HOUSE BILL NO. HB0155

Alcohol administration revisions.
Sponsored by: Representative(s) Clem and Lindholm

A BILL

for

AN ACT relating to alcohol; providing for licenses for wholesalers of alcoholic liquors and wine; increasing the tax on alcoholic beverages; revising distribution of those taxes; repealing provisions authorizing the Wyoming liquor division to purchase and sell alcoholic liquors; conforming related provisions; requiring the liquor division to sell its remaining stock of alcoholic liquors; providing rulemaking authority; and providing for effective dates.

Be It Enacted by the Legislature of the State of Wyoming:

Section 1. W.S. 12-1-101(a)(xvii), 12-1-102(b), 12-2-201(a)(intro), (i), (ii), (b) and (e), 12-2-203(b) and (g), 12-2-204(b) and (d)(i), 12-2-302(a), 12-2-305, 12-2-306, 12-3-101(a) and (e), 12-3-102(a), 12-4-103(c),
12-4-407(a), 12-4-412(g), 12-6-101(a), 12-7-103 and 12-7-201(e) are amended to read:

(a) As used in this title:
(xvii) "Wholesaler" means any person except the division, who sells any alcoholic or malt beverage to a retailer for resale;

(b) Nothing in this title prohibits a liquor supplier operating under a governmental permit or tax license from selling his product to the division an appropriate wholesale licensee or delivering products at points not within the state of Wyoming after licenses are secured as required by the division.

12-2-201. Wholesale licenses; fees.
(a) **The division may grant wholesale licenses for the sale of alcoholic liquor, wine and malt beverages as provided in this section.** Except as otherwise provided in paragraph (ii) of this subsection a wholesale license authorizing the sale of malt beverages only, may be granted by the division to microbreweries and malt beverage wholesalers resident within this state. Wholesale licensees have the exclusive right to sell alcoholic liquor, wine and malt beverages at wholesale. Any qualified person desiring an alcoholic liquor wholesale license, wine wholesale license or malt beverage wholesale license shall apply to the division on forms to be provided and pay a license fee of two hundred fifty dollars ($250.00) **for each license** annually in advance. A wholesale license issued under this subsection shall be subject to the following:

(i) Except as provided in paragraph (ii) of this section, no manufacturer, winery, brewery or malt beverage importer may have any legal ownership interest, in whole or in part, in the license, business, assets or corporate stock of a **licensee-wholesaler** under this subsection;
(ii) The division may issue a temporary malt beverage wholesale license under this subsection to a brewery or malt beverage importer if a current licensee who has been granted distribution rights for a brand in a designated sales territory is unable to service the territory as a result of the loss of his license, bankruptcy or insolvency, and the loss of license, bankruptcy or insolvency is not the result of action by the brewery or malt beverage importer that is prohibited under the franchise agreement. A temporary license under this paragraph may be issued for a period not to exceed one (1) year and shall be limited to the sale of products in the designated territory;

(b) Each applicant for a malt beverage wholesale license shall submit to the division a statement under oath designating clearly the geographical territory within which the applicant will sell and deliver malt beverages to qualified retail liquor and malt beverage licensees or permittees only. The territory is to be that designated by the brewer or brewer's authorized agent whose product the applicant sells. The application shall state that malt beverages sold by the applicant may be purchased by all
retail liquor licensees or malt beverage permittees, and that the applicant will maintain a warehouse and delivery facilities within the territory designated. This subsection does not apply to a licensed malt beverage wholesaler when there has been no territorial designation of a brand by a brewer or the brewer's authorized agent to another licensed wholesaler. The division may authorize a licensed malt beverage wholesaler to annually purchase not more than one hundred fifteen (115) gallons of any unassigned brand. A retail liquor licensee or malt beverage permittee shall purchase all malt beverages for retail sale only from a Wyoming wholesale malt beverage licensee.

(e) All Wyoming breweries and all malt beverage wholesalers shall be under the direct supervision of the division and subject to all the provisions of this title and the rules and regulations of the department. The department may adopt separate rules for alcoholic liquor wholesale licenses, wine wholesale licenses and malt beverage wholesaler licenses.

12-2-203. Manufacturing and rectifying; importing and industry representatives; licensing; fees.
(b) The Wyoming liquor division shall grant a class A industry representative license for alcoholic liquor suppliers to a qualified individual domiciled within this state who submits an application to the division on forms provided by the division accompanied by an annual license fee of not to exceed seven hundred fifty dollars ($750.00). A class A industry representative shall have a written statement from any vendor whose products the applicant proposes to represent. The class A industry representative shall be published in the division's price catalog with the products from any vendor represented by him and shall be authorized to request that the division list or delist products from the vendor represented by him.

