



GOVERNOR'S OFFICE OF
BUDGET AND PROGRAM PLANNING

Fiscal Note 2023 Biennium

Bill # HB0705

Title: Generally revise alcohol and gaming laws

Primary Sponsor: Buttrey, Edward

Status: As Introduced

- Significant Local Gov Impact
 Needs to be included in HB 2
 Technical Concerns
 Included in the Executive Budget
 Significant Long-Term Impacts
 Dedicated Revenue Form Attached

FISCAL SUMMARY

	<u>FY 2022 Difference</u>	<u>FY 2023 Difference</u>	<u>FY 2024 Difference</u>	<u>FY 2025 Difference</u>
Expenditures:				
General Fund	\$258,000	\$0	\$0	\$0
State Special Revenue	\$88,144	\$86,458	\$87,595	\$88,752
Revenue:				
General Fund	(\$48,144)	(\$46,458)	(\$47,595)	(\$48,752)
State Special Revenue	\$40,000	\$40,000	\$40,000	\$40,000
Net Impact-General Fund Balance:	<u>(\$306,144)</u>	<u>(\$46,458)</u>	<u>(\$47,595)</u>	<u>(\$48,752)</u>

Description of fiscal impact: HB 705 creates a new all-beverage license type available for seasonal outdoor tourism businesses. It also changes several areas of code dealing with resort license privileges, license applicant eligibility, premises approval, and other additional sections. The Department of Revenue (DOR) expects the new license type to generate an additional \$40,000 annually. The DOR requires one additional on-going FTE to implement the provisions of the bill.

FISCAL ANALYSIS

Assumptions:

Department of Revenue

1. HB 705 creates a new all-beverage license type available to seasonal businesses primarily involved in providing recreation or tourism activities and experiences.
2. The department expects that 200 businesses will seek this license.
3. At \$200 per license with a \$200 annual renewal fee, this will raise \$40,000 annually for the liquor enterprise fund.
4. The department will require one additional FTE for the additional application processing workload created by this new license type, as well as the miscellaneous work associated with other changes in the bill such as allowing resorts to have separate storage facilities, concession agreements, etc.

5. The department expects \$258,000 in one-time contracted services for the software implementation of the new license and miscellaneous license application changes.
6. The FTE for the alcoholic beverage control division is paid from the liquor enterprise fund. However, since the liquor enterprise fund transfers its end of year balance to the general fund, any expenses to the liquor enterprise fund are indirect expenses of the general fund.

	<u>FY 2022</u> <u>Difference</u>	<u>FY 2023</u> <u>Difference</u>	<u>FY 2024</u> <u>Difference</u>	<u>FY 2025</u> <u>Difference</u>
<u>Fiscal Impact:</u>				
FTE	1.00	1.00	1.00	1.00
<u>Expenditures:</u>				
Personal Services	\$77,477	\$78,449	\$79,435	\$80,438
Operating Expenses	\$268,667	\$8,009	\$8,160	\$8,314
TOTAL Expenditures	<u>\$346,144</u>	<u>\$86,458</u>	<u>\$87,595</u>	<u>\$88,752</u>
<u>Funding of Expenditures:</u>				
General Fund (01)	\$258,000	\$0	\$0	\$0
State Special Revenue (02)	\$88,144	\$86,458	\$87,595	\$88,752
TOTAL Funding of Exp.	<u>\$346,144</u>	<u>\$86,458</u>	<u>\$87,595</u>	<u>\$88,752</u>
<u>Revenues:</u>				
General Fund (01)	(\$48,144)	(\$46,458)	(\$47,595)	(\$48,752)
State Special Revenue (02)	\$40,000	\$40,000	\$40,000	\$40,000
TOTAL Revenues	<u>(\$8,144)</u>	<u>(\$6,458)</u>	<u>(\$7,595)</u>	<u>(\$8,752)</u>

Net Impact to Fund Balance (Revenue minus Funding of Expenditures):

General Fund (01)	(\$306,144)	(\$46,458)	(\$47,595)	(\$48,752)
State Special Revenue (02)	(\$48,144)	(\$46,458)	(\$47,595)	(\$48,752)

Technical Notes:

1. New Section 1 allows a guest ranch, outfitting and guide facility, or private campground or lodge to obtain an outdoor recreation all-beverages license. It is unclear which businesses may qualify for licensure without additional guidance in statute.
2. New Section 1 (4) allows for a retailer to purchase alcohol from another retailer. This conflicts with 16-3-301, MCA.
3. New Section 1 allows for sale and consumption while customers are performing recreation or tourism activities. It is not clear what activities would qualify and it seems that consumption could occur anywhere in the state because it doesn't have to occur on the property.
4. Section 2 and Section 3 require that the licensee have the ability to secure the alcohol. The DOR would prefer it require them to actually secure the alcohol after hours.
5. Section 2 allows a licensee to alter their premises without department approval to begin, but it is unclear what would happen if the alteration did not meet suitability when completed. Involving the department prior to starting an alteration could save the licensee time and money if the alteration ultimately wouldn't meet suitability or building, health or fire codes and could create a public safety concern.
6. Section 2 limits alterations to those that do not increase the square footage of existing approved premises, but it is unclear what would be required if a licensee wanted to increase their square footage.

