

ORIGINAL HOUSE
BILL NO. HB0030

ENROLLED ACT NO. 28, HOUSE OF REPRESENTATIVES

SIXTY-THIRD LEGISLATURE OF THE STATE OF WYOMING
2016 BUDGET SESSION

AN ACT relating to the general revision of laws; amending archaic and obsolete provisions; repealing fully executed or otherwise archaic and obsolete provisions; and providing for an effective date.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 12-1-101(a)(iii)(E), (iv), (ix) and (xvii), 12-1-102(b), 12-2-201(a)(intro), (ii), (b) through (e), (g)(intro) and (iii), 12-2-202(a)(intro), 12-2-203(g), 12-2-301(a), 12-2-302, 12-2-303(b), 12-2-304 through 12-2-306, 12-2-502, 12-2-504, 12-3-101(a), (d) and (e), 12-3-102, 12-4-101(c), 12-4-102(c), 12-4-103(c), 12-4-104(d), 12-4-301(b), 12-4-407(a) and (c), 12-4-412(b)(ii), 12-5-202, 12-5-402(c), 12-5-405, 12-6-101(a), 12-7-102, 12-7-103, 12-7-201(c) through (e), 12-9-110 and 35-1-627 are amended to read:

12-1-101. Definitions.

(a) As used in this title:

(iii) "Club" means any of the following organizations:

(E) A social club with more than one hundred (100) bona fide members who are residents of the county in which it is located, owning, maintaining or operating club quarters, incorporated and operating solely as a nonprofit corporation under the laws of this state and qualified as a tax exempt organization under the Internal Revenue Service Code and having been continuously operating for a period of not less than one (1) year. The club shall have had during this one (1) year period a bona fide membership paying dues of at least twenty-five dollars

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(\$25.00) per year as recorded by the secretary of the club, quarterly meetings and an actively engaged membership carrying out the objects of the club. A social club shall, upon applying for a license, file with the licensing authority and the ~~commission~~-division, a true copy of its bylaws and shall further, upon applying for a renewal of its license, file with the licensing authority and the ~~commission~~-division a detailed statement of its activities during the preceding year which were undertaken or furthered in pursuit of the objects of the club together with an itemized statement of amounts expended for such activities. Club members, at the time of application for a limited retail liquor license pursuant to W.S. 12-4-301, shall be in good standing by having paid at least one (1) full year in dues;

(iv) ~~"Commission"~~-"Division" means the Wyoming liquor division within the department of revenue created under W.S. 12-2-106;

(ix) "Licensing authority" means the governing body of an incorporated city, town or county in Wyoming with the responsibility to issue, control and administer a particular license, or the ~~commission~~-division;

(xvii) "Wholesaler" means any person except the ~~commission~~-division, who sells any alcoholic or malt beverage to a retailer for resale;

12-1-102. Application of provisions.

(b) Nothing in this title prohibits a liquor supplier operating under a governmental permit or tax license from selling his product to the ~~commission~~-division or delivering products at points not within the state of

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Wyoming after licenses are secured as required by the ~~commission~~division.

12-2-201. Wholesale license for sale of malt beverages only; fee.

(a) Except as otherwise provided in paragraph (ii) of this subsection a wholesale license authorizing the sale of malt beverages only may be granted by the ~~commission~~division to microbreweries and malt beverage wholesalers resident within this state. Wholesale licensees have the exclusive right to sell malt beverages at wholesale. Any qualified person desiring a wholesale license shall apply to the ~~commission~~division on forms to be provided and pay a license fee of two hundred fifty dollars (\$250.00) annually in advance. A wholesale license issued under this subsection shall be subject to the following:

(ii) The ~~commission~~division may issue a temporary wholesale license under this subsection to a brewery or malt beverage importer if a current licensee who has been granted distribution rights for a brand in a designated sales territory is unable to service the territory as a result of the loss of his license, bankruptcy or insolvency, and the loss of license, bankruptcy or insolvency is not the result of action by the brewery or malt beverage importer that is prohibited under the franchise agreement. A temporary license under this paragraph may be issued for a period not to exceed one (1) year and shall be limited to the sale of products in the designated territory;

