

HOUSE BILL NO. 284

INTRODUCED BY R. COOK

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A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING INCREASES TO COMMISSIONS FOR AGENCY LIQUOR STORES; AMENDING SECTION 16-2-101, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

**Section 1.** Section 16-2-101, MCA, is amended to read:

**"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement -- kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

(2) (a) The department may from time to time fix the posted prices at which the various classes, varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

(b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor licenses and to all other persons at the retail price established by the agent.

(ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor store may place a liquor order with the department at its state liquor warehouse in the manner to be established by the department.

(B) The agency liquor store's purchase price is the department's posted price less the agency liquor store's commission rate and less the agency liquor store's weighted average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or employee-operated state liquor stores that were operating on June 30, 1994, the weighted average discount ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales, based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The

1 weighted average discount ratio must be computed on the store's first 12 months of operation.

2 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for within  
3 60 days of the date on which the department invoices the liquor to the agency liquor store.

4 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

5 (3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with  
6 populations over 3,000.

7 (4) (a) Agency liquor stores must receive commissions payable as follows:

8 (i) (A) a 10% commission for agencies in communities with less than 3,000 in population, unless  
9 adjusted pursuant to subsection (6); or

10 (B) a commission established by competitive bidding unless adjusted pursuant to subsection (6) for  
11 agencies in communities with 3,000 or more in population; plus

12 (ii) for agency liquor stores operating under a renewed franchise agreement or that have been operated  
13 for at least 3 years under an original franchise agreement, a percentage based upon the total annual dollar  
14 volume of sales in the previous fiscal year, as follows:

15 ~~(A) for agency liquor stores with a volume of sales of \$560,000 \$1 million or more, 0.875% 1.5%~~  
16 ~~beginning July 1, 2009 2013;~~

17 ~~—— (B) for agency liquor stores with a volume of sales of less than \$560,000 \$1 million, 1.5% 4.5% beginning~~  
18 ~~July 1, 2009 2013; or~~

19 (A) FOR AGENCY LIQUOR STORES WITH A VOLUME OF SALES UP TO \$1.1 MILLION:

20 (I) 2.25% DURING THE PERIOD BEGINNING JULY 1, 2013, AND ENDING JUNE 30, 2014;

21 (II) 3% BEGINNING JULY 1, 2014;

22 (B) FOR AGENCY LIQUOR STORES WITH A VOLUME OF SALES GREATER THAN \$1.1 MILLION AND UP TO \$3.1

23 MILLION:

24 (I) 1.375% DURING THE PERIOD BEGINNING JULY 1, 2013, AND ENDING JUNE 30, 2014;

25 (II) 1.875% BEGINNING JULY 1, 2014;

26 (C) FOR AGENCY LIQUOR STORES WITH A VOLUME OF SALES GREATER THAN \$3.1 MILLION AND UP TO \$5.1

27 MILLION:

28 (I) 1% DURING THE PERIOD BEGINNING JULY 1, 2013, AND ENDING JUNE 30, 2014;

29 (II) 1.125% BEGINNING JULY 1, 2014;

30 (D) FOR AGENCY LIQUOR STORES WITH A VOLUME OF SALES GREATER THAN \$5.1 MILLION:

1 (I) 0.875% DURING THE PERIOD BEGINNING JULY 1, 2013, AND ENDING JUNE 30, 2014;

2 (II) 1% BEGINNING JULY 1, 2014; OR

3 ~~(C)(E)~~ for a city with more than one agency liquor store, in lieu of the addition to a commission increase  
4 provided in subsection ~~(4)(a)(ii)(A) or (4)(a)(ii)(B)~~ (4)(A)(II), for each agency liquor store in the city, an addition to  
5 its commission rate equal to the increase granted the agency liquor store with the lowest commission rate.

6 (b) The department shall by April 1 of each year determine the dollar values of sales volumes in  
7 ~~subsections (4)(a)(ii)(A) and (4)(a)(ii)(B)~~ SUBSECTION (4)(A)(II) OF THE RELEVANT YEAR by using an inflation factor  
8 based on the change in the cost of liquor to agency liquor stores during the prior calendar year. The department  
9 shall establish the method of determining the inflation factor by rule using a liquor-specific base such as the  
10 annual change in the cost per case of the 25 items with the highest sales volume for a calendar year or another  
11 appropriate method of measuring the change in liquor prices.

