



AN ACT GENERALLY REVISING LAWS RELATED TO THE DIRECT SHIPMENT OF TABLE WINE TO INDIVIDUAL CONSUMERS; PROVIDING FOR A DIRECT SHIPMENT ENDORSEMENT TO WINERIES FOR SELLING DIRECTLY TO INDIVIDUAL CONSUMERS IN MONTANA; PROVIDING REQUIREMENTS AND FEES FOR A WINERY WITH A DIRECT SHIPMENT ENDORSEMENT; PROVIDING PENALTIES; EXTENDING RULEMAKING AUTHORITY; REVISING THE CONNOISSEUR'S LICENSE TO ELIMINATE ITS APPLICATION TO WINE; AND AMENDING SECTIONS 16-1-411, 16-3-402, 16-3-411, 16-4-107, 16-4-901, 16-4-902, 16-4-903, 16-4-906, AND 16-6-301, MCA.

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

Section 1. Direct shipment endorsement for wineries -- definition. (1) A winery licensed or registered in Montana under 16-4-107 may sell and ship under a direct shipment endorsement up to 18 9-liter cases of table wine annually to an individual in Montana who is at least 21 years of age for the individual's personal use and not for resale.

(2) The shipment of table wine directly to an individual in Montana from a winery that does not possess a current direct shipment endorsement is prohibited and penalties may be assessed as provided in [section 3].

(3) The shipment of table wine directly to an individual in Montana under a direct shipment endorsement that is not conspicuously labeled as required under [section 2(2)] is prohibited and subject to penalties as provided in [section 3].

(4) For the purposes of [sections 2 and 3] and this section, a "direct shipment endorsement" is permission issued by the department to a winery licensed or registered pursuant to 16-4-107 under which the winery is allowed to sell and ship table wine directly to an individual in Montana.

Section 2. Requirements for direct shipment endorsements -- fee -- labeling -- taxes -- recordkeeping. (1) A winery licensed or registered under 16-4-107 shall before shipping table wine directly to an individual in Montana:

- (a) remit an annual direct shipment endorsement fee of \$50;
 - (b) submit to the department a written statement acknowledging that the winery will contract only with common carriers that agree that any delivery of table wine will be made only to an individual in Montana who is at least 21 years of age and who signs a form acknowledging receipt of the table wine; and
 - (c) receive from the department a direct shipment endorsement.
- (2) A shipment of table wine under [sections 1 through 3] must be conspicuously labeled with the words "Contains Alcohol: Signature of Person Age 21 or Older Required for Delivery".
- (3) (a) In addition to maintaining records required under 16-3-411 or 16-4-107, a winery with a direct shipment endorsement shall maintain records of any sales or shipments to an individual in Montana.
- (b) The winery shall, by the 15th day of each month following a month in which a shipment was made, report to the department in the manner and form prescribed by the department information on direct shipments in the preceding month and pay the tax required under 16-1-411(1)(a). The information reported to the department must include the names and addresses of the individual to whom the table wine was shipped and any other information that the department determines is necessary to verify that direct shipment of table wine conforms to the requirements of Title 16. Failure to pay taxes or file the information required in this subsection subjects the winery holding the direct shipment endorsement to the penalties and interest provided for in 15-1-216.
- (4) A winery with a direct shipment endorsement shall allow the department to perform an audit of the record of shipments made under [section 1]. The shipment records must be retained for 3 years.
- (5) If a winery with a direct shipment endorsement uses a bonded wine warehouse to fill table wine orders shipped to an individual in Montana, the winery shall provide written notice to the department of the name and the address of the bonded wine warehouse. The winery is responsible for compliance with [sections 1 through 3].

Section 3. Enforcement -- penalty -- rulemaking. (1) Subject to a right to a hearing and the appeal process provided by the Montana Administrative Procedure Act in Title 2, chapter 4, the department may enforce the requirements of [sections 1 through 3] by suspending or revoking the direct shipment endorsement or imposing a civil penalty not to exceed \$1,500.

- (2) A winery that has a direct shipment endorsement is considered to have consented to the jurisdiction

of the department or any other state agency and the Montana courts concerning enforcement of [sections 1 through 3] and related rules or regulations.