7. Section 2 and Section 3 both allow things such as snow and hillsides to be considered a boundary for a patio or deck, but snow would not be present all year and whether a hillside impedes foot traffic is subjective and the area would then not meet suitability.
8. Section 2 (6) talks about allowing a noncontiguous storage area for onsite storage, but it is unclear what this means. The department suggests clarification that the licensee has control of this area still.
9. Section 3 (5), it is not clear how age would be verified if the purchaser weren't present.
10. Section 3 (7) says that the provisions of 16-4-418, MCA, apply, but some of the provisions of 16-4-418, MCA, would conflict with this. The department would suggest specifying which provisions of 16-4-418, MCA, would apply.
11. Section 3 (8) conflicts with 16-3-311, MCA, which allows a license to be in a singular building.
12. Section 3 (8) conflicts with 16-3-301(1), MCA, which says it is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewery, winery, or wholesaler licensed under the provisions of this code.
13. Section 3 (8) conflicts with 16-3-301(2), MCA, which says it is unlawful for a licensed retailer to transport beer or wine from one licensed premises or other facility to any other licensed premises owned by the licensee.
14. Section 3 (8) conflicts with 16-4-103(5), MCA, which refers to "distribute" as in 16-3-218, MCA, which means to deliver beer or wine to a retailer's premises licensed to sell beer, table wine, or sacramental wine.
15. Section 3 (8) potentially conflict with 16-6-303, MCA, requiring liquor to come from an agency liquor store.
16. Section 3 (8) should have some segregation of each licensee's alcohol to ensure control as most of these licensees do not have the same owners.
17. Section 3 (8) is unclear which licensee or if all of the licensees would be responsible for a violation should there be illegal alcohol or something along that line discovered at the storage facility.
18. Section 3 (8) assumes that licensee's wanting to use the storage facility need to apply to and be approved by the department, but it is unclear if there is an application fee for this and what the requirements are for approval.
19. Section 4 changes the requirements for who requires vetting by the department and increases the risk of allowing bad actors into the industry. It will also increase the disparity between alcohol licensing requirements and gambling licensing requirements and will put different requirements on different alcohol licensees.
20. Section 4 in several locations contains the language "who is substantially involved in the management of" which is too subjective and again could increase the risk of allowing bad actors into the industry by simply saying they are not substantially involved in the management.
21. Section 4 in several locations contains the language "however, nothing in this subsection (2)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor." This appears to attempt to incorporate language from *Broers v. Montana Department of Revenue*, 237 Mont. 367 (1989). In that case, the Montana Supreme Court stated: "A person's past record or present status as an income tax protestor, or, as argued at bar, a trespasser at Malmstrom Air Force Base bears no relation to the operation of a liquor establishment . . . Neither income tax protestation nor advocacy of nuclear disarmament bear any relation to the manufacture, sale, or distribution of alcoholic beverages." These subsections appear to expand the Montana Supreme Court's reasoning beyond an applicant's status as an income tax protestor to also include "an applicant's tax status." Compliance with Montana taxes prior to the initial issuance of the license "demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments" which is required in current law. For example, compliance with Montana's tax requirements is relevant to whether an applicant is likely to submit licensing fees and alcoholic beverage taxes during operation of the establishment. The Department is also tasked with verifying if an applicant's source of funding is suitable under 16-4-401(7), MCA. An applicant's compliance with Montana's tax requirements is used to confirm the applicant's source of funding is suitable and does not create a danger of illegal practices, methods, or activities.
22. Section 4 (9) contains the language "in a timely manner" which is too subjective. The department would suggest replacing "in a timely manner" with "within 45 days".

- 23. Section 6 (2)(b) makes it almost impossible to enforce Title 16. Most of Title 16, chapter 6, part 3 pertains to non-licensees. Proposed revocation is sometimes the only way to get a licensee into compliance as paying a fine does not get the department the paperwork we need. Without the paperwork, the department may not know who is actually operating the license or what the potential public harm might be. If the paperwork we are missing is something related to transfer or ownership, location manager or noninstitutional lenders for example, there is the potential of someone who is unsuitable operating the establishment and the department would have no ability to remedy the situation without the ability to propose revocation.
- 24. Section 7 contains the language “responsible for operating the licensed establishment” which is too subjective and again could increase the risk of allowing bad actors into the industry as all they would have to say is that individual is not responsible for operating the licensed establishment.
- 25. Section 9 contains the language “a sealed bottle” and the department recommends replacing with “wine in original packaging that has not previously been opened.”
- 26. Section 9, it is unclear if this privilege would extend to entities that concession with on-premises retailers.
- 27. New Section 15 calls for an effective date upon passage and approval and will not give the department ample time to implement the bill as it requires significant software developer hours.

NOT SIGNED BY SPONSOR

Sponsor's Initials

Date

Date

Sponsor's Initials

Date

Budget Director's Initials

Date