

House BILL NO. 554

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INTRODUCED BY

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A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO SMALL BREWERIES, HOME BREWING, AND IN-STATE BREWERIES; AUTHORIZING THE RETAIL SALE OF BEER AND MALT BEVERAGES BY SMALL BREWERIES; PROHIBITING GAMBLING AND ESTABLISHING HOURS OF OPERATION IN A SMALL BREWERY LICENSED FOR RETAIL BEER SALES; PROVIDING THAT A LICENSE FOR RETAIL SALE OF BEER AT A BREWERY MAY BE HELD IN CONJUNCTION WITH OTHER LICENSES ISSUED UNDER TITLE 16, CHAPTER 4; PROVIDING FOR THE ADMINISTRATION OF THE LICENSE; AUTHORIZING HOME BREWING THAT MEETS THE REQUIREMENTS OF FEDERAL LAW; CLARIFYING THAT IN-STATE BREWERS ARE REQUIRED TO HAVE A LICENSE EVEN IF THEY MAKE NO IN-STATE SALES OF BEER; AND AMENDING SECTIONS 16-3-201, 16-3-213, 16-3-242, 16-4-101, 16-4-401, 16-4-501, 16-6-301, 23-5-176, 23-5-306, 23-5-502, AND 23-5-603, MCA."

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

**NEW SECTION. Section 1. Microbreweries -- retail sale of beer or malt beverages at brewery -- gambling prohibited.** (1) A licensed brewer who manufactures at least 300 barrels but not more than 20,000 barrels of beer a year, upon payment of the annual license fee of \$250, must be licensed by the department for retail sales of beer at the brewery for on-premises or off-premises consumption. The department may deny a license or revoke a license if:

- (a) gambling has occurred on the premises;
- (b) the licensee has been convicted of illegal sales of beer or other violation of this code; or
- (c) the licensee is no longer a qualifying brewer.

(2) The limit on retail licenses established in 16-4-105 does not apply to the issuance of licenses under this section.

(3) An otherwise qualified applicant may be granted a license under this section even if the applicant is licensed under the provisions of 16-4-105, 16-4-201, 16-4-202, 16-4-208, and 16-4-209. A licensee is not disqualified by reason of holding a license under this section for licensure under 16-4-105, 16-4-201, 16-4-202, 16-4-208, and 16-4-209.



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INTRODUCED BILL

1 (4) (a) A brewery licensed for retail sale of beer under this section is prohibited from being licensed  
2 for gambling under Title 23, chapter 5.

3 (b) A license issued under this section may not be amended to allow the holder to sell wine under  
4 16-4-105.

5 (c) A brewery licensed under this section may not conduct retail sales of beer before 11 a.m. or  
6 after 11 p.m.

7 (5) A licensee may sell malt beverages at retail for on- or off-premises consumption. Malt  
8 beverages may be sold in an unpasteurized form directly to a consumer for consumption off the premises  
9 and may be sold in an unpackaged form in which a consumer supplies the container for the malt beverage.

10 (6) An additional license fee may not be imposed on a brewery providing, without charge, its own  
11 products on its licensed premises for consumption on the premises.

12 (7) This section does not prohibit a brewer located outside of Montana from shipping and selling  
13 beer directly to a wholesaler in this state under the provisions of 16-3-230.

14 (8) The provisions of subsection (3) of this section do not apply to a licensee who also holds a  
15 license under 16-4-105, 16-4-201, 16-4-202, 16-4-208, or 16-4-209.  
16

17 **Section 2.** Section 16-3-201, MCA, is amended to read:

18 **"16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than**  
19 **prescribed unlawful -- personal brewing.** (1) ~~It shall be~~ is unlawful to manufacture, import, sell or dispose  
20 of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater ~~than~~  
21 ~~herein prescribed~~ than authorized or other than in the manner permitted by this code.

22 (2) Nothing in this code prohibits the manufacture of beer for personal or family use and not for  
23 sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including  
24 the brewing of beer, for personal or family use, on premises other than those of the person brewing the  
25 beer."  
26

27 **Section 3.** Section 16-3-213, MCA, is amended to read:

28 **"16-3-213. Brewers or beer importers not to retail beer -- original package and taproom exceptions.**  
29 (1) ~~It shall be~~ Except as provided in subsection (2), it is unlawful for any brewer or breweries or beer  
30 importer to have or own any permit to sell or retail beer at any place or premises, ~~it being the declared~~

1 ~~intention to prohibit brewers and beer importers from engaging in the retail dispensation of beer; provided,~~  
 2 ~~however, that this shall not be so construed as to~~

3 (2) Subsection (1) does not prohibit breweries from:

4 (a) making sale and delivery of ~~selling or delivering~~ beer manufactured by them, in original  
 5 packages, at either wholesale or retail, ~~or;~~

6 (b) from providing, without charge, their products for consumption on their licensed premises; or

7 (c) otherwise selling beer in accordance with 16-6-301 or [section 1]."

8

9 **Section 4.** Section 16-3-242, MCA, is amended to read:

10 "**16-3-242. Financial interest in retailers prohibited.** ~~No~~ Except as provided in [section 1], a brewer,  
 11 beer importer, or wholesaler ~~shall~~ may not advance or loan money to or furnish money for or pay for or on  
 12 behalf of any retailer any license or tax which may be required to be paid for any retailer, and ~~no~~ a brewer,  
 13 beer importer, or wholesaler ~~shall~~ may not be financially interested, either directly or indirectly, in the  
 14 conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler ~~shall be deemed~~  
 15 is considered to have ~~such~~ a financial interest within the meaning of this section if:

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

18 (2) ~~such~~ the brewer, beer importer, or wholesaler is under any contract with a retailer concerning  
 19 future purchases ~~and/or~~ or sale, or both, of merchandise by one from or to the other;

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

21

22 **Section 5.** Section 16-4-101, MCA, is amended to read:

23 "**16-4-101. Applications for sale, import, or manufacture of beer -- qualifications of applicant.** (1)  
 24 Any person desiring to manufacture, import, or sell beer under the provisions of this code shall first apply  
 25 to the department for a license to do so and pay with ~~such~~ the application the license fee prescribed. The  
 26 department shall require of ~~such~~ the applicant satisfactory evidence that the applicant is of good moral  
 27 character and a law-abiding person.

28 (2) Upon being satisfied, from ~~such~~ the application or otherwise, that ~~such~~ the applicant is  
 29 qualified, the department shall issue ~~such~~ a license to ~~such~~ the person, ~~which~~ The license ~~shall~~ must be  
 30 at all times prominently displayed in the place of business of ~~such~~ the applicant.

1           (3) If the department ~~shall find~~ finds that ~~such the~~ the applicant is not qualified, ~~no a license shall~~ may  
2 not be granted and ~~such the~~ the license fee ~~shall~~ must be returned.

3           (4) A person manufacturing beer for personal or family use under 16-3-201(2) is not required to  
4 be licensed."

5  
6           **Section 6.** Section 16-4-401, MCA, is amended to read:

7           "**16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code  
8 is a privilege ~~which~~ that the state may grant to an applicant and is not a right to which any applicant is  
9 entitled.

10           (2) Except as provided in subsection (6), in the case of a license that permits on-premises  
11 consumption, the department must find in every case in which it makes an order for the issuance of a new  
12 license or for the approval of the transfer of a license that:

13           (a) in the case of an individual applicant:

14           (i) the applicant will not possess an ownership interest in more than one establishment licensed  
15 under this chapter for all-beverages sales;

16           (ii) except as provided in [section 1], the applicant or any member of ~~his~~ the applicant's immediate  
17 family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of  
18 alcoholic beverages;

19           (iii) the applicant is a resident of the state and is qualified to vote in a state election;

20           (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
21 businessman and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the establishment in  
22 compliance with all applicable laws of the state and local governments; and

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

24           (b) in the case of a corporate applicant:

25           (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection  
26 (2)(a)(iii);

27           (ii) except as provided in [section 1], each owner of 10% or more of the outstanding stock meets  
28 the requirements for an individual applicant listed in subsection (2)(a) of this section;

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

30           (iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets

- 1 the requirements of subsection (2)(a)(i); and
- 2 (c) in the case of any other business entity as applicant:
- 3 (i) except as provided in [section 1], if the applicant consists of more than one individual, all must
- 4 meet the requirements of subsection (2)(a); and
- 5 (ii) except as provided in [section 1], if the applicant consists of more than one corporation, all
- 6 must meet the requirements of subsection (2)(b).
- 7 (3) In the case of a license that permits only off-premises consumption, the department must find
- 8 in every case in which it makes an order for the issuance of a new license or for the approval of the transfer
- 9 of a license that:
- 10 (a) in the case of an individual applicant:
- 11 (i) the applicant will not possess an ownership interest in more than one establishment licensed
- 12 under this chapter for all-beverages sales;
- 13 (ii) the applicant or any member of ~~his~~ the applicant's immediate family is without financing from
- 14 or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;
- 15 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a
- 16 felony, his rights have been restored;
- 17 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
- 18 ~~businessman~~ business person and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the
- 19 establishment in compliance with all applicable laws of the state and local governments; and
- 20 (v) the applicant is not under the age of 19 years; and
- 21 (b) in the case of a corporate applicant:
- 22 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
- 23 (3)(a)(iii);
- 24 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
- 25 listed in subsection (3)(a) of this section; and
- 26 (iii) the corporation is authorized to do business in Montana; and
- 27 (c) in the case of any other business entity as applicant:
- 28 (i) if the applicant consists of more than one individual, all must meet the requirements of
- 29 subsection (3)(a); and
- 30 (ii) if the applicant consists of more than one corporation, all must meet the requirements of

1 subsection (3)(b).