(3) The owner of a winery is guilty of a misdemeanor if the winery makes a direct shipment without having a direct shipment endorsement.

(4) The department may adopt rules to implement [sections 1 through 3].

Section 4. Section 16-1-411, MCA, is amended to read:

"16-1-411. Tax on wine and hard cider -- penalty and interest. (1) (a) A tax of 27 cents per liter is imposed on table wine, except hard cider, imported by a table wine distributor or the department and on table wine shipped directly by a winery with a direct shipment endorsement.

(b) A tax of 3.7 cents per liter is imposed on hard cider imported by a table wine distributor or the department.

(2) The tax imposed in subsection (1) must be paid by the winery with a direct shipment endorsement or a table wine distributor by the 15th day of the month following shipment by the winery with the direct shipment endorsement or sale of the table wine or hard cider from the table wine distributor's warehouse. Failure to file a tax return or failure to pay the tax required by this section subjects the winery with the direct shipment endorsement or the table wine distributor to the penalties and interest provided for in 15-1-216.

(3) The tax paid by a winery with a direct shipment endorsement or by a table wine distributor in accordance with subsection (2) must, in accordance with the provisions of 17-2-124, be distributed as follows:

(a) 69% to the state general fund; and

(b) 31% to the state special revenue fund to the credit of the department of public health and human services for the treatment, rehabilitation, and prevention of alcoholism and chemical dependency.

(4) The tax computed and paid in accordance with this section is the only tax imposed by the state or any of its subdivisions, including cities and towns.

(5) For purposes of this section, "table wine" has the meaning assigned in 16-1-106, but does not include hard cider."

Section 5. Section 16-3-402, MCA, is amended to read:

"16-3-402. Importation of wine -- records. (1) Except as provided in 16-3-411 and ~~16-4-901~~ [sections

1 through 3], all table wine manufactured outside of Montana and shipped into Montana must be consigned to and shipped to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse in Montana or subwarehouse in Montana. The distributor shall distribute the table wine from the warehouse or subwarehouse.

(2) The distributor shall keep records at the distributor's principal place of business of all table wine, including the name or kind received, on hand, sold, and distributed. The records may at all times be inspected by the department.

(3) Table wine that has been shipped into Montana in violation of this code must be seized by any peace officer or representative of the department and may be confiscated in the manner as provided for the confiscation of intoxicating liquor."

Section 6. Section 16-3-411, MCA, is amended to read:

"16-3-411. Winery. (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

- (a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;
- (b) sell wine it produces at wholesale to wine distributors;
- (c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the premises;
- (d) provide, without charge, wine it produces for consumption at the winery;
- (e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it produces;
- (f) obtain a special event permit under 16-4-301;
- (g) perform those operations and cellar treatments that are permitted for bonded winery premises under applicable regulations of the United States department of the treasury; ~~or~~
- (h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of the license; or
- (i) obtain a direct shipment endorsement to ship table wine as provided in [sections 1 through 3] directly to an individual in Montana who is at least 21 years of age.

(2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery directly to licensed retailers if the winery:

(i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;

(ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer; or

(iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:

(A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or bonded warehouse;

(B) individual shipments delivered by common carrier are limited to three cases a day for each licensed retailer; and

(C) the shipments delivered by common carrier do not exceed 4,500 cases a year.

(b) A winery making sales to retail licensees under the provisions of this subsection (2) is considered a table wine distributor for the purposes of collecting taxes on table wine, as provided in 16-1-411.

(c) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and retailers, the shipment must be:

(i) in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to Montana Licensee";

(ii) delivered to the premises of a licensed (i) table wine distributor or licensed retailer who is in good standing; and

(iii) signed for by the wine distributor or retailer or its employee or agent.

(d) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, on or before the 15th day of each month, in the manner and form prescribed by the department, make a return reporting the amount of wine that it shipped in the state during the preceding month, names and addresses of consignees or retailers, and other information that the department may determine to be necessary to ensure that distribution of table wines within this state conforms to the requirements of this code."

