

HOUSE BILL NO. 211

INTRODUCED BY K. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING OFF-PREMISES BEER AND WINE LICENSES TO DELIVER BEER AND TABLE WINE; CREATING A THIRD-PARTY DELIVERY LICENSE FOR ALCOHOL; ALLOWING AN OFF-PREMISES RETAIL LICENSEE TO HAVE A THIRD-PARTY DELIVERY LICENSEE DELIVER BEER OR TABLE WINE; REQUIRING THE SALE OF ALCOHOL TO THE END CONSUMER; PROVIDING LICENSURE REQUIREMENTS; PROVIDING REQUIREMENTS FOR THE THIRD-PARTY DELIVERY LICENSEE; REVISING LAWS RELATING TO RESPONSIBLE SERVER TRAINING; PROVIDING FOR LICENSING BY THE DEPARTMENT OF REVENUE; PROVIDING FOR PAYMENT OF A FEE; PROVIDING RULEMAKING AUTHORITY; PROVIDING DEFINITIONS; AMENDING SECTIONS 16-4-115, 16-4-501, 16-4-1001, 16-4-1002, 16-4-1003, 16-4-1004, 16-4-1005, 16-4-1007, AND 16-4-1008, MCA; AND PROVIDING A DELAYED EFFECTIVE DATE."

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

NEW SECTION. Section 1. Third-party delivery license -- definitions. (1) The off-premises retail licensee shall sell the beer or table wine to the end consumer for personal use and not for resale. The third-party delivery licensee may not sell beer or table wine to the end consumer. The off-premises retail licensee must have the exclusive authority to determine which beer or table wine is available for delivery and set the prices for these beverages.

(2) (a) The department may issue a third-party delivery license to a third-party delivery applicant if the following requirements are met:

(i) the third-party delivery applicant meets the requirements for an off-premises retail licensee under 16-4-401 to hold a license; and

(ii) the third-party delivery applicant submits an application and pays the initial license fee as provided in 16-4-501.

(b) Third-party delivery licenses may be renewed annually by June 30 if:

1 (i) the third-party delivery licensee continues to meet the requirements for an off-premises retail
2 licensee under 16-4-401 to hold a license; and

3 (ii) the third-party delivery licensee submits a renewal form and the annual renewal fee as
4 provided in 16-4-501.

5 (3) A third-party delivery licensee may only deliver or facilitate the delivery of beer or table wine
6 through drivers who meet the following requirements:

7 (a) are an employee or an independent contractor of the third-party delivery licensee;

8 (b) are at least 21 years of age;

9 (c) have a valid driver's license or a state-issued identification;

10 (d) have not been convicted of a felony or a driving under the influence offense in the past 7 years;

11 and

12 (e) have completed a responsible server and sales training program or a delivery training program
13 under Title 16, chapter 4, part 10, prior to their first alcohol delivery.

14 (4) Drivers are subject to the penalties provided in Title 16, chapter 4, part 10.

15 (5) Any beer or table wine sold by an off-premises retail licensee for delivery by or through a third-
16 party delivery licensee must be removed from the off-premises retail licensee's licensed premises only during
17 the hours in which the off-premises retail licensee is permitted to sell alcoholic beverages. The delivery must be
18 completed within an hour after the time that the off-premises retail licensee is required to end sales of alcoholic
19 beverages.

20 (6) Any beer or table wine unable to be delivered for any reason must be returned to the licensed
21 premises of the off-premises retail licensee that sold the beer or table wine. The third-party delivery licensee
22 shall document and maintain a record of the delivery attempt. Drivers may not be compensated based on
23 whether a delivery of beer or table wine results in a completed delivery transaction.

24 (7) The person to whom the delivery is made must be at least 21 years of age. The driver shall use
25 an identification scanning software technology or an alternative approved by the department to verify the age of
26 the recipient at the time of delivery.

27 (8) Deliveries may not be made to anyone who is apparently or obviously intoxicated.

28 (9) The outer packaging containing the beer or table wine being delivered must clearly indicate

1 that the package contains an alcoholic beverage, unless one of the following conditions is met:

2 (a) the person delivering the order has personally retrieved and bagged or otherwise packaged the
3 beer or table wine for delivery; or

4 (b) the driver is notified through electronic or other means that the delivery order contains alcohol
5 and the recipient must be 21 years of age or older.

