

HOUSE BILL NO. 123

INTRODUCED BY K. ZOLNIKOV

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LAWS RELATING TO SELF-SERVICE OF BEER AND WINE; PROVIDING RESTRICTIONS FOR SELF-POUR OF BEER AND WINE; ALLOWING SELF-POUR FOR ELECTRONIC DEVICES OR OTHER TECHNOLOGY-BASED DEVICES; PROVIDING EXEMPTIONS TO THE TERM "SELF SERVICE"; PROVIDING FOR ALCOHOL LICENSEE SUPERVISION OF SELF-POUR; PROVIDING THAT METHODS OF PAYMENT FOR BEER AND WINE USING TECHNOLOGY-BASED DEVICES DO NOT CONSTITUTE GIFT CERTIFICATES; AND AMENDING SECTION SECTIONS 16-3-311 AND 30-14-102, MCA."

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

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

"16-3-311. Suitable premises for licensed retail establishments. (1) (a) A licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages, except as otherwise allowed in 16-3-302(4). The licensed retailer must demonstrate that it has adequate control over all alcoholic beverages to prevent self-service, service to underage persons, and service to persons who are actually or apparently intoxicated. Except as provided in subsections (8), (10), and (11), the premises must be separated from the rest of the building by permanent walls but may have inside access to the rest of the building at all times even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served. A licensee may lease the kitchen or another specified area to allow another business entity to operate a business within its premises without permanent floor-to-ceiling walls and without a concession agreement if the other business does not take orders for, serve, or deliver alcohol and has a separate point of sale system. If the premises are located in a portion of a building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access. For the purposes of this

subsection (1)(a), the term "self-service" does not include when customers self-pour beer and wine after an on-premises licensee, including the licensee's employees, concessionaire, or concessionaire's employees, has provided alcohol, including:

(i) large containers of beer or wine, such as pitchers, buckets, or bottles, but not including liquor; or

(ii) if approved by the department, electronic devices or other technology-based devices with predetermined limits used to measure and supply customers with a predetermined volume of beer or wine if the electronic device or other technology-based device is monitored by the licensee, the licensee's employees, the concessionaire, or the concessionaire's employees to ensure that people are not overserved.

(b) A resort retail all-beverages licensee, a retail all-beverages licensee, or an on-premises consumption beer and wine licensee within the boundaries of a resort area may also utilize up to three alternate alcoholic beverage storage facilities as allowed in 16-4-213(8).

(2) A licensee may alter the approved floorplan of the premises. The alteration must be consistent with the requirements of subsection (1)(a). A licensee shall provide a copy of the revised floorplan with the proposed alteration for the licensed premises to the department within 7 days of beginning the alteration. Department approval may not be unreasonably withheld. If the completed alteration differs from the approved alteration due to modifications required for approval by other state or local government entities, such as compliance with fire or building codes, the department must be notified, but preapproval is not required for these modifications. An alteration for the purposes of this section is any structural change in a premises that does not increase the square footage of the existing approved premises. An alteration that increases the square footage of the existing approved premises must be approved by the department prior to beginning the alteration. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section. If the alteration does not require the licensee to obtain a building permit, then the inspections by local government agencies may not be required for department approval.

(3) The interior portion of the licensed premises must be a continuous area that is under the control of the licensee and not interrupted by any area in which the licensee does not have adequate control and includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in order to allow patrons to access other tenant businesses or private dwellings in the same building, including

but not limited to entryways, hallways, stairwells, and elevators.

(4) The premises may include one or more exterior patios or decks as long as sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and impedes foot traffic.

(5) Premises suitability does not include a minimum number of seats.

(6) A licensed retailer may apply to the department to have a noncontiguous storage area that is under the control of the licensed retailer approved for onsite alcoholic beverage storage separate from its service area as long as the licensed retailer demonstrates that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access. The application fee is \$100. On department approval, an on-premises consumption retailer's keg storage and beer lines running into the licensed premises may be in a noncontiguous storage area provided that the licensee is able to maintain control and adequate safeguards are in place to prevent public access.