2 (4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic  
3 beverage, the department must find in every case in which it makes an order for the issuance of a new  
4 license or for the approval of the transfer of a license that:

5 (a) in the case of an individual applicant:

6 (i) except as provided in [section 1], the applicant ~~has no~~ does not have an ownership interest in  
7 any establishment licensed under this chapter for retail alcoholic beverages sales;

8 (ii) except as provided in [section 1], the applicant has not been convicted of a felony or, if the  
9 applicant has been convicted of a felony, ~~his~~ rights have been restored;

10 (iii) except as provided in [section 1], the applicant's past record and present status as a purveyor  
11 of alcoholic beverages and as a businessman and citizen demonstrate that ~~he~~ the applicant is likely to  
12 operate ~~his~~ an establishment in compliance with all applicable laws of the state and local governments;

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

14 (v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is  
15 owned or controlled by a manufacturer of an alcoholic beverage; and

16 (b) in the case of a corporate applicant:

17 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection  
18 (4)(a)(ii);

19 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
20 listed in subsection (4)(a) of this section;

21 (iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is  
22 owned or controlled by a manufacturer of an alcoholic beverage; and

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

24 (c) in the case of any other business entity as applicant:

25 (i) except as provided in [section 1], if the applicant consists of more than one individual, all must  
26 meet the requirements of subsection (4)(a); and

27 (ii) except as provided in [section 1], if the applicant consists of more than one corporation, all  
28 must meet the requirements of subsection (4)(b).

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

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

3  
4 **Section 7.** Section 16-4-501, MCA, is amended to read:

5 **"16-4-501. License and permit fees.** (1) ~~Each~~ A beer licensee licensed to sell either beer or table  
6 wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee  
7 as follows:

8 (a) each brewer and each beer importer, ~~wherever located, whose product is sold or offered for~~  
9 ~~sale within the state,~~ \$500; for each storage depot, \$400;

10 (b) each beer wholesaler, \$400; each table wine distributor, \$400; each subwarehouse, \$400;

11 (c) each beer retailer, \$200;

12 (d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer  
13 license; for a license to sell table wine at retail for off-premises consumption only, either alone or in  
14 conjunction with beer, \$200;

15 (e) any unit of a nationally chartered veterans' organization, \$50.

16 (2) The permit fee under 16-4-301(1) is computed at the rate of \$15 a day for each day beer and  
17 table wine are sold at those events lasting 2 or more days, ~~but in no case shall the fee~~ may not be less than  
18 \$30.

19 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the  
20 sale of all alcoholic beverages.

21 (4) Passenger carrier licenses ~~shall~~ must be issued upon payment by the applicant of an annual  
22 license fee in the sum of \$300.

23 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment  
24 to a beer-only license pursuant to 16-4-105, is \$200.

25 (6) The annual fee for resort retail all-beverages licenses within a given resort area ~~shall be~~ is  
26 \$2,000 for each license.

27 (7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

28 (a) except as provided in this section, for each license outside of incorporated cities and  
29 incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000,  
30 \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

1 (b) except as provided in this section, for each license in incorporated cities with a population of  
2 more than 2,000 and less than 5,000 or within a distance of 5 miles ~~thereof~~ from the city, measured in a  
3 straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city,  
4 \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

5 (c) except as provided in this section, for each license in incorporated cities with a population of  
6 more than 5,000 and less than 10,000 or within a distance of 5 miles ~~thereof~~ from the city, measured in  
7 a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city,  
8 \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

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

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

22 (f) an applicant for the issuance of an original license to be located in areas described in subsection  
23 (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees  
24 that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original  
25 license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any  
26 transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the  
27 annual renewal fee.

28 (8) The fee for one all-beverage license to a public airport is \$800. This license is nontransferable.

29 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under  
30 16-4-303 is \$250.



1 (10) The license fees provided in this section are exclusive of and in addition to other license fees  
2 chargeable in Montana for the sale of alcoholic beverages.

3 (11) In addition to other license fees, the department of revenue may require a licensee to pay a  
4 late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license  
5 fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1  
6 of the renewal year.

7 (12) All license and permit fees collected under this section must be deposited as provided in  
8 16-2-108."

9

10 **Section 8.** Section 16-6-301, MCA, is amended to read:

11 "**16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful.** (1) Except  
12 as provided by this code, ~~no a person or the person's agents or employees shall may not, within the state,~~  
13 ~~by himself, his clerk, servant, or agent;~~

14 (a) ~~expose or keep an alcoholic beverage for sale or;~~

15 (b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic  
16 beverage; or,

17 (c) in consideration of the purchase or transfer of any property or for any other consideration or  
18 at the time of the transfer of any property, give to any other person ~~any~~ an alcoholic beverage.

19 (2) ~~No A person shall may not~~ have or keep any alcoholic beverage ~~which that~~ has not been  
20 purchased within the state of Montana. ~~Nothing in this code shall prohibit, except that this section does~~  
21 not prohibit:

22 (a) ~~any a~~ person entering this state from ~~any other another~~ state or ~~from any~~ foreign country from  
23 having in ~~his~~ possession an amount not to exceed 3 ~~wine~~ gallons of alcoholic beverage ~~which beverage~~  
24 ~~shall have been that was~~ purchased in another state or foreign country, ~~but no person claiming to have so~~  
25 ~~entered the state shall at any time have in his possession more than 3 wine gallons of alcoholic beverage~~  
26 ~~which shall not have been purchased within the state of Montana;~~

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

30 (c) ~~This subsection shall not apply to the department or to the keeping or having of possession of~~

1 alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the  
 2 manufacture of ~~such~~ those alcoholic beverages; ~~or~~

3 ~~(d) to the keeping or having of any possession of~~ proprietary or patent medicines or of any  
 4 extracts, essences, tinctures, or preparations ~~where such having and keeping~~ if the possession is authorized  
 5 by this code; ~~or~~

6 ~~(3)(e) Nothing contained in this section shall apply to the possession by a sheriff or his~~ bailiff of  
 7 alcoholic beverages seized under execution or other judicial or extrajudicial process or ~~to~~ sales under  
 8 executions or other judicial or extrajudicial process to the department or a licensee.

9 ~~(4)(3) Except as provided in this code, no a person or the person's agents or employees shall,~~  
 10 ~~within the state, by himself, his clerk, servant, or agent may not:~~

11 (a) attempt to purchase any alcoholic beverage;

12 (b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

13 (c) in consideration of the sale or transfer of any property or for any other consideration or at the  
 14 time of the transfer of any property, take or accept from any other person any alcoholic beverage."

15

16 **Section 9.** Section 23-5-176, MCA, is amended to read:

17 "**23-5-176. Qualifications for licensure.** (1) A person who the department determines is qualified  
 18 to receive a license under the provisions of this chapter may, based on information available to, required  
 19 by, or supplied to the department under department rules, be issued a state gambling license.

20 (2) Except as provided in subsection (4), the department shall issue a license unless the department  
 21 can demonstrate that the applicant:

22 (a) is a person whose prior financial or other activities or criminal record:

23 (i) poses a threat to the public interest of the state;

24 (ii) poses a threat to the effective regulation and control of gambling; or

25 (iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the  
 26 carrying on of the business and financial arrangements incidental to gambling;

27 (b) has been convicted of a felony offense within 5 years of the date of application or is on  
 28 probation or parole or under deferred prosecution for committing a felony offense; or

29 (c) is receiving a substantial amount of financing for the proposed operation from an unsuitable  
 30 source. A lender or other source of money or credit that the department finds to meet the provisions of

1 subsection (2)(a) may be considered an unsuitable source.

2 (3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under  
3 this section.

4 (4) (a) The department may deny a license or permit to an applicant who has falsified a license or  
5 permit application. If the falsification is determined after the license or permit has been issued, the  
6 department may revoke the license or permit.

7 (b) The department may not issue a permit or license for premises licensed for retail sale of beer  
8 under [section 1]."

