

1 HOUSE BILL NO. 305

2 INTRODUCED BY E. BUTTREY, K. ZOLNIKOV, L. JONES, M. HOPKINS, C. SPRUNGER

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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

28 given to each individual customer during a business day for consumption on the premises or in prepared

1           (1)(a) the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage  
2 against the retailer or the retailer's premises;

3           (2)(b) the brewer, beer importer, or wholesaler is under any contract with a retailer concerning future  
4 purchases or the sale of merchandise by one from or to the other; or

5           (3)(c) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler.

6           (2) A licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(10) is  
7 not subject to the limitations of this section for the licensed brewery's retail-licensed premises"

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9           **Section 5.** Section 16-3-244, MCA, is amended to read:

10           **"16-3-244. Beer advertising limitations.** ~~It~~ (1) Except as provided in subsection (2), it is lawful to  
11 advertise beer, as defined and regulated, subject to the restrictions on brewers and beer importers contained in  
12 16-3-241 of this code and subject to the following restrictions on retailers. A retail licensee may not display or  
13 permit to be displayed on the exterior portion or surface of the retailer's place of business or on the exterior  
14 portion or surface of any building of which the place of business is a part or on any premises adjacent to the  
15 place of business, whether any of the premises are owned or leased by the retailer, any sign, poster, or  
16 advertisement bearing the name, brand name, trade name, trademark, or other designation indicating the  
17 manufacturer, brewer, beer importer, wholesaler, or place of manufacture of any beer, unless it is on a  
18 marquee, board, or other space used for temporary advertisements and is not displayed for more than 10 days  
19 per display period.

20           (2) A licensed brewery holding complete ownership of a retail license pursuant to 16-4-401(10) is  
21 not subject to the restrictions in subsection (1) at any of the ~~separated~~ licensed premises for products  
22 manufactured by the licensed brewery."

23

24           **Section 6.** Section 16-3-311, MCA, is amended to read:

25           **"16-3-311. Suitable premises for licensed retail establishments.** (1) (a) A licensed retailer may  
26 use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The licensed  
27 retailer must demonstrate that it has adequate control over all alcoholic beverages to prevent self-service,  
28 service to underage persons, and service to persons who are actually or apparently intoxicated. Except as

1 department.

2 (3) (a) A distillery producing less than 25,000 gallons of product annually may deliver its product  
3 directly to a state agency liquor store if the distillery uses the distillery's own equipment, trucks, and employees  
4 to deliver the product. The amount of product delivered may not be less than a case. The department shall  
5 create an electronic reporting system for distilleries to record deliveries made under this subsection (3). Agency  
6 liquor stores must be invoiced by the department for product received from a distillery.

7 (b) A distillery delivering its product pursuant to this subsection (3) shall maintain records of each  
8 delivery, subject to inspection by the department.

9 (c) The department shall pay the distillery for any product delivered to an agency liquor store:

10 (i) the current freight rate; and

11 (ii) the distiller's current quoted price per case.

12 (d) For a licensed distillery holding complete ownership of a retail license pursuant to 16-4-  
13 401(10), liquor that is manufactured and sold at the colocated premises is not subject to the limitations imposed  
14 by subsection (3)(a) or the limitations and privileges of 16-4-312(3). Liquor manufactured and sold at the  
15 colocated premises does count toward production levels for tax purposes."

16

17 **Section 9.** Section 16-4-401, MCA, is amended to read:

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

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

24 (a) if the applicant is an individual:

25 (i) and the application is approved, the applicant will not possess an ownership interest in more  
26 than three establishments licensed under this chapter for all-beverages sales. However, resort retail all-  
27 beverages licenses issued under 16-4-213 do not count toward this limit.

28 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in

1 16-1-106;

2 (iii) except as provided in subsection (10), the applicant or any member of the applicant's  
3 immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of  
4 alcoholic beverages, except that an applicant's spouse may possess an ownership interest in one or more  
5 manufacturer licenses;

6 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
7 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance  
8 with all applicable laws of the state and local governments; however, nothing in this subsection (2)(a)(iv)  
9 authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax  
10 protestor when renewing the license;

11 (v) the applicant has not been convicted of a felony or, if the applicant has been convicted of a  
12 felony, the applicant's rights have been restored; and

13 (vi) the applicant is not under 19 years of age;

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

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

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

21 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
22 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a  
23 corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of  
24 subsection (8) apply.