Section 7. Section 16-4-107, MCA, is amended to read:

"16-4-107. Winery license -- winery and importer registration. (1) (a) Wine, other than for personal consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be manufactured or directly distributed to retailers within the state only by a licensed winery and table wine may be

shipped directly by a winery with a direct shipment endorsement as provided in [section 1] to an individual in Montana who is at least 21 years of age. An application for a winery license must be accompanied by a fee of \$400, which constitutes the first annual license fee, and a licensee shall in each succeeding year pay an annual fee as provided in 16-4-501. Winery licensees located in Montana must hold the appropriate basic permit required by the United States department of the treasury and be qualified for a license in accordance with the provisions of 16-4-401(4). Winery licensees located in another state must hold the appropriate basic permit required by the United States department of the treasury and the appropriate license to manufacture wine from the state in which the winery is located and shall provide all other information required by the department.

(b) A winery located in Montana that is licensed to do business in the state shall, each quarter and in the manner and form prescribed by the department, report to the department the amount of wine manufactured or imported by the winery in the previous quarter and the winery's inventory. The department may at any time examine a winery's books.

(2) (a) A winery that is not located in the state or an importer of table wines that holds the appropriate license from the United States department of the treasury and that desires to distribute its table wines within this state through licensed table wine distributors ~~only~~ shall apply to the department of revenue for registration on forms to be prepared and furnished by the department.

(b) Each winery shall furnish the department with a copy of each container label currently used by the winery on its products imported into Montana. The department shall require the winery or importer to agree to furnish monthly and other reports concerning quantities and prices of table wine that it ships into the state, names and addresses of consignees, and any other information that the department may determine to be necessary to ensure that importation and distribution of table wines within this state conform to the requirements of this code.

(c) A winery or importer of table wines may not ship table wines into this state until the registration is granted by the department. The registration may be canceled or suspended by the department upon a finding after notice and hearing that the registrant has not complied with the terms of its registration.

(3) A winery that is not located in Montana, that holds the appropriate license from the United States department of the treasury, that is not already registered with the department, and that desires to sell and ship table wine directly to individuals in Montana who are at least 21 years of age shall apply to the department for registration pursuant to subsection (2) and for a direct shipment endorsement pursuant to [section 1]."

Section 8. Section 16-4-901, MCA, is amended to read:

"16-4-901. Connoisseur's licenses -- application -- fees. (1) A person in this state desiring to receive direct shipments of beer ~~only, wine only, or both beer and wine~~ from an out-of-state brewery ~~or winery~~ for the person's own consumption and not for resale shall file with the department an application for a connoisseur's license. The application must be accompanied by a registration fee in the amount of:

- ~~_____ (a) \$50 for a beer connoisseur's license;~~
- ~~_____ (b) \$50 for a wine connoisseur's license; or~~
- ~~_____ (c) \$100 for a beer and wine connoisseur's license.~~

(2) Each application for a license must be on a form prescribed by the department and must set forth the name of the applicant, the applicant's home or business address, proof that the applicant is at least 21 years of age, and other information that the department may require.

(3) A connoisseur's license expires on June 30 of each calendar year. A licensee may annually renew a license with the department by paying a \$25 renewal fee for a beer connoisseur's license ~~or a wine connoisseur's license and a \$50 renewal fee for a beer and wine connoisseur's license.~~

(4) The holder of a connoisseur's license may not sell beer ~~or wine~~ to the public.

(5) The department shall adopt rules to provide procedures for the application for and the provision of a connoisseur's license."

Section 9. Section 16-4-902, MCA, is amended to read:

"16-4-902. Payment of taxes -- authority of department. (1) A person holding a connoisseur's license shall pay, on June 30 and December 31, the beer ~~and wine~~ taxes imposed by Title 16, chapter 1, part 4, on beer ~~or wine~~ that is received by direct shipment from an out-of-state brewery ~~or winery~~ during the previous 6-month period.

(2) Each holder of a connoisseur's license shall file with the department a return, on a form provided by the department, and pay the tax for shipments received."

Section 10. Section 16-4-903, MCA, is amended to read:

"16-4-903. Direct shipment of beer ~~or wine~~ -- limitations. (1) Subject to the provisions of 16-4-901, the holder of a connoisseur's license may receive up to ~~144 bottles or 12 cases of wine or 288 bottles or~~ 288

~~bottles or 12 cases of beer from an out-of-state brewery or winery during a 12-month period for personal use and not for resale. A person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's license.~~

(2) A licensee under this section shall forward to the out-of-state brewery or winery a distinctive address label, provided by the department, clearly identifying any package that is shipped as a legal direct-shipment package to the holder of a connoisseur's license.