12 (5) An agency franchise agreement must:

13 (a) be effective for a 10-year period and must be renewed at the existing commission rate for additional  
14 10-year periods if the requirements of the agency franchise agreement have been satisfactorily performed;

15 (b) require the agent to maintain comprehensive general liability insurance and liquor liability insurance  
16 throughout the term of the agency franchise agreement in an amount established by the department of  
17 administration. The insurance policy must:

18 (i) declare the department as an additional insured; and

19 (ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising from  
20 or in connection with the agent's negligent acts or activities in the execution and performance of the agency  
21 franchise agreement.

22 (c) provide that upon termination by the department for cause or upon mutual termination, the agent is  
23 liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time, the  
24 department may immediately repossess all liquor inventory, wherever located.

25 (d) specify the reasonable service and space requirements that the agent will provide throughout the  
26 term of the agency franchise agreement.

27 (6) (a) The commission percentage that the department pays the agent under subsection (4)(a) may be  
28 reviewed every 3 years at the request of either party. If the agent concurs, the department may adjust the  
29 commission percentage to be paid during the remaining term of the agency franchise agreement or until the next  
30 time the commission percentage is reviewed, if that is sooner than the term of the agency franchise agreement,

1 to a commission percentage that is equal to the average commission percentage being paid agents with similar  
2 sales volumes if:

3 (i) the agent's commission percentage is less than the average; and

4 (ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

5 (b) The adjusted commission percentage determined under subsection (6)(a) may be greater than the  
6 average commission paid agents with similar sales volume:

7 (i) if the agent demonstrates that:

8 (A) the agent has experienced cost increases that are beyond the agent's control, including but not  
9 limited to increases in the federally established minimum wage or escalation in prevailing rent; and

10 (B) the average commission percentage is insufficient to yield net income commensurate with net income  
11 experienced before the cost increases occurred; and

12 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements specified  
13 in the agent's franchise agreement that will eliminate the impact of cost increases.

14 (7) The liability insurance requirement may be reviewed every 3 years at the request of either the agent  
15 or the department. If the agent concurs, the department may adjust the requirements to be effective during the  
16 remaining term of the agency franchise agreement if the adjustments adequately protect the state from risks  
17 associated with the agent's negligent acts or activities in the execution and performance of the agency franchise  
18 agreement. The amount of liability insurance coverage may not be less than the minimum requirements of the  
19 department of administration.

20 (8) (a) The department may terminate an agency franchise agreement if the agent has not satisfactorily  
21 performed the requirements of the agency franchise agreement because the agent:

22 (i) charges retail prices that are less than the department's posted price for liquor, sells liquor to persons  
23 who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the discount  
24 provided for in 16-2-201 to persons who hold liquor licenses;

25 (ii) fails to maintain sufficient liability insurance;

26 (iii) has not maintained a quantity and variety of product available for sale commensurate with demand,  
27 delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase  
28 special orders;

29 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated  
30 the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making

1 purchases of liquor; or

2 (v) fails to comply with the express terms of the agency franchise agreement.

3 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise  
4 agreement for cause and specify the unmet requirements. The agent may contest the termination and request  
5 a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its  
6 termination order until after a final decision has been made pursuant to the Montana Administrative Procedure  
7 Act.

8 (c) In the case of failure to make timely payments to the department for liquor purchased, the department  
9 may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the  
10 possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination  
11 and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall  
12 remain closed until a final decision has been reached following a hearing held pursuant to the Montana  
13 Administrative Procedure Act.

14 (9) An agency franchise agreement may be terminated upon mutual agreement by the agent and the  
15 department.

16 (10) An agent may assign an agency franchise agreement to a person who, upon approval of the  
17 department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities  
18 of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the  
19 department of an intent to assign the agency franchise agreement 60 days before the intended effective date of  
20 the assignment. The department may not unreasonably withhold approval of an assignment request.

21 (11) A person or entity may not hold an ownership interest in more than one agency liquor store.

22 (12) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly  
23 service level of at least 97%."

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25 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

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