(g) The local licensing authority may issue to the holder of a manufacturer's license under subsection (a) of this section who is a federally licensed distiller or rectifier, a satellite manufacturer's permit which allows the permittee to sell its manufactured product at not more than one (1) satellite location within Wyoming separate from its manufacturing site under the original permit. All products sold at a manufacturer's satellite location shall
be obtained through the division a licensed wholesaler. The satellite manufacturer's permit may be issued on application to the appropriate licensing authority. The local licensing authority may require a public hearing and the payment of an additional permit fee not to exceed one hundred dollars ($100.00). The satellite manufacturer's permit shall be subject to the terms and conditions of W.S. 12-4-106, the schedule of operating hours provided in W.S. 12-5-101 and the dispensing room provisions pursuant to W.S. 12-5-201.

12-2-204. Out-of-state shipment of manufactured wine; license; fees; restrictions; conditions.

(b) Notwithstanding any law, rule or regulation to the contrary, any person currently licensed in its state of domicile as an alcoholic liquor or malt beverage manufacturer, importer, wholesaler or retailer who obtains an out-of-state shipper's license, as provided in this section, may ship manufactured wine to any Wyoming retail establishment which holds a liquor license in this state or any household in this state.
not listed with the liquor division as part of its inventory and distribution operation.

(d) Any out-of-state shippers licensed pursuant to this section shall:

(i) Not ship more than a total of thirty-six (36) liters of manufactured wine to any one (1) household in this state during any twelve (12) month period; in the event any out-of-state shipper ships more than ninety (90) liters of any particular manufactured wine to any combination of households or licensed retailers in this state, the out-of-state shipper shall offer to sell the manufactured wine to the liquor division at wholesale prices;

12-2-302. Collection of excise taxes; disposition of revenue and fees.

(a) The division shall collect all excise taxes provided by this title relating to alcoholic and malt beverages for deposit into the general fund, in equal amounts to the following accounts:
(i) The court supervised treatment program account established under W.S. 7-13-1605(a);

(ii) The tobacco settlement trust fund income account established under W.S. 9-4-1203(b);

(iii) The Wyoming children's trust fund established under W.S. 14-8-106; and

(iv) The juvenile services block grant account established under W.S. 14-9-104.

12-2-305. Sales to violators prohibited; hearing and review.

Whenever any licensee is convicted of willfully violating any provision of this title, upon satisfactory proof of the conviction, the division may, after notice and hearing, refuse to sell alcoholic beverages to the licensee suspend the license of the licensee. The administrative proceeding shall be conducted as a contested case before a hearing examiner of the office of administrative hearings, who
shall recommend a decision to the division. Judicial
review, if any, shall be from the decision of the division
and in accordance with the provisions of the Wyoming
Administrative Procedure Act.

12-2-306. Sales to licensees failing to pay sales tax
prohibited; hearing and review.

Upon certification by the department of revenue that any
licensee is sixty (60) or more days delinquent in paying
sales taxes, the division shall not sell alcoholic
beverages to suspend the license of the licensee or its
operator until the department of revenue certifies that the
licensee has paid all sales taxes owed. Upon receipt of
certification, the division shall notify the issuing
licensing authority of the delinquency. The licensee shall
be allowed a hearing before the state board of equalization
as provided by the Wyoming Administrative Procedure Act if
the licensee feels aggrieved by any action taken under this
section.

12-3-101. Excise tax to be paid; limitation on liquor
or malt beverage importation; penalties.
(a) An excise tax is assessed and shall be collected by the division equal to three-fourths of one cent ($0.0075), five and one-fourth cents ($0.0525) per one hundred (100) milliliters (3.4 ounces) or fraction thereof on wine, two and one-half cents ($0.025), seventeen and one-half cents ($0.175) per one hundred (100) milliliters (3.4 ounces) or fraction thereof on spirituous liquors and one-half cent ($0.005), three and one-half cents ($0.035) per liter (33.8 ounces) or fraction thereof on malt beverages. The appropriate excise tax shall be collected on all alcoholic or malt beverages sold, offered for sale or use in this state.

(e) Any person importing or transporting alcoholic liquor in violation of subsection (d) of this section is guilty of a misdemeanor. All alcoholic liquor or malt beverages illegally imported or transported shall be forfeited and delivered to the division for disposition as inventory stock destroyed.