9

10 **Section 10.** Section 23-5-306, MCA, is amended to read:

11 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has  
12 been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for  
13 consumption on the premises, except a license issued under [section 1], may be granted an annual permit  
14 for the placement of live card game tables.

15 (b) The department may issue an annual permit for the placement of live card game tables to a  
16 person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

17 (i) one or more live card game tables were legally operated on the premises on January 15, 1989;

18 (ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other  
19 consumable product;

20 (iii) the person has been granted an operator's license under 23-5-177; and

21 (iv) at the time of application for the permit:

22 (A) the person has continuously operated a live card game table on the premises since January 15,  
23 1989; and

24 (B) the natural person or persons who own the business operated on the premises are the same  
25 as on January 15, 1989.

26 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed  
27 operator's premises may not be prorated and must be:

28 (a) \$250 for the first table; and

29 (b) \$500 for each additional table.

30 (3) The department shall retain for administrative purposes \$100 of the fee collected under this

1 part for each live card game table.

2 (4) The department shall forward on a quarterly basis the remaining balance of the fee collected  
3 under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or  
4 town in which the live card game table is located for deposit to the county or municipal treasury. A county  
5 is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and  
6 towns within the county. The local government portion of this fee is statutorily appropriated to the  
7 department, as provided in 17-7-502, for deposit to the county or municipal treasury."

8

9 **Section 11.** Section 23-5-502, MCA, is amended to read:

10 **"23-5-502. Sports pools and sports tab games authorized -- tax.** (1) Conducting or participating  
11 in sports pools and sports tab games as defined and governed in this part is lawful, except that:

12 (a) sports tab games may ~~only~~ be conducted only on premises licensed to sell alcoholic beverages  
13 for consumption on the premises under provisions of law other than [section 1]; and

14 (b) only a licensee of premises that are located in an incorporated city or town with a population  
15 of less than 100 or located outside the boundaries of an incorporated city or town and that are licensed  
16 to sell alcoholic beverages for consumption on the premises may conduct a race between animals and  
17 conduct one or more sports pools on the race. The race may be conducted only if it is between pigs,  
18 gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment  
19 where food and beverages are usually stored, prepared, or served.

20 (2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensed operator for use  
21 in a sports tab game shall collect from the operator, at the time of sale, a tax of \$1 for each 100 sports  
22 tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms  
23 required by the department and the proceeds of the collected tax. The manufacturer shall keep a record  
24 of taxes collected as required by department rule. The records must be made available for inspection by  
25 the department upon request of the department. The department shall retain the proceeds of the tax to  
26 administer this part."

27

28 **Section 12.** Section 23-5-603, MCA, is amended to read:

29 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator  
30 may make available for public play only the number of approved video gambling machines specifically

1 authorized by this part.

2 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw  
3 poker machines. Only the number of approved machines for which permits have been granted under  
4 23-5-612 may be made available for play by the public on the premises of a licensed operator. The  
5 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced  
6 while it is being repaired with a video gambling machine that is approved under the permit provisions of  
7 this part. A fee may not be charged for the replacement machine.

8 (3) Machines on premises licensed to sell alcoholic beverages for on-premises consumption must  
9 be placed:

10 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or  
11 consumed; and

12 (b) within control of the operator for the purpose of preventing access to the machines by persons  
13 under 18 years of age.

14 (4) Machines may not be placed on premises licensed for the retail sale of beer under [section 1]."

15

16 NEW SECTION. Section 13. Codification instruction. [Section 1] is intended to be codified as an  
17 integral part of Title 16, chapters 1 through 6, and the provisions of Title 16, chapters 1 through 6, apply  
18 to [section 1].

19

-END-

---

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB554, as Introduced

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DESCRIPTION OF PROPOSED LEGISLATION:

An act relating to small breweries, home brewing, and in-state breweries; authorizing the retail sale of beer and malt beverages by small breweries; prohibiting gambling and establishing hours of operation in a small brewery licensed for retail beer sales; providing that a license for retail sale of beer at a brewery may be held in conjunction with other licenses issued under Title 16, Chapter 4; providing for the administration of the license; authorizing home brewing that meets the requirements of federal law; clarifying that in-state brewers are required to have a license even if they make no in-state sales of beer.

ASSUMPTIONS:

1. Currently, there are 10 microbreweries operating in the state.
2. Providing for the legal practice of homebrewing will not reduce consumption of other sources of beer beyond that occurring now as a result of current homebrewing activity.

FISCAL IMPACT:

Expenditures:

This bill has no impact on Department of Revenue administrative expenses.

Revenues:

License fees for microbreweries will increase a maximum of \$2,500 under this proposal, assuming that each of the existing microbreweries purchases a license to allow for retail sales of beer at the brewery.

 Dave Lewis 2-18-95

DAVE LEWIS, BUDGET DIRECTOR    DATE  
Office of Budget and Program Planning

  
HAL HARPER, PRIMARY SPONSOR    DATE  
Fiscal Note for HB554, as Introduced

440 FFU

APPROVED BY COMMITTEE  
ON BUSINESS AND LABOR

HOUSE BILL NO. 554

INTRODUCED BY HARPER, HARP, STANG, GROSFIELD, GRINDE, GRADY, WENNEMAR, OHS,  
BOHLINGER, SLITER, KEENAN, FORBES, SCHWINDEN, ANDERSON, KNOX, GREEN, SOMERVILLE,  
HIBBARD, STORY

A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO SMALL BREWERIES, HOME BREWING, AND  
IN-STATE BREWERIES; AUTHORIZING THE RETAIL SALE OF BEER AND MALT BEVERAGES BY SMALL  
BREWERIES; PROHIBITING GAMBLING AND ESTABLISHING HOURS OF OPERATION IN A SMALL  
BREWERY LICENSED FOR RETAIL BEER SALES; PROVIDING THAT A LICENSE FOR RETAIL SALE OF BEER  
AT A BREWERY MAY BE HELD IN CONJUNCTION WITH OTHER LICENSES ISSUED UNDER TITLE 16,  
CHAPTER 4; PROVIDING FOR THE ADMINISTRATION OF THE LICENSE; AUTHORIZING HOME BREWING  
THAT MEETS THE REQUIREMENTS OF FEDERAL LAW; CLARIFYING THAT IN-STATE BREWERS ARE  
REQUIRED TO HAVE A LICENSE EVEN IF THEY MAKE NO IN-STATE SALES OF BEER; AND AMENDING  
SECTIONS 16-3-201, 16-3-213, 16-3-242, 16-4-101, 16-4-401, 16-4-501, 16-6-301, 23-5-176, 23-5-306,  
23-5-502, AND 23-5-603, MCA."

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

NEW SECTION. Section 1. Microbreweries -- retail sale of beer or malt beverages at brewery --  
gambling prohibited. (1) A licensed brewer who ~~manufactures~~ HAS THE CAPACITY TO MANUFACTURE  
at least 300 barrels but DOES not MANUFACTURE more than 20,000 barrels of beer a year, upon payment  
of the annual license fee of \$250, must be licensed by the department for retail sales of THAT BREWER'S  
beer at the brewery for on-premises or off-premises consumption. The department may deny a license or  
revoke a license if:

- (a) gambling has occurred on the premises;
- (b) the licensee has been convicted of illegal sales of beer or other violation of this code; ~~or~~
- (c) the licensee is no longer a qualifying brewer; OR

(D) THE LICENSEE DOES NOT, WITHIN THE THIRD YEAR SUBSEQUENT TO OBTAINING A  
LICENSE, MANUFACTURE AT LEAST 300 BARRELS OF BEER IN THAT YEAR.

- (2) The limit on retail licenses established in 16-4-105 does not apply to the issuance of licenses

1 under this section.

2 (3) (A) An otherwise qualified applicant may be granted a license under this section even if the  
3 applicant is licensed under the provisions of 16-4-105, 16-4-201, 16-4-202, 16-4-208, and 16-4-209.

4 (B) A LICENSEE WHO IS ALSO LICENSED UNDER THE PROVISIONS OF 16-4-105, 16-4-201,  
5 16-4-202, 16-4-208, OR 16-4-209 IS EXEMPT FROM THE PROVISION OF SUBSECTION (1) THAT  
6 REQUIRES AN APPLICANT FOR A BREWER'S LICENSE TO HAVE THE CAPACITY TO PRODUCE AT LEAST  
7 300 BARRELS OF BEER A YEAR AND FROM THE PROVISION OF SUBSECTION (1)(D), EXCEPT THAT THE  
8 LICENSEE IS REQUIRED TO MANUFACTURE AT LEAST 50 BARRELS OF BEER WITHIN THE FIRST YEAR  
9 OF OBTAINING A BREWER'S LICENSE.

10 (C) A licensee is not disqualified by reason of holding a license under this section for licensure  
11 under 16-4-105, 16-4-201, 16-4-202, 16-4-208, and 16-4-209.