6 (10) Beer or table wine intended for delivery by a motor vehicle must be transported in the rear of
7 the motor vehicle and may not be within the immediate arm's length of the driver or within a separate cargo
8 area.

9 (11) Beer or table wine intended for delivery by bicycle must be in a closed compartment or
10 otherwise out of reach of the bicycle operator.

11 (12) A licensee under this section may not deliver or facilitate delivery of beer or table wine to the
12 following locations:

13 (a) a business licensed to sell alcoholic beverages at retail, with the exception of delivery to
14 individual guest rooms of a lodging facility that is also licensed to sell alcoholic beverages at retail;

15 (b) a residence hall located on the premises of an institution of higher education; or

16 (c) a property that does not have a permanent address that includes a street name and number.

17 (13) A licensee under this section that delivers or facilitates the delivery of alcoholic beverages shall
18 maintain books and records reflecting the date, time, address, and recipient of the alcohol delivery for each
19 delivery, the name and address of the person making the delivery, and the name and business address of the
20 off-premises retail licensee selling the alcoholic beverage. Records must be maintained either in hard copy or
21 electronic format for 3 years. Licensees shall make these books and records available to the department and its
22 investigators on reasonable notice from the department.

23 (14) An off-premises retail licensee may utilize the services of a third-party delivery licensee by
24 means of the telephone, the internet, a mobile application, or other electronic means to facilitate the ordering or
25 delivery of beer or table wine from inventory located at the off-premises retail licensee's licensed premises.

26 (15) An off-premises retail licensee is not subject to violations of this section that arise out of the
27 delivery of beer or table wine delivered by a third-party delivery licensee.

28 (16) A violation of this code by a third-party delivery licensee or its drivers subjects the third-party

1 delivery licensee to penalties as provided in 16-4-406.

2 (17) Nothing in this section may be construed to require a technology services company to obtain a
3 third-party delivery license if the company does not employ or contract with delivery drivers and instead
4 provides software or an application that connects consumers and off-premises retail licensees for the delivery
5 of beer or table wine from the off-premises retail licensee.

6 (18) A third-party delivery license is not required for a common carrier lawfully transporting or
7 shipping alcoholic beverages.

8 (19) The third-party delivery licensee shall maintain a general liability insurance policy in an amount
9 of no less than \$1 million for each occurrence with a \$2 million aggregate.

10 (20) The department may adopt rules to implement this section.

11 (21) As used in this section, the following definitions apply:

12 (a) "Third-party delivery license" means a license issued by the department to a third-party delivery
13 licensee for the delivery of beer or table wine.

14 (b) "Third-party delivery licensee" means a person who offers a service to deliver or facilitate the
15 delivery of, but not to buy or sell, beer or table wine in original packaging from an off-premises retail licensee
16 issued a license under 16-4-115 and enters into a written agreement with the off-premises retail licensee for the
17 purpose of delivering beer or table wine sold by the off-premises retail licensee.

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19 **Section 2.** Section 16-4-115, MCA, is amended to read:

20 **"16-4-115. Beer and wine licenses for off-premises consumption -- third-party delivery -- own**

21 **delivery for grocery stores.** (1) A retail license to sell beer or table wine, or both, in the original packages for
22 off-premises consumption may be issued only to individuals or entities qualified for licensure under 16-4-401. If
23 the premises proposed for licensing are operated in conjunction with another business, that business must be a
24 grocery store or drugstore licensed as a pharmacy. The number of licenses that the department may issue is
25 not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound
26 discretion, and the department may in the exercise of its sound discretion grant or deny an application for any
27 license or suspend or revoke any license for cause.

28 (2) On receipt of a completed application for a license under this section, accompanied by the

1 necessary license fee as provided in 16-4-501, the department shall request that the department of justice
2 make a background investigation of all matters relating to the application.

3 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
4 subsection (1), the department shall determine whether:

5 (a) the applicant is qualified to receive a license;

6 (b) the applicant's premises are suitable for the carrying on of the business; and

7 (c) the requirements of this code and the rules promulgated by the department are met and
8 complied with.

9 (4) License applications submitted under this section are not subject to the provisions of 16-4-203
10 and 16-4-207.

11 (5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in
12 original packaging.

