provided in subsection (9), an applicant for a manufacturing, importing, or  
15 wholesaling license and any individual of the applicant who must meet the requirements of subsection (2)(a)  
16 may not possess an ownership interest in any establishment licensed under this chapter for retail alcoholic  
17 beverage sales.

18 (h) An applicant for a wholesale license and any individual of the applicant who must meet the  
19 requirements of subsection (2)(a) may not be a manufacturer of an alcoholic beverage or owned or controlled  
20 by a manufacturer of an alcoholic beverage.

21 (9) (a) A person with an ownership interest in a licensed brewery or licensed winery may hold  
22 complete ownership of up to a combined total of three retail licenses issued pursuant to 16-4-105 or 16-4-201.  
23 The owner of a retail license issued pursuant to 16-4-105 or 16-4-201 may hold complete ownership of brewery  
24 or winery licenses. The first of these licenses must be a colocated license.

25 (b) A person with an ownership interest in a licensed distillery may hold complete ownership of up  
26 to three retail licenses issued pursuant to 16-4-201. The owner of a retail license issued pursuant to 16-4-201  
27 may hold complete ownership of distillery licenses. The first of these licenses must be a colocated license.

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1 (c) A person with an ownership interest in a retail license issued pursuant to 16-4-105 may not  
2 also have an ownership interest in a distillery license.

3 (d) To hold both a manufacturing license and a retail license pursuant to this subsection (9), a  
4 licensee:

5 (i) must maintain both the manufacturing license and the retail license on the same premises for  
6 the first of these licenses, known as a colocated premises;

7 (ii) must have 100% of the same ownership between the manufacturing license and the retail  
8 license; and

9 (iii) must provide and serve through the retail license alcohol produced by other manufacturers that  
10 are not affiliated or financially interested, either directly or indirectly, in the conduct or operation of the business  
11 in which the license was issued pursuant to 16-4-105 and 16-4-201, or the licensed brewery, winery, or  
12 distillery.

13 (e) Colocated licenses may transfer beer manufactured, liquor distilled, or wine produced by the  
14 licensee between the colocated manufacturing license and the retail license without it being considered  
15 distributed or delivered as provided in this code.

16 (f) For the purposes of this code, the following definitions apply:

17 (i) "Colocated license" means a manufacturing license and a retail license owned completely by a  
18 licensee and that are operated at one premises.

19 (ii) "Colocated premises" means a premises where a manufacturing license and a retail license are  
20 both located."

21

22 **NEW SECTION. Section 11. Saving clause.** [This act] does not affect rights and duties that  
23 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

24

25 **NEW SECTION. Section 12. Effective date.** [This act] is effective July 1, 2023.

26 - END -