12 (4) (a) A brewery licensed for retail sale of beer under this section is prohibited from being licensed  
13 for gambling under Title 23, chapter 5.

14 (b) A license issued under this section may not be amended to allow the holder to sell wine under  
15 16-4-105.

16 (c) A brewery licensed under this section may not conduct retail sales of beer before 11 a.m. or  
17 after ~~11~~ 9 p.m.

18 (5) A licensee may sell malt beverages at retail for on- or off-premises consumption ONLY IF THE  
19 BEVERAGES WERE MANUFACTURED IN THE BREWERY LICENSED UNDER THIS SECTION. Malt beverages  
20 may be sold in an unpasteurized form directly to a consumer for consumption ON OR off the premises and  
21 may be sold in an unpackaged form in which a consumer supplies the container for the malt beverage.

22 (6) An additional license fee may not be imposed on a brewery providing, without charge, its own  
23 products on its licensed premises for consumption on the premises.

24 (7) This section does not prohibit a brewer located outside of Montana from shipping and selling  
25 beer directly to a wholesaler in this state under the provisions of 16-3-230.

26 (8) The provisions of subsection ~~(3)~~ (4) of this section do not apply to a licensee who also holds  
27 a license under 16-4-105, 16-4-201, 16-4-202, 16-4-208, or 16-4-209.

28

29 **Section 2.** Section 16-3-201, MCA, is amended to read:

30 **"16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than**



1 ~~prescribed unlawful --~~ **personal brewing.** (1) ~~It shall be~~ is unlawful to manufacture, import, sell or dispose  
2 of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater ~~than~~  
3 ~~herein prescribed~~ than authorized or other than in the manner permitted by this code.

4 (2) Nothing in this code prohibits the manufacture of beer for personal or family use and not for  
5 sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including  
6 the brewing of beer, for personal or family use, on premises other than those of the person brewing the  
7 beer."

8  
9 **Section 3.** Section 16-3-213, MCA, is amended to read:

10 **"16-3-213. Brewers or beer importers not to retail beer -- original package and taproom exceptions.**

11 ~~(1) It shall be~~ Except as provided in subsection (2), it is unlawful for any brewer or breweries or beer  
12 importer to have or own any permit to sell or retail beer at any place or premises, ~~it being the declared~~  
13 ~~intention to prohibit brewers and beer importers from engaging in the retail dispensation of beer; provided,~~  
14 ~~however, that this shall not be so construed as to~~.

15 (2) Subsection (1) does not prohibit breweries from:

16 (a) ~~making sale and delivery of~~ selling or delivering beer manufactured by them, in original  
17 packages, at either wholesale or retail, ~~or;~~

18 (b) ~~from~~ providing, without charge, their products for consumption on their licensed premises; or

19 (c) ~~otherwise selling beer in accordance with 16-6-301 or~~ [section 1]."

20  
21 **Section 4.** Section 16-3-242, MCA, is amended to read:

22 **"16-3-242. Financial interest in retailers prohibited.** ~~No~~ Except as provided in [section 1], a brewer,  
23 beer importer, or wholesaler ~~shall~~ may not advance or loan money to or furnish money for or pay for or on  
24 behalf of any retailer any license or tax which may be required to be paid for any retailer, and ~~no~~ a brewer,  
25 beer importer, or wholesaler ~~shall~~ may not be financially interested, either directly or indirectly, in the  
26 conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler ~~shall be deemed~~  
27 is considered to have ~~such~~ a financial interest within the meaning of this section if:

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

30 (2) ~~such~~ the brewer, beer importer, or wholesaler is under any contract with a retailer concerning

1 future purchases ~~and/or~~ or sale, or both, of merchandise by one from or to the other;

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

3  
4 **Section 5.** Section 16-4-101, MCA, is amended to read:

5 **"16-4-101. Applications for sale, import, or manufacture of beer -- qualifications of applicant.** (1)

6 Any person desiring to manufacture, import, or sell beer under the provisions of this code shall first apply  
7 to the department for a license to do so and pay with ~~such the~~ the application the license fee prescribed. The  
8 department shall require of ~~such the~~ the applicant satisfactory evidence that the applicant is of good moral  
9 character and a law-abiding person.

10 (2) Upon being satisfied, from ~~such the~~ the application or otherwise, that ~~such the~~ the applicant is  
11 qualified, the department shall issue ~~such a~~ a license to ~~such the~~ the person, ~~which~~ The license ~~shall~~ must be  
12 at all times prominently displayed in the place of business of ~~such the~~ the applicant.

13 (3) If the department ~~shall find~~ finds that ~~such the~~ the applicant is not qualified, ~~no a~~ a license ~~shall~~ may  
14 not be granted and ~~such the~~ the license fee ~~shall~~ must be returned.

15 (4) A person manufacturing beer for personal or family use under 16-3-201(2) is not required to  
16 be licensed."

17  
18 **Section 6.** Section 16-4-401, MCA, is amended to read:

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

22 (2) Except as provided in subsection (6), in the case of a license that permits on-premises  
23 consumption, the department must find in every case in which it makes an order for the issuance of a new  
24 license or for the approval of the transfer of a license that:

25 (a) in the case of an individual applicant:

26 (i) the applicant will not possess an ownership interest in more than one establishment licensed  
27 under this chapter for all-beverages sales;

28 (ii) except as provided in [section 1], the applicant or any member of ~~his~~ the applicant's immediate  
29 family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of  
30 alcoholic beverages;

1 (iii) the applicant is a resident of the state and is qualified to vote in a state election;

2 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
3 businessman and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the establishment in  
4 compliance with all applicable laws of the state and local governments; and

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

6 (b) in the case of a corporate applicant:

7 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection  
8 (2)(a)(iii);

9 (ii) except as provided in [section 1], each owner of 10% or more of the outstanding stock meets  
10 the requirements for an individual applicant listed in subsection (2)(a) of this section;

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

12 (iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets  
13 the requirements of subsection (2)(a)(i); and

14 (c) in the case of any other business entity as applicant:

15 (i) except as provided in [section 1], if the applicant consists of more than one individual, all must  
16 meet the requirements of subsection (2)(a); and

17 (ii) except as provided in [section 1], if the applicant consists of more than one corporation, all  
18 must meet the requirements of subsection (2)(b).

19 (3) In the case of a license that permits only off-premises consumption, the department must find  
20 in every case in which it makes an order for the issuance of a new license or for the approval of the transfer  
21 of a license that:

22 (a) in the case of an individual applicant:

23 (i) the applicant will not possess an ownership interest in more than one establishment licensed  
24 under this chapter for all-beverages sales;

25 (ii) the applicant or any member of ~~his~~ the applicant's immediate family is without financing from  
26 or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

27 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a  
28 felony, his rights have been restored;

29 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
30 ~~businessman~~ business person and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the

- 1 establishment in compliance with all applicable laws of the state and local governments; and
- 2 (v) the applicant is not under the age of 19 years; and
- 3 (b) in the case of a corporate applicant:
- 4 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
- 5 (3)(a)(iii);
- 6 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
- 7 listed in subsection (3)(a) of this section; and
- 8 (iii) the corporation is authorized to do business in Montana; and
- 9 (c) in the case of any other business entity as applicant:
- 10 (i) if the applicant consists of more than one individual, all must meet the requirements of
- 11 subsection (3)(a); and
- 12 (ii) if the applicant consists of more than one corporation, all must meet the requirements of
- 13 subsection (3)(b).
- 14 (4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic
- 15 beverage, the department must find in every case in which it makes an order for the issuance of a new
- 16 license or for the approval of the transfer of a license that:
- 17 (a) in the case of an individual applicant:
- 18 (i) except as provided in [section 1], the applicant ~~has no~~ does not have an ownership interest in
- 19 any establishment licensed under this chapter for retail alcoholic beverages sales;
- 20 (ii) except as provided in [section 1], the applicant has not been convicted of a felony or, if the
- 21 applicant has been convicted of a felony, ~~his~~ rights have been restored;
- 22 (iii) except as provided in [section 1], the applicant's past record and present status as a purveyor
- 23 of alcoholic beverages and as a businessman and citizen demonstrate that ~~he~~ the applicant is likely to
- 24 operate ~~his~~ an establishment in compliance with all applicable laws of the state and local governments;
- 25 (iv) the applicant is not under the age of 19 years; and
- 26 (v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is
- 27 owned or controlled by a manufacturer of an alcoholic beverage; and
- 28 (b) in the case of a corporate applicant:
- 29 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
- 30 (4)(a)(ii);

1 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
2 listed in subsection (4)(a) of this section;

3 (iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is  
4 owned or controlled by a manufacturer of an alcoholic beverage; and

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

6 (c) in the case of any other business entity as applicant:

7 (i) except as provided in [section 1], if the applicant consists of more than one individual, all must  
8 meet the requirements of subsection (4)(a); and

9 (ii) except as provided in [section 1], if the applicant consists of more than one corporation, all  
10 must meet the requirements of subsection (4)(b).