13 (6) An off-premises retail licensee may use a third-party delivery licensee to deliver beer and table
14 wine as provided in [section 1].

15 (7) A retail licensee who qualifies for licensure under 16-4-401 as an off-premises retail licensee
16 that operates in conjunction with a grocery store or drugstore licensed as a pharmacy with a license to sell beer
17 and table wine in original packaging may apply to the department and pay a fee for an endorsement to, with the
18 licensee's own agents or employees who are 21 years of age or older, deliver beer and table wine in original
19 packaging. Deliveries under this subsection may be made only to a residential or commercial address."

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21 **Section 3.** Section 16-4-501, MCA, is amended to read:

22 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine
23 only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise
24 specified in this section, the fee is an annual fee and is imposed as follows:

25 (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for
26 sale within the state, \$500;

27 (ii) for each storage depot, \$400;

28 (b) (i) each license for selling and distributing beer, table wine, or sacramental wine at wholesale to

- 1 licensed retailers or table wine to agency liquor stores under 16-4-113, \$400; each winery, \$200;
- 2 (ii) for each subwarehouse and winery storage depot, \$400;
- 3 (c) each beer and wine retailer, \$400;
- 4 (d) (i) for a license to sell beer at retail for off-premises consumption only, \$200;
- 5 (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in
- 6 conjunction with beer, \$200;
- 7 (e) any unit of a nationally chartered veterans' organization, \$50.
- 8 (2) The permit fee under 16-4-301(1) is computed at the following rate:
- 9 (a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting
- 10 contests, other than those applied for pursuant to 16-4-301(1)(c); and
- 11 (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the
- 12 provisions of 16-4-301(1)(c).
- 13 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the
- 14 sale of all alcoholic beverages.
- 15 (4) Passenger carrier licenses must be issued on payment by the applicant of an annual license
- 16 fee in the sum of \$300.
- 17 (5) The annual renewal fee for:
- 18 (a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is \$200;
- 19 (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license; and
- 20 (c) a continuing care retirement community limited all-beverages license is \$500 for each license.
- 21 (6) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall
- 22 pay an annual license fee as follows:
- 23 (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities
- 24 and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans'
- 25 organization and \$400 for all other licensees;
- 26 (b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000
- 27 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be
- 28 licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and

1 \$500 for all other licensees;

2 (c) for each license in incorporated cities with a population of more than 5,000 and less than
3 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to
4 be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization
5 and \$650 for all other licensees;

6 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance
7 of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
8 boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other
9 licensees;

10 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated
11 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
12 boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles
13 of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations,
14 the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the
15 applicant. When the premises of the applicant to be licensed are situated within an incorporated town or
16 incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the
17 license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the
18 applicant.

19 (f) an applicant for the issuance of a resort retail all-beverages license shall pay a \$100,000
20 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another
21 location within the boundaries of the resort area or to another owner to be used at a location within the
22 boundaries of the resort area.

23 (7) The fee for one all-beverages license to a public airport is \$800. This license is
24 nontransferable.

25 (8) The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.

26 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under
27 16-4-303 is \$250.

28 (10) (a) The annual fee for a distillery is \$600.

1 (b) The annual fee for each distillery storage depot is \$400.

2 ~~(11)~~ The initial and annual fee for a third-party delivery license under [section 1] is \$1,000.

3 ~~(14)(12)~~The license fees provided in this section are exclusive of and in addition to other license fees
4 chargeable in Montana for the sale of alcoholic beverages.

5 ~~(12)(13)~~In addition to other license fees, the department may require a licensee to pay a late fee of 33
6 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date,
7 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the
8 licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1
9 year and 2 months after the licensee's anniversary date.

10 ~~(13)(14)~~All license and permit fees collected under this section must be deposited as provided in 16-2-
11 108."

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13 **Section 4.** Section 16-4-1001, MCA, is amended to read:

14 **"16-4-1001. Short title.** This part may be cited as the "Responsible Alcohol Sales, ~~and Service, and~~
15 Delivery Act"."