(b) Each applicant shall submit to the ~~commission~~division a statement under oath designating clearly the geographical territory within which the applicant will sell

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and deliver malt beverages to qualified retail liquor and malt beverage licensees or permittees only. The territory is to be that designated by the brewer or brewer's authorized agent whose product the applicant sells. The application shall state that malt beverages sold by the applicant may be purchased by all retail liquor licensees or malt beverage permittees, and that the applicant will maintain a warehouse and delivery facilities within the territory designated. This subsection does not apply to a licensed malt beverage wholesaler when there has been no territorial designation of a brand by a brewer or the brewer's authorized agent to another licensed wholesaler. The ~~commission~~-division may authorize a licensed wholesaler to annually purchase not more than one hundred fifteen (115) gallons of any unassigned brand. A retail liquor licensee or malt beverage permittee shall purchase all malt beverages for retail sale only from a Wyoming wholesale malt beverage licensee.

(c) A malt beverage wholesaler may sell to or purchase from another malt beverage wholesaler only those products the purchasing wholesaler is licensed to sell within his designated territory. A copy of the invoice of the transaction shall be submitted to the ~~Wyoming liquor commission~~-division by the seller. State excise tax shall be reported and paid by the licensed malt beverage wholesaler who has imported the products into the state.

(d) The ~~commission~~-division may grant the number of licenses it deems appropriate and at points within the state as it may select.

(e) All Wyoming breweries and all malt beverage wholesalers shall be under the direct supervision of the

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~~commission~~-division and subject to all the provisions of this title and the rules and regulations of the department.

(g) Notwithstanding W.S. 12-2-203, the ~~commission~~-division:

(iii) The ~~commission~~-division shall not grant a license for a brewery and a microbrewery to the same producer.

12-2-202. Sales by railroads and chartered transportation services; limited transportation liquor license; fees; chartered transportation services defined.

(a) The ~~commission~~-division may authorize sales by railroads and by any charter transportation service. Under the authority of a limited transportation liquor license, railroads and chartered transportation services may sell alcoholic liquor or malt beverages when moved into and through the state in dining cars, club cars, observation cars and pullman cars attached to trains or in the passenger compartment of a chartered transportation vehicle. Upon application, the ~~commission~~-division may issue a limited transportation liquor license for each scheduled train or chartered transportation vehicle upon which alcoholic liquor or malt beverages are to be sold, subject to the following terms and maximum fees:

12-2-203. Manufacturing and rectifying; importing and industry representatives; licensing; fees.

(g) The local licensing authority may issue to the holder of a manufacturer's license under subsection (a) of this section who is a federally licensed distiller or rectifier, a satellite manufacturer's permit which allows

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the permittee to sell its manufactured product at not more than one (1) satellite location within Wyoming separate from its manufacturing site under the original permit. All products sold at a manufacturer's satellite location shall be obtained through the ~~commission~~division. The satellite manufacturer's permit may be issued on application to the appropriate licensing authority. The local licensing authority may require a public hearing and the payment of an additional permit fee not to exceed one hundred dollars (\$100.00). The satellite manufacturer's permit shall be subject to the terms and conditions of W.S. 12-4-106, the schedule of operating hours provided in W.S. 12-5-101 and the dispensing room provisions pursuant to W.S. 12-5-201.

12-2-301. Generally.

(a) The ~~commission~~division is the exclusive wholesale distributor and seller of alcoholic liquor within Wyoming. It is granted the sole right to sell alcoholic liquors at wholesale, and no licensee or permittee who is granted the right to sell, distribute or receive alcoholic liquors at retail shall purchase any alcoholic liquors from any source other than the ~~commission~~division, unless otherwise expressly authorized by state law. Any out-of-state shipment of alcoholic liquor or malt beverage into this state is prohibited unless otherwise expressly authorized by state law.