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

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

15  
16 **Section 7.** Section 16-4-501, MCA, is amended to read:

17 **"16-4-501. License and permit fees.** (1) ~~Each~~ A beer licensee licensed to sell either beer or table  
18 wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee  
19 as follows:

20 (a) each brewer and each beer importer, ~~wherever located, whose product is sold or offered for~~  
21 ~~sale within the state,~~ \$500; for each storage depot, \$400;

22 (b) each beer wholesaler, \$400; each table wine distributor, \$400; each subwarehouse, \$400;

23 (c) each beer retailer, \$200;

24 (d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer  
25 license; for a license to sell table wine at retail for off-premises consumption only, either alone or in  
26 conjunction with beer, \$200;

27 (e) any unit of a nationally chartered veterans' organization, \$50.

28 (2) The permit fee under 16-4-301(1) is computed at the rate of \$15 a day for each day beer and  
29 table wine are sold at those events lasting 2 or more days, ~~but in no case shall~~ the fee may not be less than  
30 \$30.

1 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the  
2 sale of all alcoholic beverages.

3 (4) Passenger carrier licenses ~~shall~~ must be issued upon payment by the applicant of an annual  
4 license fee in the sum of \$300.

5 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment  
6 to a beer-only license pursuant to 16-4-105, is \$200.

7 (6) The annual fee for resort retail all-beverages licenses within a given resort area ~~shall be~~ is  
8 \$2,000 for each license.

9 (7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

10 (a) except as provided in this section, for each license outside of incorporated cities and  
11 incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000,  
12 \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

13 (b) except as provided in this section, for each license in incorporated cities with a population of  
14 more than 2,000 and less than 5,000 or within a distance of 5 miles ~~thereof~~ from the city, measured in a  
15 straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city,  
16 \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

17 (c) except as provided in this section, for each license in incorporated cities with a population of  
18 more than 5,000 and less than 10,000 or within a distance of 5 miles ~~thereof~~ from the city, measured in  
19 a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city,  
20 \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

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

25 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated  
26 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest  
27 boundary of the city or town; and ~~where~~ when the premises of the applicant to be licensed are situated  
28 within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of  
29 different populations, the license fee chargeable by the larger incorporated city or incorporated town applies  
30 and must be paid by the applicant. When the premises of the applicant to be licensed are situated within

1 an incorporated town or incorporated city and any portion of the incorporated town or incorporated city  
 2 is ~~without~~ outside a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated  
 3 city applies and must be paid by the applicant.

4 (f) an applicant for the issuance of an original license to be located in areas described in subsection  
 5 (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees  
 6 that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original  
 7 license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any  
 8 transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the  
 9 annual renewal fee.

10 (8) The fee for one all-beverage license to a public airport is \$800. This license is nontransferable.

11 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under  
 12 16-4-303 is \$250.

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

15 (11) In addition to other license fees, the department of revenue may require a licensee to pay a  
 16 late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license  
 17 fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1  
 18 of the renewal year.

19 (12) All license and permit fees collected under this section must be deposited as provided in  
 20 16-2-108."

21  
 22 **Section 8.** Section 16-6-301, MCA, is amended to read:

23 "**16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful.** (1) Except  
 24 as provided by this code, ~~no~~ a person or the person's agents or employees shall may not, within the state,  
 25 by himself, his clerk, servant, or agent;

26 (a) expose or keep an alcoholic beverage for sale ~~or;~~

27 (b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic  
 28 beverage; or;

29 (c) in consideration of the purchase or transfer of any property or for any other consideration or  
 30 at the time of the transfer of any property, give to any other person ~~any~~ an alcoholic beverage.

1 (2) ~~No~~ A person shall may not have or keep any alcoholic beverage ~~which that~~ has not been  
 2 purchased within the state of Montana. ~~Nothing in this code shall prohibit, except that this section does~~  
 3 not prohibit:

4 (a) ~~any a~~ a person entering this state from any other another state or from any foreign country from  
 5 having in his possession an amount not to exceed 3 wine gallons of alcoholic beverage ~~which beverage~~  
 6 ~~shall have been that was~~ purchased in another state or foreign country, ~~but no person claiming to have so~~  
 7 ~~entered the state shall at any time have in his possession more than 3 wine gallons of alcoholic beverage~~  
 8 ~~which shall not have been purchased within the state of Montana;~~

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

12 (c) ~~This subsection shall not apply to the department or to the keeping or having of~~ possession of  
 13 alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the  
 14 manufacture of ~~such those~~ alcoholic beverages; ~~or~~

15 (d) ~~to the keeping or having of any~~ possession of proprietary or patent medicines or of any  
 16 extracts, essences, tinctures, or preparations ~~where such having and keeping~~ if the possession is authorized  
 17 by this code; ~~or~~

18 (3)(e) ~~Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of~~  
 19 alcoholic beverages seized under execution or other judicial or extrajudicial process or ~~to~~ sales under  
 20 executions or other judicial or extrajudicial process to the department or a licensee.

21 (4)(3) ~~Except as provided in this code, no a person or the person's agents or employees shall,~~  
 22 ~~within the state, by himself, his clerk, servant, or agent may not:~~

23 (a) attempt to purchase any alcoholic beverage;

24 (b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

25 (c) in consideration of the sale or transfer of any property or for any other consideration or at the  
 26 time of the transfer of any property, take or accept from any other person any alcoholic beverage."

27  
 28 **Section 9.** Section 23-5-176, MCA, is amended to read:

29 "23-5-176. **Qualifications for licensure.** (1) A person who the department determines is qualified  
 30 to receive a license under the provisions of this chapter may, based on information available to, required



1 by, or supplied to the department under department rules, be issued a state gambling license.

2 (2) Except as provided in subsection (4), the department shall issue a license unless the department  
3 can demonstrate that the applicant:

4 (a) is a person whose prior financial or other activities or criminal record:

5 (i) poses a threat to the public interest of the state;

6 (ii) poses a threat to the effective regulation and control of gambling; or

7 (iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the  
8 carrying on of the business and financial arrangements incidental to gambling;

9 (b) has been convicted of a felony offense within 5 years of the date of application or is on  
10 probation or parole or under deferred prosecution for committing a felony offense; or

11 (c) is receiving a substantial amount of financing for the proposed operation from an unsuitable  
12 source. A lender or other source of money or credit that the department finds to meet the provisions of  
13 subsection (2)(a) may be considered an unsuitable source.

14 (3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under  
15 this section.

16 (4) (a) The department may deny a license or permit to an applicant who has falsified a license or  
17 permit application. If the falsification is determined after the license or permit has been issued, the  
18 department may revoke the license or permit.

19 (b) The department may not issue a permit or license for premises licensed for retail sale of beer  
20 under [section 1]."

21  
22 **Section 10.** Section 23-5-306, MCA, is amended to read:

23 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has  
24 been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for  
25 consumption on the premises, except a license issued under [section 1], may be granted an annual permit  
26 for the placement of live card game tables.

27 (b) The department may issue an annual permit for the placement of live card game tables to a  
28 person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

29 (i) one or more live card game tables were legally operated on the premises on January 15, 1989;

30 (ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other

1 consumable product;

2 (iii) the person has been granted an operator's license under 23-5-177; and

3 (iv) at the time of application for the permit:

4 (A) the person has continuously operated a live card game table on the premises since January 15,  
5 1989; and

6 (B) the natural person or persons who own the business operated on the premises are the same  
7 as on January 15, 1989.

8 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed  
9 operator's premises may not be prorated and must be:

10 (a) \$250 for the first table; and

11 (b) \$500 for each additional table.

12 (3) The department shall retain for administrative purposes \$100 of the fee collected under this  
13 part for each live card game table.

14 (4) The department shall forward on a quarterly basis the remaining balance of the fee collected  
15 under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or  
16 town in which the live card game table is located for deposit to the county or municipal treasury. A county  
17 is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and  
18 towns within the county. The local government portion of this fee is statutorily appropriated to the  
19 department, as provided in 17-7-502, for deposit to the county or municipal treasury."  
20

21 **Section 11.** Section 23-5-502, MCA, is amended to read:

22 **"23-5-502. Sports pools and sports tab games authorized -- tax.** (1) Conducting or participating  
23 in sports pools and sports tab games as defined and governed in this part is lawful, except that:

24 (a) sports tab games may ~~only~~ be conducted only on premises licensed to sell alcoholic beverages  
25 for consumption on the premises under provisions of law other than [section 1]; and

26 (b) only a licensee of premises that are located in an incorporated city or town with a population  
27 of less than 100 or located outside the boundaries of an incorporated city or town and that are licensed  
28 to sell alcoholic beverages for consumption on the premises may conduct a race between animals and  
29 conduct one or more sports pools on the race. The race may be conducted only if it is between pigs,  
30 gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment

1 where food and beverages are usually stored, prepared, or served.

