

## 1 HOUSE BILL NO. 157

2 INTRODUCED BY R. MARSHALL, J. KASSMIER, D. HARVEY

3 BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

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 5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LICENSING LAWS;  
 6 ALLOWING A BREWERY OR WINERY TO ~~SHARE A LOCATION WITH A~~ BE LOCATED ADJACENT TO AN  
 7 ON-PREMISES RETAIL LICENSE IF THE ~~BREWERY MAINTAINS~~ LICENSEES MAINTAIN ADEQUATE  
 8 PHYSICAL SEPARATION; DEFINING ADEQUATE PHYSICAL SEPARATION; ALLOWING AN APPLICANT  
 9 FOR AN ON-PREMISES ALCOHOL LICENSE TO HAVE A SPOUSE THAT ~~IS AFFILIATED HAS FINANCING~~  
 10 ~~FROM A MANUFACTURER OF ALCOHOLIC BEVERAGES~~ HAS AN OWNERSHIP INTEREST IN ONE OR  
 11 MORE MANUFACTURER LICENSES; AMENDING SECTIONS 16-3-311 AND 16-4-401, MCA; AND  
 12 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

13  
 14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15  
 16 ~~NEW SECTION. Section 1. Control of brewery premises -- portion of brewery building adjacent~~  
 17 ~~to licensed retailer.~~ (1) A brewery may use part of a building that is also approved by the department as a  
 18 licensed retail location if the brewery can maintain control of the premises through adequate physical  
 19 separation.

20 ~~(2) (a) For purposes of this section, the term "adequate physical separation" means the brewery can~~  
 21 ~~be secured after business hours from unlawful entry. The separation may include doors, gates, and windows~~  
 22 ~~that may be left open during business hours.~~

23 ~~(b) The term does not require permanent floor-to-ceiling walls.~~

24  
 25 **Section 1.** Section 16-3-311, MCA, is amended to read:

26 **"16-3-311. Suitable premises for licensed retail establishments.** (1) A licensed retailer may use a  
 27 part of a building as premises licensed for on-premises consumption of alcoholic beverages. ~~The~~ Except as  
 28 provided in ~~section 4~~ SUBSECTION (3), the premises must be separated from the rest of the building by

1 permanent walls but may have inside access during lawful hours of operation to the rest of the building even if  
 2 the businesses or uses in the other part of the building are unrelated to the operation of the premises in which  
 3 the alcoholic beverages are served.

4 (2) A licensee whose premises did not meet the requirements of this section on September 24, 1992,  
 5 shall meet the requirements when an alteration to the premises has been completed and the department has  
 6 approved the alteration. An alteration is any structural change in a premises. A cosmetic change, such as  
 7 painting, carpeting, or other interior decorating, is not considered an alteration under this section.

8 (3) AN ON-PREMISES CONSUMPTION RETAILER MAY BE LOCATED ADJACENT TO A BREWERY OR WINERY IF THE  
 9 LICENSEES ARE ABLE TO MAINTAIN CONTROL OF THEIR RESPECTIVE PREMISES THROUGH ADEQUATE PHYSICAL  
 10 SEPARATION.

11 (4) (A) FOR THE PURPOSES OF THIS SECTION, "ADEQUATE PHYSICAL SEPARATION" MEANS:

12 (I) THE PREMISES OF THE RETAILER AND THE PREMISES OF THE BREWERY OR WINERY ARE SECURED AFTER  
 13 BUSINESS HOURS FROM EACH OTHER AND FROM ANY OTHER BUSINESS, INCLUDING BUT NOT LIMITED TO PROHIBITING A  
 14 CUSTOMER FROM ACCESSING A BREWERY SAMPLE ROOM AND PURCHASING ALCOHOL AFTER THE BREWERY TASTING  
 15 ROOM HOURS OF OPERATION AS SPECIFIED IN 16-3-213(2)(B); AND

16 (II) THE SEPARATION MAY INCLUDE DOORS, GATES, OR WINDOWS THAT MAY BE LEFT OPEN DURING BUSINESS  
 17 HOURS.

18 (B) THE TERM DOES NOT REQUIRE PERMANENT FLOOR-TO-CEILING WALLS."

19

20 **Section 2.** Section 16-4-401, MCA, is amended to read:

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

23 (2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in  
 24 the case of a license that permits on-premises consumption, the department shall find in every case in which it  
 25 makes an order for the issuance of a new license or for the approval of the transfer of a license that:

26 (a) if the applicant is an individual:

27 (i) and the application is approved, the applicant will not possess an ownership interest in more than  
 28 three establishments licensed under this chapter for all-beverages sales. However, resort retail all-beverages

1 licenses issued under 16-4-213 do not count toward this limit.