(7) A licensed retailer operating within a hotel or similar short-term lodging facility may apply to the department to allow for the delivery of alcoholic beverages to guests of accommodation units, and the prestocking of alcoholic beverages in accommodation units is allowed for the accommodation units within the property as long as the purchaser's age is verified and there are adequate safeguards in place to prevent underage service. The application fee is \$100.

(8) An on-premises consumption retailer may be located adjacent to a brewery or winery if the licensees are able to maintain control of their respective premises through adequate physical separation.

(9) (a) For the purposes of this section, "adequate physical separation" means:

(i) the premises of the retailer and the premises of the brewery or winery are secured after business hours from each other and from any other business, including but not limited to prohibiting a customer from accessing a brewery sample room and purchasing alcohol after the brewery tasting room hours of operation as specified in 16-3-213(2)(b); and

(ii) the separation may include doors, gates, or windows that may be left open during business hours.

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

(10) For colocated premises authorized in 16-4-401(9), there are no physical separation requirements applied by this code but the licensee shall follow any federal requirements.

(11) A public airport all-beverages licensee, licensed pursuant to 16-4-208, or the Yellowstone airport beer and wine licensee, licensed pursuant to 16-4-304, may use the airport terminal or part of the terminal as premises licensed for the on-premises consumption of alcoholic beverages without regard to other businesses or uses in the terminal. The airport licensee must be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access."

Section 2. Section 30-14-102, MCA, is amended to read:

"30-14-102. Definitions. As used in this part, the following definitions apply:

(1) "Consumer" means a person who purchases or leases goods, services, real property, or information primarily for personal, family, or household purposes.

(2) "Department" means the department of justice created in 2-15-2001.

(3) "Documentary material" means the original or a copy of any book, record, report, memorandum, paper, communication, tabulation, map, chart, photograph, mechanical transcription, or other tangible document or recording.

(4) "Examination" of documentary material includes the inspection, study, or copying of documentary material and the taking of testimony under oath or acknowledgment in respect to any documentary material or copy of documentary material.

(5) (a) "Gift certificate" means a record, including a gift card or stored value card, that is provided for paid consideration and that indicates a promise by the issuer or seller of the record that goods or services will be provided to the possessor of the record for the value that is shown on the record or contained within the record by means of a microprocessor chip, magnetic stripe, bar code, or other electronic information storage device. The consideration provided for the gift certificate must be made in advance. The value of the gift certificate is reduced by the amount spent with each use. A gift certificate is considered trust property of the possessor if the issuer or seller of the gift certificate declares bankruptcy after issuing or selling the gift

1 certificate. The value represented by the gift certificate belongs to the possessor, to the extent provided by law,
2 and not to the issuer or seller.

3 (b) The term does not include:

4 (i) prepaid telecommunications and technology cards, including but not limited to prepaid
5 telephone calling cards, prepaid technical support cards, and prepaid internet disks that have been distributed
6 to or purchased by a consumer;

7 (ii) a coupon provided to a consumer pursuant to any award, loyalty, or promotion program without
8 any money or consideration being given in exchange for the card; ~~or~~

9 (iii) a gift certificate usable with multiple sellers of goods or services; or

10 (iv) any method of payment relating to electronic devices or other technology-based devices for
11 service of beer and wine under 16-3-311.

12 (6) "Person" means natural persons, corporations, trusts, partnerships, incorporated or
13 unincorporated associations, and any other legal entity.

14 (7) "Possessor" means a natural person who has physical control over a gift certificate.

15 (8) (a) "Trade" and "commerce" mean the advertising, offering for sale, sale, or distribution of any
16 services, any property, tangible or intangible, real, personal, or mixed, or any other article, commodity, or thing
17 of value, wherever located, and includes any trade or commerce directly or indirectly affecting the people of this
18 state.

19 (b) The terms include direct patient care agreements established pursuant to 50-4-107."
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