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

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

27 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
28 applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the

1 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
2 for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet  
3 the requirements of subsection (2)(a).

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

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

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

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

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

17 (f) if the applicant is a limited liability company, all managing members and those members whose  
18 ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (2)(a). If  
19 no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of  
20 subsection (2)(a).

21 (3) In the case of a license that permits only off-premises consumption and subject to subsection  
22 (8), the department shall find in every case in which it makes an order for the issuance of a new license or for  
23 the approval of the transfer of a license that:

24 (a) if the applicant is an individual:

25 (i) and the application is approved, the applicant will not possess an ownership interest in more  
26 than three establishments licensed under this chapter for all-beverages sales;

27 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in  
28 16-1-106;

- 1 (iii) the applicant or any member of the applicant's immediate family is without financing from or  
2 any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;
- 3 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a  
4 felony, the applicant's rights have been restored;
- 5 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
6 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance  
7 with all applicable laws of the state and local governments; however, nothing in this subsection (3)(a)(v)  
8 authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax  
9 protestor when renewing the license; and
- 10 (vi) the applicant is not under 19 years of age;
- 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  
13 listed in subsection (3)(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 (3)(a).
- 16 (ii) the corporation is authorized to do business in Montana;
- 17 (c) if the applicant is a privately held corporation:
- 18 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
19 applicant listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the  
20 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
21 for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet  
22 the requirements of subsection (3)(a).
- 23 (ii) the corporation is authorized to do business in Montana;
- 24 (d) if the applicant is a general partnership, each partner must meet the requirements of  
25 subsection (3)(a);
- 26 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and  
27 all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the  
28 requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all

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

2 (f) if the applicant is a limited liability company, all managing members and those members whose  
3 ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (3)(a). If  
4 no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of  
5 subsection (3)(a).

6 (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or  
7 wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the  
8 issuance of a new license or for the approval of the transfer of a license that:

9 (a) if the applicant is an individual:

10 (i) except as provided in subsection (10), the applicant has no ownership interest in any  
11 establishment licensed under this chapter for retail alcoholic beverages sales;

12 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in  
13 16-1-106;

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

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

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

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

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  
26 listed in subsection (4)(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  
28 applicant listed in subsection (4)(a).

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

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

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

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

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

12 (iii) 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 (4)(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 (4)(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 (4)(a).

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

23 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)  
24 apply separately to each class of stock.

25 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant  
26 to 16-4-302.

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

- 1 (a) is a person whose prior financial or other activities or criminal record:  
2 (i) poses a threat to the public interest of the state;  
3 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or  
4 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed  
5 business; or  
6 (b) has been convicted of a felony offense within 5 years of the date of application or is on  
7 probation or parole or under deferred prosecution for committing a felony offense.

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

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

15 (9) (a) Except as specifically provided in this code relating to financial interests in licenses, nothing  
16 in this section applies or otherwise prohibits an applicant or licensee from obtaining personal financing from a  
17 licensed financial institution, taking advantage of consumer credit, or using a personal credit card to make  
18 purchases on behalf of a licensed entity if the applicant or licensee is reimbursed by the licensed entity within  
19 90 days. An applicant or individual may obtain multiple transactions up to an aggregate maximum of \$100,000  
20 with each individual transaction not to exceed \$25,000 to be used on behalf of the licensed entity.

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

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

25 (10) (a) A person with an ownership interest in a licensed brewery or licensed winery may hold  
26 complete ownership of up to a combined total of three retail licenses issued pursuant to ~~16-4-104~~ 16-4-105 or  
27 16-4-201. The owner of a retail license issued pursuant to ~~16-4-104~~ 16-4-105 or 16-4-201 may hold complete  
28 ownership of brewery or winery licenses. The first of these licenses must be a colocated license.

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

4           (c) A person ~~who holds a license with an ownership interest in a retail license~~ issued pursuant to  
5 ~~16-4-104 16-4-105~~ may not also ~~hold have an ownership interest in~~ a distillery license.

6           (d) To hold both a manufacturing license and a retail license pursuant to this subsection (10), a  
7 licensee:

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

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

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

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

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

20           (i) "Colocated license" means a manufacturing license and a retail license owned completely by a  
21 ~~person-licensee~~ and that are operated at one premises.

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

24  
25           NEW SECTION. Section 10. Saving clause. [This act] does not affect rights and duties that  
26 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
27

28           NEW SECTION. Section 11. Effective date. [This act] is effective July 1, 2023.