2 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-  
3 106;

4 (iii) the applicant or any member of the applicant's immediate family is without financing from or any  
5 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an applicant's  
6 spouse may possess an ownership interest in a manufacturer license ONE OR MORE MANUFACTURER LICENSES;

7 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
8 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance  
9 with all applicable laws of the state and local governments; and

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

11 (b) if the applicant is a publicly traded corporation:

12 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
13 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the  
14 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
15 for an individual applicant listed in subsection (2)(a).

16 (ii) each individual who has control over the operation of the license meets the requirements for an  
17 individual applicant listed in subsection (2)(a);

18 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
19 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a  
20 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of  
21 subsection (8) apply.

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

23 (c) if the applicant is a privately held corporation:

24 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
25 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the  
26 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
27 for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet  
28 the requirements of subsection (2)(a).

1 (ii) each individual who has control over the operation of the license meets the requirements for an  
2 individual applicant listed in subsection (2)(a);

3 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
4 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a  
5 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of  
6 subsection (8) apply.

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

8 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection  
9 (2)(a);

10 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all  
11 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the  
12 requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all  
13 limited partners must meet the requirements of subsection (2)(a).

14 (f) if the applicant is a limited liability company, all managing members and those members whose  
15 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If  
16 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of  
17 subsection (2)(a).

18 (3) In the case of a license that permits only off-premises consumption and subject to subsection (8),  
19 the department shall find in every case in which it makes an order for the issuance of a new license or for the  
20 approval of the transfer of a license that:

21 (a) if the applicant is an individual:

22 (i) and the application is approved, the applicant will not possess an ownership interest in more than  
23 three establishments licensed under this chapter for all-beverages sales;

24 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-  
25 106;

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

28 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,

1 the applicant's rights have been restored;

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

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

6 (b) if the applicant is a publicly traded corporation:

7 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed  
8 in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall  
9 designate two or more officers or board members, each of whom must meet the requirements for an individual  
10 applicant listed in subsection (3)(a).

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

12 (c) if the applicant is a privately held corporation:

13 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
14 applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the  
15 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
16 for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet  
17 the requirements of subsection (3)(a).

18 (ii) the corporation is authorized to do business in Montana;

19 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection  
20 (3)(a);

21 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all  
22 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the  
23 requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all  
24 limited partners must meet the requirements of subsection (3)(a).

25 (f) if the applicant is a limited liability company, all managing members and those members whose  
26 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If  
27 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of  
28 subsection (3)(a).

- 1           (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or  
2 wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the  
3 issuance of a new license or for the approval of the transfer of a license that:
- 4           (a) if the applicant is an individual:
- 5           (i) the applicant has no ownership interest in any establishment licensed under this chapter for retail  
6 alcoholic beverages sales;
- 7           (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-  
8 106;
- 9           (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,  
10 the applicant's rights have been restored;
- 11           (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
12 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance  
13 with all applicable laws of the state and local governments;
- 14           (v) the applicant is not under 19 years of age; and
- 15           (vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or  
16 controlled by a manufacturer of an alcoholic beverage;
- 17           (b) if the applicant is a publicly traded corporation:
- 18           (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed  
19 in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall  
20 designate two or more officers or board members, each of whom must meet the requirements for an individual  
21 applicant listed in subsection (4)(a).
- 22           (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or  
23 controlled by a manufacturer of an alcoholic beverage; and
- 24           (iii) the corporation is authorized to do business in Montana;
- 25           (c) if the applicant is a privately held corporation:
- 26           (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
27 applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the  
28 applicant must designate two or more officers or board members, each of whom must meet the requirements

1 for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet  
2 the requirements of subsection (4)(a).

3 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or  
4 controlled by a manufacturer of an alcoholic beverage; and

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

6 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection  
7 (4)(a);

8 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all  
9 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the  
10 requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all  
11 limited partners must meet the requirements of subsection (4)(a).

12 (f) if the applicant is a limited liability company, all managing members and those members whose  
13 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If  
14 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of  
15 subsection (4)(a).

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

18 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to  
19 16-4-302.

20 (7) An applicant's source of funding must be from a suitable source. A lender or other source of  
21 money or credit may be found unsuitable if the source:

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 alcoholic beverages; or

25 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business;

26 or

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

1           (8) (a) An individual applying for an all-beverages license or having any ownership interest in an  
2 entity applying for an all-beverages license may not, if the application were to be approved, own an interest in  
3 more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

4           (b) If two or more individuals through business or family relationship share in the profits or liabilities of  
5 all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not  
6 exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-  
7 beverages licenses will be held."

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9           ~~NEW SECTION. Section 4. Codification instruction.~~ [Section 1] is intended to be codified as an  
10 integral part of Title 16, chapter 3, part 2, and the provisions of Title 16, chapter 3, part 2, apply to [section 1].

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

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