12-3-102. Confiscation authorized; disposition; when seizure permitted.
(a) When an authorized inspector discovers alcoholic liquors or malt beverages upon which excise taxes have not been paid in the possession of a licensee, he shall take possession of and hold the alcoholic liquors or malt beverages as evidence against the offender. If the offender is convicted of a violation of W.S. 12-3-101, the court shall order that the untaxed liquor or beverage be delivered to the division, if merchantable, where it will be added to its stock and sold in the usual course of business. If the liquors or beverages are determined to be nonmerchantable, the court shall order their destruction destroyed. This subsection shall not apply to homemade beverages that are provided in accordance with an event under W.S. 12-10-102, provided that the beverages shall be removed from the premises within twenty-four (24) hours following the end of the event.

12-4-103. Restrictions upon license or permit applicants and holders; license limitation per person.

(c) Except as provided in subsection (d) of this section, a license or permit authorized by this title shall
not be renewed if the licensee or permittee did not, during
the previous one (1) year term of the license or permit,
purchase at least five hundred dollars ($500.00) of
alcoholic or malt beverages or a combination thereof from
the division or any authorized malt beverage wholesaler. A
retail liquor license shall not be renewed if the licensee
did not, during the previous one (1) year term of the
license, purchase at least two thousand dollars ($2,000.00)
of alcoholic or malt beverages or a combination thereof
from the division or any authorized malt beverage
wholesaler.

12-4-407. Restaurant liquor license; authorized.

(a) Restaurants as defined by W.S. 12-1-101(a)(xiv)
may be licensed by the appropriate licensing authority in
counties, cities and towns under a restaurant liquor
license. In addition to the application requirements
required by this title, the license applicant shall submit
a valid food service permit upon application. When the
total dollar amount of wholesale purchases from the
division of liquor in a county is greater than fifty (50)
times the county population, then population formulas have
no application to issuance of restaurant liquor licenses within the county.

12-4-412. Microbrewery and winery permits; authorized; conditions; dual permits and licenses; satellite winery permits; direct shipment of wine; fees.

(g) Notwithstanding paragraph (b)(v) of this section and W.S. 12-5-201, any person holding a winery permit as provided by this section, may sell and ship its manufactured wine which is not listed with the liquor division as part of its inventory and distribution operation to any Wyoming retail establishment which holds a liquor license in this state.

12-6-101. Sale or possession prohibited; when possession unlawful; public drunkenness; falsification of identification; penalty; prima facie identification as defense.

(a) Any person who sells, furnishes, gives or causes to be sold, furnished or given away any alcoholic liquor or malt beverage to any person under the age of twenty-one
1 (21) years, who is not his legal ward, medical patient or
2 member of his own immediate family, is guilty of a
3 misdemeanor. This subsection does not apply to sales by
4 the division or a wholesaler to a licensee under this
5 title.

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7 12-7-103. Suspension of license by licensing
8 authorities for failure to pay sales tax.

9 A local licensing authority may suspend any license issued
10 under this title if the licensee fails to pay sales taxes.
11 and the division has ceased sales of alcoholic liquor to
12 the licensee pursuant to W.S. 12-2-306. The licensee may
13 appeal license suspension to the district court in the
14 manner specified under W.S. 12-4-104(f) and the appeal
15 proceedings shall be in accordance with the Wyoming Rules
16 of Appellate Procedure. The suspension shall remain in
17 effect pending a decision by the appellate court.

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19 12-7-201. Civil action; administrative and judicial
20 proceedings; disposition of liquors.
(e) Upon the revocation of a liquor license or permit, all alcoholic liquors in the possession of the license holder and which are in merchantable condition shall be delivered to the division which shall reimburse the license holder for the value thereof at its then regular wholesale prices. All malt beverages and nonmerchantable alcoholic liquors shall be disposed of at the direction of the division destroyed.

Section 2. W.S. 12-2-301(a), 12-2-303, 12-4-412(h)(ii), 12-5-402(c) and 12-5-405 are repealed.

Section 3. The Wyoming liquor division shall sell its full stock of alcoholic liquors not later than December 31, 2017 to qualified licensees within the state. The department of revenue shall adopt rules and regulations necessary to begin accepting applications for alcoholic liquor wholesale licenses and wine wholesale licenses by July 1, 2017 and the division may also sell its stock to any appropriate licensed wholesaler in the state after July 1, 2017. To the extent practical, sales shall be made at prices sufficient to return the cost of merchandise and all expenses of operation together with a profit, not to exceed
seventeen and six-tenths percent (17.6%) above the cost of the merchandise. The division may make sales at prices less than the amount specified in this section if necessary to sell the full stock by the date specified in this section.

As used in this section, "licensee" means as defined in W.S. 12-1-101(a)(viii).

Section 4.

(a) Except as provided in subsection (b) of this section, this act is effective July 1, 2017.

(b) Section 3 of this act is effective immediately upon completion of all acts necessary for a bill to become law as provided by Article 4, Section 8 of the Wyoming Constitution.

(END)