2 (2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensed operator for use  
3 in a sports tab game shall collect from the operator, at the time of sale, a tax of \$1 for each 100 sports  
4 tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms  
5 required by the department and the proceeds of the collected tax. The manufacturer shall keep a record  
6 of taxes collected as required by department rule. The records must be made available for inspection by  
7 the department upon request of the department. The department shall retain the proceeds of the tax to  
8 administer this part."

9

10 **Section 12.** Section 23-5-603, MCA, is amended to read:

11 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator  
12 may make available for public play only the number of approved video gambling machines specifically  
13 authorized by this part.

14 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw  
15 poker machines. Only the number of approved machines for which permits have been granted under  
16 23-5-612 may be made available for play by the public on the premises of a licensed operator. The  
17 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced  
18 while it is being repaired with a video gambling machine that is approved under the permit provisions of  
19 this part. A fee may not be charged for the replacement machine.

20 (3) Machines on premises licensed to sell alcoholic beverages for on-premises consumption must  
21 be placed:

22 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or  
23 consumed; and

24 (b) within control of the operator for the purpose of preventing access to the machines by persons  
25 under 18 years of age.

26 (4) Machines may not be placed on premises licensed for the retail sale of beer under [section 1]."

27

28 **NEW SECTION. Section 13. Codification instruction.** [Section 1] is intended to be codified as an  
29 integral part of Title 16, chapters 1 through 6, and the provisions of Title 16, chapters 1 through 6, apply  
30 to [section 1].

-END-

- 13 -

## 1 HOUSE BILL NO. 554

2 INTRODUCED BY HARPER, HARP, STANG, GROSFIELD, GRINDE, GRADY, WENNEMAR, OHS,  
3 BOHLINGER, KEENAN, SCHWINDEN, ANDERSON, KNOX, GREEN, HIBBARD, STORY

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO SMALL BREWERIES, HOME BREWING, AND  
6 IN-STATE BREWERIES; AUTHORIZING THE RETAIL SALE OF BEER AND MALT BEVERAGES BY SMALL  
7 BREWERIES; PROHIBITING GAMBLING AND ESTABLISHING HOURS OF OPERATION IN A SMALL  
8 BREWERY LICENSED FOR RETAIL BEER SALES; PROVIDING THAT A LICENSE FOR RETAIL SALE OF BEER  
9 AT A BREWERY MAY BE HELD IN CONJUNCTION WITH OTHER LICENSES ISSUED UNDER TITLE 16,  
10 CHAPTER 4; PROVIDING FOR THE ADMINISTRATION OF THE LICENSE; AUTHORIZING HOME BREWING  
11 THAT MEETS THE REQUIREMENTS OF FEDERAL LAW; CLARIFYING THAT IN-STATE BREWERS ARE  
12 REQUIRED TO HAVE A LICENSE EVEN IF THEY MAKE NO IN-STATE SALES OF BEER; AND AMENDING  
13 SECTIONS 16-3-201, 16-3-213, 16-3-242, 16-4-101, 16-4-401, 16-4-501, 16-6-301, 23-5-176, 23-5-306,  
14 23-5-502, AND 23-5-603, MCA."

15  
16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

17  
18 NEW SECTION. Section 1. Microbreweries -- retail sale of beer or malt beverages at brewery --  
19 gambling prohibited. (1) A licensed brewer who ~~manufactures~~ HAS THE CAPACITY TO MANUFACTURE  
20 at least 300 barrels but DOES not MANUFACTURE more than 20,000 barrels of beer a year, upon payment  
21 of the annual license fee of ~~\$250~~ \$500, must be licensed by the department for retail sales of THAT  
22 BREWER'S beer at the brewery for on-premises or off-premises consumption. The department may deny  
23 a license or revoke a license if:

- 24 (a) gambling has occurred on the premises;  
25 (b) the licensee has been convicted of illegal sales of beer or other violation of this code; ~~or~~  
26 (c) the licensee is no longer a qualifying brewer; OR

27 (D) THE LICENSEE DOES NOT, WITHIN THE THIRD YEAR SUBSEQUENT TO OBTAINING A  
28 LICENSE, MANUFACTURE AT LEAST 300 BARRELS OF BEER IN THAT YEAR.

29 (2) The limit on retail licenses established in 16-4-105 does not apply to the issuance of licenses  
30 under this section.

1           (3) (A) An otherwise qualified applicant may be granted a license under this section even if the  
2 applicant is licensed under the provisions of 16-4-105, 16-4-201, 16-4-202, 16-4-208, and 16-4-209.

3           (B) A LICENSEE WHO IS ALSO LICENSED UNDER THE PROVISIONS OF 16-4-105, 16-4-201,  
4 16-4-202, 16-4-208, OR 16-4-209 IS EXEMPT FROM THE PROVISION OF SUBSECTION (1) THAT  
5 REQUIRES AN APPLICANT FOR A BREWER'S LICENSE TO HAVE THE CAPACITY TO PRODUCE AT LEAST  
6 300 BARRELS OF BEER A YEAR AND FROM THE PROVISION OF SUBSECTION (1)(D), EXCEPT THAT THE  
7 LICENSEE IS REQUIRED TO MANUFACTURE AT LEAST 50 BARRELS OF BEER WITHIN THE FIRST YEAR  
8 OF OBTAINING A BREWER'S LICENSE.

9           (C) A licensee is not disqualified by reason of holding a license under this section for licensure  
10 under 16-4-105, 16-4-201, 16-4-202, 16-4-208, and 16-4-209.

11           (4) (a) A brewery licensed for retail sale of beer under this section is prohibited from being licensed  
12 for gambling under Title 23, chapter 5.

13           (b) A license issued under this section may not be amended to allow the holder to sell wine under  
14 16-4-105.

15           (c) A brewery licensed under this section may not conduct retail sales of beer before 11 a.m. or  
16 after ~~4~~ 9 p.m.

17           (5) A licensee may sell malt beverages at retail for on- or off-premises consumption ONLY IF THE  
18 BEVERAGES WERE MANUFACTURED IN THE BREWERY LICENSED UNDER THIS SECTION. Malt beverages  
19 may be sold in an unpasteurized form directly to a consumer for consumption ON OR off the premises and  
20 may be sold in an unpackaged form in which a consumer supplies the container for the malt beverage.

21           (6) An additional license fee may not be imposed on a brewery providing, without charge, its own  
22 products on its licensed premises for consumption on the premises.

23           (7) This section does not prohibit a brewer located outside of Montana from shipping and selling  
24 beer directly to a wholesaler in this state under the provisions of 16-3-230.

25           (8) The provisions of subsection ~~(3)~~ (4) of this section do not apply to a licensee who also holds  
26 a license under 16-4-105, 16-4-201, 16-4-202, 16-4-208, or 16-4-209.

27

28           **Section 2.** Section 16-3-201, MCA, is amended to read:

29           **"16-3-201. Possession, manufacture, importation, or disposal of beer in manner other than**  
30 **prescribed unlawful -- personal brewing. (1) It shall be is unlawful to manufacture, import, sell or dispose**

1 of, or possess for the purpose of sale beer of any kind or character of an alcoholic content greater than  
 2 ~~herein prescribed~~ than authorized or other than in the manner permitted by this code.

3 (2) Nothing in this code prohibits the manufacture of beer for personal or family use and not for  
 4 sale that meets the exemptions of 26 U.S.C. 5053(e) and regulations implementing that section, including  
 5 the brewing of beer, for personal or family use, on premises other than those of the person brewing the  
 6 beer."

7  
 8 **Section 3.** Section 16-3-213, MCA, is amended to read:

9 **"16-3-213. Brewers or beer importers not to retail beer -- original package and taproom exceptions.**

10 (1) It shall be Except as provided in subsection (2), it is unlawful for any brewer or breweries or beer  
 11 importer to have or own any permit to sell or retail beer at any place or premises, ~~it being the declared~~  
 12 ~~intention to prohibit brewers and beer importers from engaging in the retail dispensation of beer; provided,~~  
 13 ~~however, that this shall not be so construed as to,~~

14 (2) Subsection (1) does not prohibit breweries from:

15 (a) ~~making sale and delivery of~~ selling or delivering beer manufactured by them, in original  
 16 packages, at either wholesale or retail, ~~or;~~

17 (b) ~~from~~ providing, without charge, their products for consumption on their licensed premises; or

18 (c) otherwise selling beer in accordance with 16-6-301 or [section 1]."

