

HOUSE BILL NO. 402

INTRODUCED BY C. HUNTER

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATED TO THE DIRECT
5 SHIPMENT OF WINE; PROVIDING FOR A DIRECT SHIPMENT ENDORSEMENT TO WINERIES FOR
6 SELLING DIRECTLY TO INDIVIDUAL CONSUMERS IN MONTANA; PROVIDING REQUIREMENTS AND FEES
7 FOR A WINERY WITH A DIRECT SHIPMENT ENDORSEMENT; PROVIDING PENALTIES; EXTENDING
8 RULEMAKING AUTHORITY; REVISING THE CONNOISSEUR'S LICENSE TO ELIMINATE ITS APPLICATION
9 TO WINE; AND AMENDING SECTIONS 16-1-411, 16-3-402, 16-3-411, 16-4-107, 16-4-901, 16-4-902, 16-4-903,
10 16-4-906, AND 16-6-301, MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 NEW SECTION. **Section 1. Direct shipment endorsement for wineries -- definition.** (1) A winery
15 licensed or registered in Montana under 16-4-107 may sell and ship under a direct shipment endorsement up to
16 18 9-liter cases of wine annually to an individual in Montana who is at least 21 years of age for the individual's
17 personal use and not for resale.

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

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

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

26
27 NEW SECTION. **Section 2. Requirements for direct shipment endorsements -- fee -- labeling --**
28 **taxes -- recordkeeping.** (1) A winery licensed or registered under 16-4-107 shall before shipping wine directly
29 to an individual in Montana:

30 (a) remit an annual direct shipment endorsement fee of \$50;

1 (b) submit to the department a written statement acknowledging that the winery will contract only with
2 common carriers that agree that any delivery of wine will be made only to an individual in Montana who is at least
3 21 years of age and who signs a form acknowledging receipt of the wine; and

4 (c) receive from the department a direct shipment endorsement.

5 (2) A shipment of wine under [sections 1 through 3] must be conspicuously labeled with the words
6 "Contains Alcohol: Signature of Person Age 21 or Older Required for Delivery".

7 (3) (a) In addition to maintaining records required under 16-3-411 or 16-4-107, a winery with a direct
8 shipment endorsement shall maintain records of any sales or shipments to an individual in Montana.

9 (b) The winery shall, by the 15th day of each month following a month in which a shipment was made,
10 report to the department in the manner and form prescribed by the department information on direct shipments
11 in the preceding month and pay the tax required under 16-1-411(1)(a). The information reported to the
12 department must include the names and addresses of the individual to whom the wine was shipped and any other
13 information that the department determines is necessary to verify that direct shipment of wine conforms to the
14 requirements of Title 16. Failure to pay taxes or file the information required in this subsection subjects the winery
15 holding the direct shipment endorsement to the penalties and interest provided for in 15-1-216.

16 (4) A winery with a direct shipment endorsement shall allow the department to perform an audit of the
17 record of shipments made under [section 1]. The shipment records must be retained for 3 years.

18 (5) If a winery with a direct shipment endorsement uses a bonded wine warehouse to fill wine orders
19 shipped to an individual in Montana, the winery shall provide written notice to the department of the name and
20 the address of the bonded wine warehouse. The winery is responsible for compliance with [sections 1 through
21 3].

22
23 **NEW SECTION. Section 3. Enforcement -- penalty -- rulemaking.** (1) Subject to a right to a hearing
24 and the appeal process provided by the Montana Administrative Procedure Act in Title 2, chapter 4, the
25 department may enforce the requirements of [sections 1 through 3] by suspending or revoking the direct shipment
26 endorsement or imposing a civil penalty not to exceed \$1,500.

27 (2) A winery that has a direct shipment endorsement is considered to have consented to the jurisdiction
28 of the department or any other state agency and the Montana courts concerning enforcement of [sections 1
29 through 3] and related rules or regulations.

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

1 having a direct shipment endorsement.

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

3

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

5 **"16-1-411. Tax on wine and hard cider -- penalty and interest.** (1) (a) A tax of 27 cents per liter is
6 imposed on table wine, except hard cider, imported by a table wine distributor or the department and on wine
7 shipped directly by a winery with a direct shipment endorsement.

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

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

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

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

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

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

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

24

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

26 **"16-3-402. Importation of wine -- records.** (1) Except as provided in 16-3-411 and ~~16-4-901~~ [sections
27 1 through 3], all table wine manufactured outside of Montana and shipped into Montana must be consigned to
28 and shipped to a licensed table wine distributor and be unloaded by the distributor into the distributor's warehouse
29 in Montana or subwarehouse in Montana. The distributor shall distribute the table wine from the warehouse or
30 subwarehouse.

