

SENATE BILL NO. 203

INTRODUCED BY R. ZINKE

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A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING THE SALE AND FURNISHING OF BEER BY ON-PREMISES RETAILERS IN GROWLERS FOR OFF-PREMISES CONSUMPTION; AMENDING SECTIONS 16-1-106 AND 16-3-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person appointed to sell liquor and table wine as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted cereal grain; and

(B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

(b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

(6) "Beer importer" means a person other than a brewer who imports malt beverages.

(7) "Brewer" means a person who produces malt beverages.

(8) "Caffeinated or stimulant-enhanced malt beverage" means:

(a) a beverage:



- 1 (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has
2 been removed and replaced with distilled ethyl alcohol;
- 3 (ii) that contains at least 0.5% of alcohol by volume;
- 4 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
5 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and
- 6 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
7 taurine; or
- 8 (b) a beverage:
- 9 (i) that contains at least 0.5% of alcohol by volume;
- 10 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
11 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 12 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 13 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
14 taurine;
- 15 (v) for which the producer is required to file a formula for approval with the United States alcohol and
16 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 17 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 18 (9) "Community" means:
- 19 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 20 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
21 community for census purposes; and
- 22 (c) in a consolidated local government, the area of the consolidated local government not otherwise
23 incorporated.
- 24 (10) "Department" means the department of revenue, unless otherwise specified, and includes the
25 department of justice with respect to receiving and processing, but not granting or denying, an application under
26 a contract entered into under 16-1-302.
- 27 (11) "Growler" means any refillable, resealable container complying with federal law.
- 28 ~~(11)~~(12) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
29 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of
30 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

1 ~~(12)~~(13) "Immediate family" means a spouse, dependent children, or dependent parents.

2 ~~(13)~~(14) "Import" means to transfer beer or table wine from outside the state of Montana into the state
3 of Montana.

4 ~~(14)~~(15) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
5 caffeinated or stimulant-enhanced malt beverage.

6 ~~(15)~~(16) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
7 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts
8 or their products and with or without other malted cereals and with or without the addition of unmalted or prepared
9 cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome
10 products suitable for human food consumption.

11 ~~(16)~~(17) "Package" means a container or receptacle used for holding an alcoholic beverage.

12 ~~(17)~~(18) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
13 as fixed and determined by the department and in addition an excise and license tax as provided in this code.
14 In the case of sacramental wine, the wholesale price may not exceed the sum of the department's cost to acquire
15 the sacramental wine, the department's current freight rate to agency liquor stores, and a 20% markup.

16 ~~(18)~~(19) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains
17 50% of alcohol by volume.

18 ~~(19)~~(20) "Public place" means a place, building, or conveyance to which the public has or may be
19 permitted to have access and any place of public resort.

20 ~~(20)~~(21) "Retail price" means the price established by an agent for the sale of liquor to persons who do
21 not hold liquor licenses. The retail price may not be less than the department's posted price.

22 ~~(21)~~(22) "Rules" means rules adopted by the department or the department of justice pursuant to this
23 code.

24 ~~(22)~~(23) "Sacramental wine" means wine that is manufactured and sold exclusively for use as
25 sacramental wine or for other religious purposes.

26 ~~(23)~~(24) "Special event", as it relates to an application for a beer and wine special permit, means a short,
27 infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

28 ~~(24)~~(25) "State liquor warehouse" means a building owned or under control of the department for the
29 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

30 ~~(25)~~(26) "Storage depot" means a building or structure owned or operated by a brewer at any point in the

1 state of Montana off and away from the premises of a brewery, which building or structure is equipped with
 2 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
 3 permitted by this code.

4 ~~(26)~~(27) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler
 5 or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine
 6 distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer
 7 or table wine as permitted by this code.

8 ~~(27)~~(28) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
 9 cider.

10 ~~(28)~~(29) "Table wine distributor" means a person importing into or purchasing in Montana table wine for
 11 sale or resale to retailers licensed in Montana.

12 ~~(29)~~(30) "Warehouse" means a building or structure located in Montana that is owned or operated by a
 13 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine
 14 as permitted by this code.

15 ~~(30)~~(31) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation
 16 of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur
 17 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of
 18 alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in
 19 accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic
 20 beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in
 21 accordance with federal regulations are also wine."

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23 **Section 2.** Section 16-3-303, MCA, is amended to read:

24 "**16-3-303. Sale of beer by retailer for consumption off premises.** It ~~shall be~~ is lawful for ~~such an~~
 25 on-premises retailer to sell or furnish beer to the public in its original package or in growlers ~~with intent that such~~
 26 and the beer shall ~~must~~ be taken away from the premises of ~~such the~~ retailer for consumption off the premises
 27 of ~~such the~~ retailer. Growlers may not be filled in advance of sale and may be furnished by the consumer."

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29 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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