12-2-302. Collection of excise taxes; disposition of revenue and fees.

(a) The ~~commission~~division shall collect all excise taxes provided by this title relating to alcoholic and malt beverages for deposit into the general fund.

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(b) All other revenue and fees collected by the ~~commission~~-division shall be deposited into the state treasury to the credit of the enterprise fund except as otherwise provided by law. The legislature shall authorize expenditures as necessary to defray the administrative expenses of the ~~commission~~-division, including salaries, office expenses and general expenses for the enforcement of their duties and sufficient funds to defray the cost of alcoholic liquor purchases and attendant expenses as provided by W.S. 9-4-205(d).

12-2-303. Purchase and sale of alcoholic liquors; shortages.

(b) In the case of a shortage in the supply of any alcoholic liquor, the ~~commission~~-division may apportion its available supply among the licensees in an equitable manner.

12-2-304. Inspections and examinations; failure to permit entry.

(a) The ~~commission~~-division, through its employees or agents, may enter and inspect at any time every place of business wherein malt or alcoholic beverages are being sold, stored or kept by any licensee or permittee.

(b) The ~~commission~~-division, through its employees or agents, may examine the records, books of account and stock of malt and alcoholic beverages of retailers, wholesalers and licensees.

(c) If any licensee refuses to permit the entry of an agent of the ~~commission~~-division to his place of business or storage place for the purpose of inspection, his license

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may be revoked as provided by law. Entry for purposes of inspection is authorized only during open business hours unless it is in the presence of the licensee or his duly authorized representative or unless the officer making entry does so under court order or has reasonable grounds to believe that evidence of any violation of this title is within the place to be entered.

12-2-305. Sales to violators prohibited; hearing and review.

Whenever any licensee is convicted of willfully violating any provision of this title, upon satisfactory proof of the conviction, the ~~commission~~division may, after notice and hearing, refuse to sell alcoholic beverages to the licensee. The administrative proceeding shall be conducted as a contested case before a hearing examiner of the office of administrative hearings, who shall recommend a decision to the ~~commission~~division. Judicial review, if any, shall be from the decision of the ~~commission~~division and in accordance with the provisions of the Wyoming Administrative Procedure Act.

12-2-306. Sales to licensees failing to pay sales tax prohibited; hearing and review.

Upon certification by the department of revenue that any licensee is sixty (60) or more days delinquent in paying sales taxes, the ~~liquor commission~~division shall not sell alcoholic beverages to the licensee or its operator until the department of revenue certifies that the licensee has paid all sales taxes owed. Upon receipt of certification, the ~~commission~~division shall notify the issuing licensing authority of the delinquency. The licensee shall be allowed a hearing before the state board of equalization as

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provided by the Wyoming Administrative Procedure Act if the licensee feels aggrieved by any action taken under this section.

12-2-502. Sale of beer kegs.

No licensee shall sell beer kegs unless that licensee affixes an identification label or tag to each beer keg. An identification label or tag provided by the ~~commission~~ division shall consist of paper, plastic, metal or another durable material that is not easily damaged or destroyed. Identification labels may contain a nonpermanent adhesive material in order to apply the label directly to an outside surface of a beer keg at the time of sale. Identification tags shall be attached to beer kegs at the time of sale with nylon ties or cording, wire ties or other metal attachment devices, or another durable means of tying or attaching the tag to the beer keg. The identification information contained on the label or tag shall include the licensee's name, address and telephone number, and a unique beer keg number assigned by the licensee. A prominently visible warning that intentional removal or alteration of the label or tag is a criminal offense shall be placed on the tag. Upon return of a beer keg to the licensee that sold the beer keg and attached the identification label or tag, the licensee shall be responsible for the complete and thorough removal of the entire identification label or tag, and any adhesive or attachment devices on the label or tag. The identification label or tag shall be kept on file with the licensee for not less than ninety (90) days after the date of return.

12-2-504. Access to records.