(3) A licensee shall report to the department, on June 30 and December 31, the total amount of beer or wine received from an out-of-state brewery or winery and pay all applicable excise taxes, as provided for in Title 16, chapter 1, part 4, imposed on the receipt of beer or wine during the previous 6 months."

Section 11. Section 16-4-906, MCA, is amended to read:

"16-4-906. Out-of-state brewery or winery registration -- limitation on shipping -- penalty. (1) Each out-of-state brewery or winery desiring to ship beer or wine to a person holding a connoisseur's license shall register with the department on forms provided by the department.

(2) The annual limit on out-of-state shipments to all connoisseur's license holders is:

- ~~— (a) 1,440 bottles or 60 cases of beer for breweries; and~~
- ~~— (b) 720 bottles or 60 cases of wine for wineries.~~

(3) For any shipment into the state that exceeds the limits provided for in subsection (2), the out-of-state brewery or winery may:

- (a) distribute the brewery's or winery's product through a licensed wholesale distributor;
- ~~(b) distribute through direct shipment to licensed retailers in accordance with the provisions of 16-3-411 if the winery is licensed pursuant to 16-4-107; or~~
- ~~(c)~~(b) distribute as a brewery in accordance with the provisions of 16-3-214.

(4) An out-of-state brewery or winery that violates the provisions of this section is subject to the penalties provided for in 16-6-302."

Section 12. Section 16-6-301, MCA, is amended to read:

"16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful. (1) Except as provided by this code, a person or the person's agents or employees may not:

- (a) expose or keep an alcoholic beverage for sale;
- (b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic beverage; or
- (c) in consideration of the purchase or transfer of any property or for any other consideration or at the time of the transfer of any property, give to any other person an alcoholic beverage.

(2) A person may not have or keep any alcoholic beverage that has not been purchased within the state of Montana.

(3) This code does not prohibit:

(a) a person entering this state from another state or foreign country from having in the person's actual physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state or foreign country;

(b) possession of beer produced for personal or family use and not intended for sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including the brewing of beer, for personal or family use, on premises other than those of the person brewing the beer;

(c) possession of beer ~~or wine~~ purchased from an out-of-state brewery ~~or winery~~ if the person possessing the beer ~~or wine~~ holds a connoisseur's license as provided for in 16-4-901 or possession of table wine purchased from a winery that has a direct shipment endorsement as provided in [section 1];

(d) possession of alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the manufacture of those alcoholic beverages;

(e) possession of proprietary or patent medicines or of any extracts, essences, tinctures, or preparations if the possession is authorized by this code; or

(f) possession by a sheriff or bailiff of alcoholic beverages seized under execution or other judicial or extrajudicial process or sales under executions or other judicial or extrajudicial process to the department or a licensee.

(4) Except as provided in this code, a person or the person's agents or employees may not:

- (a) attempt to purchase any alcoholic beverage;
- (b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or
- (c) in consideration of the sale or transfer of any property or for any other consideration or at the time of the transfer of any property, take or accept from any other person any alcoholic beverage."

Section 13. Codification instruction. [Sections 1 through 3] are intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 1 through 3].

- END -

I hereby certify that the within bill,
HB 0402, originated in the House.

Chief Clerk of the House

Speaker of the House

Signed this _____ day
of _____, 2013.

President of the Senate

Signed this _____ day
of _____, 2013.

HOUSE BILL NO. 402

INTRODUCED BY HUNTER, ARNTZEN, ARTHUN, AUGARE, BLASDEL, BOLAND, BRENDEN, D. BROWN, BUTTREY, CLARK, COOK, FITZPATRICK, GREEF, HILL, HOLLENBAUGH, INGRAHAM, JACKSON, MALEK, MCCHESENEY, MCNALLY, NEILL, O'HARA, OLSON, PIERSON, POMNICHOWSKI, PRIEST, RIPLEY, STEENBERG, THOMAS, TUTVEDT, WANZENRIED, WELBORN, WILLIAMS, WITTICH

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