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

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

7

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

9 **"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

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

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

- 26 (i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered
 27 pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;
 28 (ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer; or
 29 (iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:
 30 (A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery or

1 bonded warehouse;

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

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

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

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

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

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

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

14 (d) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine
15 within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall, on
16 or before the 15th day of each month, in the manner and form prescribed by the department, make a return
17 reporting the amount of wine that it shipped in the state during the preceding month, names and addresses of
18 consignees or retailers, and other information that the department may determine to be necessary to ensure that
19 distribution of table wines within this state conforms to the requirements of this code."
20

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

22 **"16-4-107. Winery license -- winery and importer registration.** (1) (a) Wine, other than for personal
23 consumption in conformity with federal exemptions from holding a basic permit as a bonded winery, may be
24 manufactured or directly distributed to retailers within the state only by a licensed winery and may be shipped
25 directly by a winery with a direct shipment endorsement as provided in [section 1] to an individual in Montana who
26 is at least 21 years of age. An application for a winery license must be accompanied by a fee of \$400, which
27 constitutes the first annual license fee, and a licensee shall in each succeeding year pay an annual fee as
28 provided in 16-4-501. Winery licensees located in Montana must hold the appropriate basic permit required by
29 the United States department of the treasury and be qualified for a license in accordance with the provisions of
30 16-4-401(4). Winery licensees located in another state must hold the appropriate basic permit required by the

1 United States department of the treasury and the appropriate license to manufacture wine from the state in which
2 the winery is located and shall provide all other information required by the department.

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

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

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

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

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

23

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

25 **"16-4-901. Connoisseur's licenses -- application -- fees.** (1) A person in this state desiring to receive
26 direct shipments of beer ~~only, wine only, or both beer and wine~~ from an out-of-state brewery ~~or winery~~ for the
27 person's own consumption and not for resale shall file with the department an application for a connoisseur's
28 license. The application must be accompanied by a registration fee in the amount of:

29 ~~— (a) \$50 for a beer connoisseur's license;~~

30 ~~— (b) \$50 for a wine connoisseur's license; or~~

1 ~~_____ (c) \$100 for a beer and wine connoisseur's license.~~

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

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

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

9 (5) The department shall adopt rules to provide procedures for the application for and the provision of
10 a connoisseur's license."
11

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

13 **"16-4-902. Payment of taxes -- authority of department.** (1) A person holding a connoisseur's license
14 shall pay, on June 30 and December 31, the beer ~~and wine~~ taxes imposed by Title 16, chapter 1, part 4, on beer
15 ~~or wine~~ that is received by direct shipment from an out-of-state brewery ~~or winery~~ during the previous 6-month
16 period.

17 (2) Each holder of a connoisseur's license shall file with the department a return, on a form provided by
18 the department, and pay the tax for shipments received."
19

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

21 **"16-4-903. Direct shipment of beer ~~or wine~~ -- limitations.** (1) Subject to the provisions of 16-4-901,
22 the holder of a connoisseur's license may receive up to ~~144 bottles or 12 cases of wine or 288 bottles or 12 cases~~
23 of beer from an out-of-state brewery ~~or winery~~ during a 12-month period for personal use and not for resale. ~~A~~
24 ~~person wishing to receive both wine and beer under this section must possess a beer and wine connoisseur's~~
25 ~~license.~~

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

29 (3) A licensee shall report to the department, on June 30 and December 31, the total amount of beer ~~or~~
30 ~~wine~~ received from an out-of-state brewery ~~or winery~~ and pay all applicable excise taxes, as provided for in Title

1 16, chapter 1, part 4, imposed on the receipt of beer ~~or wine~~ during the previous 6 months."

2

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

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

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

8 ~~—— (a) 1,440 bottles or 60 cases of beer for breweries; and~~

9 ~~—— (b) 720 bottles or 60 cases of wine for wineries.~~

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

12 (a) distribute the brewery's ~~or winery's~~ product through a licensed wholesale distributor;

13 ~~(b) distribute through direct shipment to licensed retailers in accordance with the provisions of 16-3-411~~
14 ~~if the winery is licensed pursuant to 16-4-107; or~~

15 ~~(c)~~(b) distribute as a brewery in accordance with the provisions of 16-3-214.

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

18

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

20 **"16-6-301. Transfer, sale, and possession of alcoholic beverages -- when unlawful.** (1) Except as
21 provided by this code, a person or the person's agents or employees may not:

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

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

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

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

29 (3) This code does not prohibit:

30 (a) a person entering this state from another state or foreign country from having in the person's actual

1 physical possession an amount not to exceed 3 gallons of alcoholic beverage that was purchased in another state
2 or foreign country;

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

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

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

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

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

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

17 (a) attempt to purchase any alcoholic beverage;

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

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

21
22 NEW SECTION. **Section 13. Codification instruction.** [Sections 1 through 3] are intended to be
23 codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 1
24 through 3].

25 - END -