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A licensee required to retain records under W.S. 12-2-502 or 12-2-503(b) shall make the records available during regular business hours for inspection by a peace officer or the ~~commission~~division.

12-3-101. Excise tax to be paid; limitation on liquor or malt beverage importation; penalties.

(a) An excise tax is assessed and shall be collected by the ~~commission~~division equal to three-fourths of one cent (\$.0075) per one hundred (100) milliliters (3.4 ounces) or fraction thereof on wine, two and one-half cents (\$.025) per one hundred (100) milliliters (3.4 ounces) or fraction thereof on spirituous liquors and one-half cent (\$.005) per liter (33.8 ounces) or fraction thereof on malt beverages. The appropriate excise tax shall be collected on all alcoholic or malt beverages sold, offered for sale or use in this state.

(d) No person shall, without authorization from the ~~commission~~division or by law, personally transport alcoholic liquor or malt beverages into Wyoming for sale, use or consumption in the state when the applicable state excise tax has not been paid. No person shall import or transport at any given time more than three (3) liters of alcoholic liquor excluding wine, nine (9) liters of wine or five (5) gallons of malt beverage for the personal use of the possessor into Wyoming if the applicable state taxes have not been paid. This subsection shall not apply to a person importing manufactured wine in accordance with the provisions of W.S. 12-2-204.

(e) Any person importing or transporting alcoholic liquor in violation of subsection (d) of this section is guilty of a misdemeanor. All alcoholic liquor or malt

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beverages illegally imported or transported shall be forfeited and delivered to the ~~commission~~division for disposition as inventory stock.

12-3-102. Confiscation authorized; disposition; when seizure permitted.

(a) When an authorized inspector discovers alcoholic liquors or malt beverages upon which excise taxes have not been paid in the possession of a licensee, he shall take possession of and hold the alcoholic liquors or malt beverages as evidence against the offender. If the offender is convicted of a violation of W.S. 12-3-101, the court shall order that the untaxed liquor or beverage be delivered to the ~~commission~~division, if merchantable, where it will be added to its stock and sold in the usual course of business. If the liquors or beverages are determined to be nonmerchantable, the court shall order their destruction.

(b) Whenever an inspector, agent or employee of the ~~commission~~division or any peace officer of the state lawfully discovers alcoholic liquors or malt beverages which have been unlawfully imported or transported, he may seize the alcoholic liquor or malt beverage and packages in which they are contained for use as evidence and shall not be removed from state control upon writ of replevin or other like process.

12-4-101. Authority of cities, towns and counties; population figures; number of available licenses and permits; assessment and payment of fees.

(c) Population figures and estimates required by subsection (b) of this section shall be furnished to the

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appropriate licensing authorities within the state by the department of administration and information using population estimates from the United States bureau of the census. The maximum number of licenses and permits available for issuance by a licensing authority pursuant to the population formula provided by W.S. 12-4-201 and 12-4-413, shall be certified and distributed by the ~~commission~~division.

12-4-102. Application for licenses and permits; contents; signature and verification.

(c) Corporate and limited liability company licensees and permittees shall advise the licensing authority within thirty (30) days in writing of any change in the information in the application required by ~~paragraphs~~paragraph (a)(iv) or (v) of this section. The licensing authority shall provide the ~~commission~~division a copy of a notification of change.

12-4-103. Restrictions upon license or permit applicants and holders; license limitation per person.

(c) Except as provided in subsection (d) of this section, a license or permit authorized by this title shall not be renewed if the licensee or permittee did not, during the previous one (1) year term of the license or permit, purchase at least five hundred dollars (\$500.00) of alcoholic or malt beverages or a combination thereof from the ~~commission~~division or any authorized malt beverage wholesaler. A retail liquor license shall not be renewed if the licensee did not, during the previous one (1) year term of the license, purchase at least two thousand dollars (\$2,000.00) of alcoholic or malt beverages or a combination

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thereof from the ~~commission~~division or any authorized malt beverage wholesaler.