19  
 20 **Section 4.** Section 16-3-242, MCA, is amended to read:

21 **"16-3-242. Financial interest in retailers prohibited. ~~No~~ Except as provided in [section 1], a brewer,**  
 22 **beer importer, or wholesaler ~~shall~~ may not advance or loan money to or furnish money for or pay for or on**  
 23 **behalf of any retailer any license or tax which may be required to be paid for any retailer, and ~~no~~ a brewer,**  
 24 **beer importer, or wholesaler ~~shall~~ may not be financially interested, either directly or indirectly, in the**  
 25 **conduct or operation of the business of a retailer. A brewer, beer importer, or wholesaler ~~shall be deemed~~**  
 26 **is considered to have ~~such~~ a financial interest within the meaning of this section if:**

27 **(1) ~~such~~ the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or**  
 28 **mortgage against the retailer or ~~his~~ the retailer's premises;**

29 **(2) ~~such~~ the brewer, beer importer, or wholesaler is under any contract with a retailer concerning**  
 30 **future purchases ~~and/or~~ or sale, or both, of merchandise by one from or to the other;**

1 (3) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."  
2

3 **Section 5.** Section 16-4-101, MCA, is amended to read:

4 **"16-4-101. Applications for sale, import, or manufacture of beer -- qualifications of applicant.** (1)

5 Any person desiring to manufacture, import, or sell beer under the provisions of this code shall first apply  
6 to the department for a license to do so and pay with ~~such~~ the application the license fee prescribed. The  
7 department shall require of ~~such~~ the applicant satisfactory evidence that the applicant is of good moral  
8 character and a law-abiding person.

9 (2) Upon being satisfied, from ~~such~~ the application or otherwise, that ~~such~~ the applicant is  
10 qualified, the department shall issue ~~such~~ a license to ~~such~~ the person, ~~which~~ The license shall must be  
11 at all times prominently displayed in the place of business of ~~such~~ the applicant.

12 (3) If the department ~~shall find~~ finds that ~~such~~ the applicant is not qualified, ~~no~~ a license shall may  
13 not be granted and ~~such~~ the license fee shall must be returned.

14 (4) A person manufacturing beer for personal or family use under 16-3-201(2) is not required to  
15 be licensed."

16  
17 **Section 6.** Section 16-4-401, MCA, is amended to read:

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

21 (2) Except as provided in subsection (6), in the case of a license that permits on-premises  
22 consumption, the department must find in every case in which it makes an order for the issuance of a new  
23 license or for the approval of the transfer of a license that:

24 (a) in the case of an individual applicant:

25 (i) the applicant will not possess an ownership interest in more than one establishment licensed  
26 under this chapter for all-beverages sales;

27 (ii) except as provided in [section 1], the applicant or any member of ~~his~~ the applicant's immediate  
28 family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of  
29 alcoholic beverages;

30 (iii) the applicant is a resident of the state and is qualified to vote in a state election;

- 1 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
 2 businessman and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the establishment in  
 3 compliance with all applicable laws of the state and local governments; and
- 4 (v) the applicant is not under the age of 19 years; and
- 5 (b) in the case of a corporate applicant:
- 6 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection  
 7 (2)(a)(iii);
- 8 (ii) except as provided in [section 1], each owner of 10% or more of the outstanding stock meets  
 9 the requirements for an individual applicant listed in subsection (2)(a) of this section;
- 10 (iii) the corporation is authorized to do business in Montana; and
- 11 (iv) in the case of a corporation not listed on a national stock exchange, each owner of stock meets  
 12 the requirements of subsection (2)(a)(i); and
- 13 (c) in the case of any other business entity as applicant:
- 14 (i) except as provided in [section 1], if the applicant consists of more than one individual, all must  
 15 meet the requirements of subsection (2)(a); and
- 16 (ii) except as provided in [section 1], if the applicant consists of more than one corporation, all  
 17 must meet the requirements of subsection (2)(b).
- 18 (3) In the case of a license that permits only off-premises consumption, the department must find  
 19 in every case in which it makes an order for the issuance of a new license or for the approval of the transfer  
 20 of a license that:
- 21 (a) in the case of an individual applicant:
- 22 (i) the applicant will not possess an ownership interest in more than one establishment licensed  
 23 under this chapter for all-beverages sales;
- 24 (ii) the applicant or any member of ~~his~~ the applicant's immediate family is without financing from  
 25 or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;
- 26 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a  
 27 felony, his rights have been restored;
- 28 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
 29 ~~businessman~~ business person and citizen demonstrate that ~~he~~ the applicant is likely to operate ~~his~~ the  
 30 establishment in compliance with all applicable laws of the state and local governments; and



- 1 (v) the applicant is not under the age of 19 years; and
- 2 (b) in the case of a corporate applicant:
- 3 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
- 4 (3)(a)(iii);
- 5 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual
- 6 listed in subsection (3)(a) of this section; and
- 7 (iii) the corporation is authorized to do business in Montana; and
- 8 (c) in the case of any other business entity as applicant:
- 9 (i) if the applicant consists of more than one individual, all must meet the requirements of
- 10 subsection (3)(a); and
- 11 (ii) if the applicant consists of more than one corporation, all must meet the requirements of
- 12 subsection (3)(b).
- 13 (4) In the case of a license that permits the manufacture, importing, or wholesaling of an alcoholic
- 14 beverage, the department must find in every case in which it makes an order for the issuance of a new
- 15 license or for the approval of the transfer of a license that:
- 16 (a) in the case of an individual applicant:
- 17 (i) except as provided in [section 1], the applicant ~~has no~~ does not have an ownership interest in
- 18 any establishment licensed under this chapter for retail alcoholic beverages sales;
- 19 (ii) except as provided in [section 1], the applicant has not been convicted of a felony or, if the
- 20 applicant has been convicted of a felony, ~~his~~ rights have been restored;
- 21 (iii) except as provided in [section 1], the applicant's past record and present status as a purveyor
- 22 of alcoholic beverages and as a businessman and citizen demonstrate that ~~he~~ the applicant is likely to
- 23 operate ~~his~~ an establishment in compliance with all applicable laws of the state and local governments;
- 24 (iv) the applicant is not under the age of 19 years; and
- 25 (v) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is
- 26 owned or controlled by a manufacturer of an alcoholic beverage; and
- 27 (b) in the case of a corporate applicant:
- 28 (i) the owners of at least 51% of the outstanding stock meet the requirements of subsection
- 29 (4)(a)(ii);
- 30 (ii) each owner of 10% or more of the outstanding stock meets the requirements for an individual

1 listed in subsection (4)(a) of this section;

2 (iii) an applicant for a wholesale license is neither a manufacturer of an alcoholic beverage nor is  
3 owned or controlled by a manufacturer of an alcoholic beverage; and

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

5 (c) in the case of any other business entity as applicant:

6 (i) except as provided in [section 1], if the applicant consists of more than one individual, all must  
7 meet the requirements of subsection (4)(a); and

8 (ii) except as provided in [section 1], if the applicant consists of more than one corporation, all  
9 must meet the requirements of subsection (4)(b).

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

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

14

15 **Section 7.** Section 16-4-501, MCA, is amended to read:

16 "**16-4-501. License and permit fees.** (1) ~~Each~~ A beer licensee licensed to sell either beer or table  
17 wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee  
18 as follows:

19 (a) each brewer and each beer importer, ~~wherever located, whose product is sold or offered for~~  
20 ~~sale within the state,~~ \$500; for each storage depot, \$400;

21 (b) each beer wholesaler, \$400; each table wine distributor, \$400; each subwarehouse, \$400;

22 (c) each beer retailer, \$200;

23 (d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer  
24 license; for a license to sell table wine at retail for off-premises consumption only, either alone or in  
25 conjunction with beer, \$200;

26 (e) any unit of a nationally chartered veterans' organization, \$50.

27 (2) The permit fee under 16-4-301(1) is computed at the rate of \$15 a day for each day beer and  
28 table wine are sold at those events lasting 2 or more days, ~~but in no case shall the fee~~ may not be less than  
29 \$30.

30 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the

1 sale of all alcoholic beverages.

2 (4) Passenger carrier licenses ~~shall~~ must be issued upon payment by the applicant of an annual  
3 license fee in the sum of \$300.

4 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment  
5 to a beer-only license pursuant to 16-4-105, is \$200.

6 (6) The annual fee for resort retail all-beverages licenses within a given resort area ~~shall be~~ is  
7 \$2,000 for each license.