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17 **Section 5.** Section 16-4-1002, MCA, is amended to read:

18 **"16-4-1002. Legislative intent.** It is the intent of this part that retail establishments and manufacturers
19 licensed to sell or serve alcoholic beverages to the public and third-party delivery services licensed to deliver or
20 facilitate the delivery of alcoholic beverages to the public ensure that all licensees, ~~and their employees, and~~
21 independent contractors that sell, ~~or serve, or deliver~~ alcoholic beverages are appropriately trained to comply
22 with state law prohibiting the sale, ~~or service, or delivery~~ of alcoholic beverages to persons under 21 years of
23 age and to persons who are intoxicated. This part does not apply to special permits issued under 16-4-301."

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25 **Section 6.** Section 16-4-1003, MCA, is amended to read:

26 **"16-4-1003. Definition.** As used in this part, "licensee" means a person or entity licensed by the
27 department to sell alcoholic beverages at retail for either on-premises or off-premises consumption or to deliver
28 or facilitate the delivery of alcoholic beverages."

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Section 7. Section 16-4-1004, MCA, is amended to read:

"16-4-1004. Notification -- violation -- penalty. (1) A licensee shall certify annually on its license renewal form that the licensee is in compliance with the provisions of this part.

(2) A license renewal form that falsely includes information that the licensee, ~~and all their~~ employees, or independent contractors have been trained pursuant to this part is a violation of this code.

(3) If, after an investigation under 16-4-406, a licensee is determined to have violated subsection (2) of this section, the licensee must be assessed an administrative penalty under 16-4-406 or the penalty for false swearing under 45-7-202."

Section 8. Section 16-4-1005, MCA, is amended to read:

"16-4-1005. Licensees required to ensure training. A licensee shall:

(1) require each employee who is authorized to sell, serve, or deliver alcoholic beverages in the normal course of employment and the employee's immediate supervisor to successfully complete training to ensure compliance with state law regarding the sale, ~~and service,~~ or delivery of alcoholic beverages. ~~The~~ Except as provided in [section 1], training must be completed within 60 days of the employee's date of hire and every 3 years after the employee's initial training.

(2) maintain employment records verifying employee completion of the training required in subsection (1)."

Section 9. Section 16-4-1007, MCA, is amended to read:

"16-4-1007. Jurisdiction. The implementation and enforcement of any mandatory server, ~~and sales,~~ and delivery training programs in this state is under the exclusive authority and jurisdiction of the department."

Section 10. Section 16-4-1008, MCA, is amended to read:

"16-4-1008. Penalty. (1) A licensee found as a result of a routine check for compliance with 16-3-301, 16-6-304, ~~or 16-6-305,~~ or [section 1] to be out of compliance with 16-4-1005 shall pay a \$50 penalty for a first offense, a \$200 penalty for a second offense, and a \$350 penalty for a third offense in a 3-year period. The fine

1 must be paid to the department and deposited in the enterprise fund to the credit of the department for
2 administration of this part.

3 (2) The department shall consider the following as mitigating circumstances before taking an
4 action pursuant to 16-4-406 against a licensee who is not in compliance with the provisions of this part:

- 5 (a) the licensee's prior violation history;
6 (b) the licensee's good faith effort to prevent a violation;
7 (c) the existence of written policies governing employee conduct; and
8 (d) whether the evidence of a violation was based solely on the investigating authority creating an
9 opportunity for the violation rather than on complaints received or observed misconduct."
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11 **NEW SECTION. Section 11. Delivery training program -- rulemaking.** (1) The department shall
12 certify all delivery training programs that include the following:

- 13 (a) methods to identify and prevent sales to underage or intoxicated persons;
14 (b) strategies used by underage persons to obtain alcohol;
15 (c) acceptable forms of identification and procedures for checking identification;
16 (d) actions that can be taken to prevent an alcohol-related incident from occurring; and
17 (e) other requirements adopted by the department supported by statute or rule relating to the
18 delivery of alcoholic beverages.

19 (2) On receipt of a proposed delivery training program from the holder of a third-party alcohol
20 delivery license, the department has 30 business days to approve, deny, or request modifications to the
21 proposed training program.

22 (3) The department may adopt rules to implement this section.
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24 **NEW SECTION. Section 12. Codification instruction.** (1) [Section 1] is intended to be codified as
25 an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

26 (2) [Section 11] is intended to be codified as an integral part of Title 16, chapter 4, part 10, and the
27 provisions of Title 16, chapter 4, part 10, apply to [section 11].
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