12-4-104. Publication of notice; grant or denial; renewal preference; copy of application and notice to division; judicial review.

(d) When any application is filed with a licensing authority, the licensing authority shall immediately forward a copy of the application to the ~~commission~~division. No licensing authority shall approve or deny an application until the ~~commission~~division has certified the application is complete pursuant to this subsection. All applications shall be deemed to be certified unless objection is made by the ~~commission~~division within ten (10) working days after receipt of the application. Upon approval or denial of an application, the licensing authority shall promptly notify the ~~commission~~division.

12-4-301. Sales by clubs; license fees; petition; license restrictions.

(b) At least fifty-one percent (51%) of the membership of a social club as defined by W.S. 12-1-101(a)(iii)(E) shall sign a petition indicating a desire to secure a limited retail liquor license. The form of the petition shall be prescribed by the ~~commission~~division and shall include the residence address of each member signing the petition.

12-4-407. Restaurant liquor license; authorized.

(a) Restaurants as defined by W.S. 12-1-101(a)(xiv) may be licensed by the appropriate licensing authority in counties, cities and towns under a restaurant liquor

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license. In addition to the application requirements required by this title, the license applicant shall submit a valid food service permit upon application. When the total dollar amount of wholesale purchases from the ~~liquor commission~~-division of liquor in a county is greater than fifty (50) times the county population, then population formulas have no application to issuance of restaurant liquor licenses within the county.

(c) After the maximum number of appropriate licenses has been certified by the ~~commission~~-division, the number of restaurant liquor licenses issued shall not exceed fifty percent (50%) of the number of retail liquor licenses allowable under W.S. 12-4-201(d), or two (2), whichever is greater.

12-4-412. Microbrewery and winery permits; authorized; conditions; dual permits and licenses; satellite winery permits; direct shipment of wine; fees.

(b) The local licensing authority:

(ii) May allow the sale of other wines under a winery permit for on-premises consumption when obtained from the ~~commission~~-division;

12-5-202. Storage outside licensed premises prohibited; exception.

A retail licensee shall not store alcoholic liquor or malt beverages outside of the licensed premises unless he files with the ~~commission~~-division a written statement that he stores alcoholic liquors or malt beverages in a place other than his place of business and states the exact location of the storage place.

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12-5-402. Furnishing of money and products; payment in full for malt beverages; credit for alcoholic liquor; credit deficiencies.

(c) The ~~commission~~division may grant credit to retailers when purchasing alcoholic liquor for a period not to exceed four (4) days from date of shipment. Payments by mail for credit shipments shall be postmarked within twenty-four (24) hours of the receipt of the shipment by the retailer. The ~~commission~~division may seize and sell all stocks of liquor of the retailer to satisfy any credit balance. Any deficiency constitutes a lien on any proceeds received through transfer of the license or permit. If a retailer defaults in payment for a shipment under this section, no further shipments shall be made to him for a period of one (1) year except on a C.O.D. basis.

12-5-405. Sale of alcoholic liquor.

Industry representatives shall not sell or attempt to sell any alcoholic liquor within Wyoming, except to the ~~commission~~division. Any violation of this section is a misdemeanor.

12-6-101. Sale or possession prohibited; when possession unlawful; public drunkenness; falsification of identification; penalty; prima facie identification as defense.

(a) Any person who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic liquor or malt beverage to any person under the age of twenty-one (21) years, who is not his legal ward, medical patient or member of his own immediate family, is guilty of a

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misdemeanor. This subsection does not apply to sales by the ~~commission~~division or a wholesaler to a licensee under this title.

12-7-102. Suspension of license when revocation inadvisable.

In a proceeding for revocation of a liquor license and when a licensee is found guilty of violating W.S. 12-1-101 through 12-8-301, the district court or the ~~commission~~division may, if it appears inadvisable to revoke the license, suspend the license for a period not to exceed the balance of the term for which the license was issued and the suspension shall not, of itself, disqualify the license holder for renewal at the end of the license term.