8 (7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

9 (a) except as provided in this section, for each license outside of incorporated cities and  
10 incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000,  
11 \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

12 (b) except as provided in this section, for each license in incorporated cities with a population of  
13 more than 2,000 and less than 5,000 or within a distance of 5 miles ~~thereof~~ from the city, measured in a  
14 straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city,  
15 \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

16 (c) except as provided in this section, for each license in incorporated cities with a population of  
17 more than 5,000 and less than 10,000 or within a distance of 5 miles ~~thereof~~ from the city, measured in  
18 a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city,  
19 \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

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

24 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated  
25 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest  
26 boundary of the city or town; and ~~where~~ when the premises of the applicant to be licensed are situated  
27 within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of  
28 different populations, the license fee chargeable by the larger incorporated city or incorporated town applies  
29 and must be paid by the applicant. When the premises of the applicant to be licensed are situated within  
30 an incorporated town or incorporated city and any portion of the incorporated town or incorporated city

1 is ~~without~~ outside a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated  
2 city applies and must be paid by the applicant.

3 (f) an applicant for the issuance of an original license to be located in areas described in subsection  
4 (d) of this subsection shall provide an irrevocable letter of credit from a financial institution that guarantees  
5 that applicant's ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original  
6 license fee of \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any  
7 transfer or renewal of a license issued prior to July 1, 1974. All licenses, however, are subject to the  
8 annual renewal fee.

9 (8) The fee for one all-beverage license to a public airport is \$800. This license is nontransferable.

10 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under  
11 16-4-303 is \$250.

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

14 (11) In addition to other license fees, the department of revenue may require a licensee to pay a  
15 late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license  
16 fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1  
17 of the renewal year.

18 (12) All license and permit fees collected under this section must be deposited as provided in  
19 16-2-108."  
20

21 **Section 8.** Section 16-6-301, MCA, is amended to read:

22 "**16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful.** (1) Except  
23 as provided by this code, ~~no~~ a person or the person's agents or employees shall may not, ~~within the state,~~  
24 ~~by himself, his clerk, servant, or agent,~~

25 (a) expose or keep an alcoholic beverage for sale ~~or~~;

26 (b) directly or indirectly or upon any pretense or upon any device, sell or offer to sell an alcoholic  
27 beverage; or,

28 (c) in consideration of the purchase or transfer of any property or for any other consideration or  
29 at the time of the transfer of any property, give to any other person ~~any~~ an alcoholic beverage.

30 (2) ~~No~~ A person shall may not have or keep any alcoholic beverage ~~which~~ that has not been

1 purchased within the state of Montana. ~~Nothing in this code shall prohibit, except that this section does~~  
 2 not prohibit:

3 (a) ~~any a person entering this state from any other another state or from any foreign country from~~  
 4 having in his possession an amount not to exceed 3 wine gallons of alcoholic beverage ~~which beverage~~  
 5 ~~shall have been that was~~ purchased in another state or foreign country, ~~but no person claiming to have so~~  
 6 entered the state shall at any time have in his possession more than 3 wine gallons of alcoholic beverage  
 7 ~~which shall not have been purchased within the state of Montana;~~

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

11 (c) ~~This subsection shall not apply to the department or to the keeping or having of possession of~~  
 12 alcoholic beverages by brewers, distillers, and other persons duly licensed by the United States for the  
 13 manufacture of ~~such those~~ alcoholic beverages; ~~or~~

14 (d) ~~to the keeping or having of any possession of~~ proprietary or patent medicines or of any  
 15 extracts, essences, tinctures, or preparations ~~where such having and keeping if the possession~~ is authorized  
 16 by this code; ~~or~~

17 (3)(e) ~~Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of~~  
 18 alcoholic beverages seized under execution or other judicial or extrajudicial process or ~~to sales under~~  
 19 executions or other judicial or extrajudicial process to the department or a licensee.

20 (4)(3) Except as provided in this code, ~~no a person or the person's agents or employees shall,~~  
 21 ~~within the state, by himself, his clerk, servant, or agent may not:~~

22 (a) attempt to purchase any alcoholic beverage;

23 (b) directly or indirectly or upon any pretense or device, purchase any alcoholic beverage; or

24 (c) in consideration of the sale or transfer of any property or for any other consideration or at the  
 25 time of the transfer of any property, take or accept from any other person any alcoholic beverage."

26

27 **Section 9.** Section 23-5-176, MCA, is amended to read:

28 "**23-5-176. Qualifications for licensure.** (1) A person who the department determines is qualified  
 29 to receive a license under the provisions of this chapter may, based on information available to, required  
 30 by, or supplied to the department under department rules, be issued a state gambling license.

1 (2) Except as provided in subsection (4), the department shall issue a license unless the department  
2 can demonstrate that the applicant:

3 (a) is a person whose prior financial or other activities or criminal record:

4 (i) poses a threat to the public interest of the state;

5 (ii) poses a threat to the effective regulation and control of gambling; or

6 (iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the  
7 carrying on of the business and financial arrangements incidental to gambling;

8 (b) has been convicted of a felony offense within 5 years of the date of application or is on  
9 probation or parole or under deferred prosecution for committing a felony offense; or

10 (c) is receiving a substantial amount of financing for the proposed operation from an unsuitable  
11 source. A lender or other source of money or credit that the department finds to meet the provisions of  
12 subsection (2)(a) may be considered an unsuitable source.

13 (3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under  
14 this section.

15 (4) (a) The department may deny a license or permit to an applicant who has falsified a license or  
16 permit application. If the falsification is determined after the license or permit has been issued, the  
17 department may revoke the license or permit.

18 (b) The department may not issue a permit or license for premises licensed for retail sale of beer  
19 under [section 1]."

20  
21 **Section 10.** Section 23-5-306, MCA, is amended to read:

22 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has  
23 been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for  
24 consumption on the premises, except a license issued under [section 1], may be granted an annual permit  
25 for the placement of live card game tables.

26 (b) The department may issue an annual permit for the placement of live card game tables to a  
27 person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

28 (i) one or more live card game tables were legally operated on the premises on January 15, 1989;

29 (ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other  
30 consumable product;

1 (iii) the person has been granted an operator's license under 23-5-177; and

2 (iv) at the time of application for the permit:

3 (A) the person has continuously operated a live card game table on the premises since January 15,  
4 1989; and

5 (B) the natural person or persons who own the business operated on the premises are the same  
6 as on January 15, 1989.

7 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed  
8 operator's premises may not be prorated and must be:

9 (a) \$250 for the first table; and

10 (b) \$500 for each additional table.

11 (3) The department shall retain for administrative purposes \$100 of the fee collected under this  
12 part for each live card game table.

13 (4) The department shall forward on a quarterly basis the remaining balance of the fee collected  
14 under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or  
15 town in which the live card game table is located for deposit to the county or municipal treasury. A county  
16 is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and  
17 towns within the county. The local government portion of this fee is statutorily appropriated to the  
18 department, as provided in 17-7-502, for deposit to the county or municipal treasury."

19

20 **Section 11.** Section 23-5-502, MCA, is amended to read:

21 **"23-5-502. Sports pools and sports tab games authorized -- tax.** (1) Conducting or participating  
22 in sports pools and sports tab games as defined and governed in this part is lawful, except that:

23 (a) sports tab games may ~~only~~ be conducted only on premises licensed to sell alcoholic beverages  
24 for consumption on the premises under provisions of law other than [section 1]; and

25 (b) only a licensee of premises that are located in an incorporated city or town with a population  
26 of less than 100 or located outside the boundaries of an incorporated city or town and that are licensed  
27 to sell alcoholic beverages for consumption on the premises may conduct a race between animals and  
28 conduct one or more sports pools on the race. The race may be conducted only if it is between pigs,  
29 gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment  
30 where food and beverages are usually stored, prepared, or served.

1 (2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensed operator for use  
2 in a sports tab game shall collect from the operator, at the time of sale, a tax of \$1 for each 100 sports  
3 tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms  
4 required by the department and the proceeds of the collected tax. The manufacturer shall keep a record  
5 of taxes collected as required by department rule. The records must be made available for inspection by  
6 the department upon request of the department. The department shall retain the proceeds of the tax to  
7 administer this part."  
8

9 **Section 12.** Section 23-5-603, MCA, is amended to read:

10 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator  
11 may make available for public play only the number of approved video gambling machines specifically  
12 authorized by this part.

13 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw  
14 poker machines. Only the number of approved machines for which permits have been granted under  
15 23-5-612 may be made available for play by the public on the premises of a licensed operator. The  
16 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced  
17 while it is being repaired with a video gambling machine that is approved under the permit provisions of  
18 this part. A fee may not be charged for the replacement machine.

19 (3) Machines on premises licensed to sell alcoholic beverages for on-premises consumption must  
20 be placed:

21 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or  
22 consumed; and

23 (b) within control of the operator for the purpose of preventing access to the machines by persons  
24 under 18 years of age.

25 (4) Machines may not be placed on premises licensed for the retail sale of beer under [section 1]."  
26

27 **NEW SECTION. Section 13. Codification instruction.** [Section 1] is intended to be codified as an  
28 integral part of Title 16, chapters 1 through 6, and the provisions of Title 16, chapters 1 through 6, apply  
29 to [section 1].  
30

-END-