12-7-103. Suspension of license by licensing authorities for failure to pay sales tax.

A local licensing authority may suspend any license issued under this title if the licensee fails to pay sales taxes and the ~~commission~~division has ceased sales of alcoholic liquor to the licensee pursuant to W.S. 12-2-306. The licensee may appeal license suspension to the district court in the manner specified under W.S. 12-4-104(f) and the appeal proceedings shall be in accordance with the Wyoming Rules of Appellate Procedure. The suspension shall remain in effect pending a decision by the appellate court.

12-7-201. Civil action; administrative and judicial proceedings; disposition of liquors.

(c) The provisions of this section are cumulative and shall not be construed as preventing the ~~commission~~

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division from revoking a liquor license in any case authorized by law.

(d) The ~~commission~~division may revoke any license or permit issued under this title for violation of any of the rules and regulations promulgated by the department pursuant to this title or for violation of any of the provisions of this title. Revocation proceedings initiated by the ~~commission~~division shall be conducted as a contested case under the Wyoming Administrative Procedure Act before a hearing examiner of the office of administrative hearings, who shall recommend a decision to the ~~commission~~division. The decision of the ~~commission~~division shall be subject to judicial review under W.S. 16-3-114 except that the review shall not operate to stay a revocation order of the ~~commission~~division during the pendency of the district court proceeding or during a later appeal to the supreme court. Should the license of a defendant expire during the pendency of an appeal in any of the courts of this state, no new or renewal license shall be granted by the licensing authority to the defendant or any other person pending the outcome of the appeal.

(e) Upon the revocation of a liquor license or permit, all alcoholic liquors in the possession of the license holder and which are in merchantable condition shall be delivered to the ~~commission~~division which shall reimburse the license holder for the value thereof at its then regular wholesale prices. All malt beverages and nonmerchantable alcoholic liquors shall be disposed of at the direction of the ~~commission~~division.

12-9-110. Discontinuance of production or distribution.

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Notwithstanding W.S. 12-9-105, 12-9-108 and 12-9-109, a manufacturer may terminate, cancel, not renew or discontinue an agreement upon not less than thirty (30) days prior written notice if the supplier discontinues production or discontinues distribution throughout this state of all the brands sold by the manufacturer to the distributor. Nothing in this act shall prohibit a manufacturer, upon not less than thirty (30) days notice, to completely discontinue the distribution throughout this state of any particular brand or package of malt beverage. This section does not prohibit a manufacturer from conducting test marketing of a new brand of malt beverage or from conducting the test marketing of a brand of malt beverage which is not currently being sold in this state, provided that the manufacturer has notified the commission division in writing of its plans to test market. The notice shall describe the market area in which the test shall be conducted, the name or names of the distributors who will be selling the malt beverage, the name or names of the brand of malt beverage being tested, and the period of time during which the testing will take place. A market testing period shall not exceed eighteen (18) months.

35-1-627. Examination of accounts.

The governing body of any entity receiving state funds under this act shall not less than every two (2) years cause to be made an audit or other oversight of the financial affairs and transactions of all funds and activities of the entity in accordance with W.S. 16-4-121(b) and (c) and 16-4-122. Costs of the audit or other oversight shall be borne by the entity. Copies of audit reports or other reports shall be submitted to the division ~~and the director of the state department of audit~~ upon completion. The director of the state department of

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audit ~~shall adopt rules for audits and~~ may examine the accounts of any entity receiving state funds under this act. The legislative service office may audit the accounts of any entity. These accounts shall be maintained in a manner to guarantee confidentiality of the patient's identity. The state auditor and treasurer shall not disburse any state money to any entity refusing access to its accounts and records for the purposes of this section.

Section 2. W.S. 28-5-101(c) is repealed.

Section 3. This act is effective July 1, 2016.

(END)

Speaker of the House

President of the Senate

Governor

TIME APPROVED: _____

DATE APPROVED: _____

I hereby certify that this act originated in the House.

Chief Clerk