

# **ServSafe Alcohol Course**

## **State of Montana Supplement**



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## ***1. Alcohol Law and Your Responsibility***

### **A. Age Definitions**

- Age to Pour - 18
- Age to Serve - 18
- Age to Consume - 21

### **B. Hours of Operations**

On Premise Operations can operate between the hours of 8 a.m. until 2 a.m. Sunday through Saturday.

### **C. General Penalties**

The department will impose progressive penalties for multiple violations of any laws, ordinances and rules within any three-year period unless mitigating circumstances indicate the penalty should be reduced, or aggravating circumstances indicate the penalty should be increased. Violations and progressive penalties include, but are not limited to, those listed on the following chart. Any combination of four of the violations listed below occurring within a three-year period could result in a license revocation action.

| <u>Violation</u>                     | <u>1st Offense</u> | <u>2<sup>nd</sup> Offense</u> | <u>3<sup>rd</sup> Offense</u> | <u>4<sup>th</sup> Offense</u> |
|--------------------------------------|--------------------|-------------------------------|-------------------------------|-------------------------------|
| Sale to a Minor                      | \$250              | \$1000                        | \$1500/20-day Suspension      | Revocation                    |
| Sale to Intoxicated Persons          | \$250              | \$1000                        | \$1500/20-day Suspension      | Revocation                    |
| Open after Hours                     | \$150              | \$600                         | \$1000/12-day Suspension      | Revocation                    |
| Sale after Hours                     | \$150              | \$600                         | \$1000/12-day Suspension      | Revocation                    |
| Re-pouring                           | \$250              | \$1000                        | \$1500/20-day Suspension      | Revocation                    |
| Denial of Right to Inspect           | \$150              | \$600                         | \$1000/12-day Suspension      | Revocation                    |
| No Approval to Alter                 | \$300              | \$600                         | \$1000/12-day Suspension      | Revocation                    |
| No Management Agreement              | \$150              | \$600                         | \$1000/12-day Suspension      | Revocation                    |
| Improper use of Catering Endorsement | \$150              | \$600                         | \$1000/12-day Suspension      | Revocation                    |
| Accept more than                     | \$250              | \$1000                        | \$1500/20-day                 | Revocation                    |

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|                                |       |        |                          |            |
|--------------------------------|-------|--------|--------------------------|------------|
| 7 Days credit                  |       |        | Suspension               |            |
| Extend more than 7 Days Credit | \$250 | \$1000 | \$1500/20-day Suspension | Revocation |

#### D. Reinstatement of a Revoked License

The department will not consider reinstatement of a revoked license for one year from the date of revocation. In every case, reinstatement will only be allowed if:

(a) the licensee demonstrates to the department that the licensee has taken steps to insure the causes of the license revocation will be prevented from occurring in the future; and

(b) a license is available under the quota.

(1) A revoked license will affect a license quota area and the following may result:

(a) if it causes the area to be under quota, a notice of availability of a license will be published in the newspaper of general circulation in the quota area and invite applications for the available license; or

(b) if the area is over quota the revoked license will cease to be available for issuance.

A revoked beer or beer and wine license issued within a city quota area before October 1997, if reinstated will not allow any gaming or gambling activity on the licensed premises.

#### E. Sale to a Minor, Mitigation and Penalties

Mitigating circumstances in the case of sale to a minor could result in a reprimand for the first offense under Title 16, MCA, within the most current three-year period if the licensee has provided alcoholic beverage service training acceptable to the department to all of its employees within 30 days of hire and at least on an annual basis. The licensee must demonstrate that the person who made the sale to a minor has completed alcoholic beverage service training prior to the department considering issuance of a reprimand. A written reprimand will be considered a first offense for the application of the progressive penalty schedule only if the licensee commits the same offense again within one year. The written reprimand in lieu of a violation shall be available only one time per licensee.

(1) Aggravating circumstances may result in the maximum monetary penalties, maximum suspension time or revocation, and will not bind the department to the progressive penalty framework indicated in (3)

(2) Aggravating circumstances include, but are not limited to:

(a) no effort on the part of a licensee to prevent a violation from occurring;

(b) a licensee's failure to report a violation at the time of renewal;

(c) a licensee's ignoring warnings issued by a regulating authority about compliance problems;

(d) a licensee's failure to timely respond to requests during the investigation of a violation; and

(e) a violation's significant negative effect on the health and welfare of the community in which the licensee operates.

(3) If the violation discovered is an undisclosed ownership interest, the department will consider aggravating circumstances described in (9) and mitigating circumstances such as voluntary disclosure of relevant facts in determining the appropriate penalty.

(4) Nothing in this rule prevents the department from revoking, suspending or refusing the renewal of a license if revocation, suspension or refusing renewal are expressly allowed in law or rule with reference to a prohibited act.

(5) As used in this rule, a sale to minor violation means a violation consisting of the unlawful sale, service, or delivery of an alcoholic beverage to a person under age 21. For sale to minor violations, the progressive penalty schedule in (3) shall apply except in the case of a licensee which meets the criteria described in this paragraph, in which case the penalty schedule in (8) shall apply. To qualify for the penalty schedule in

(6), a licensee must meet the following criteria:

(a) a licensee must, on at least an annual basis, provide responsible server training, as defined in

(7), to all employees, including any individual owners of the license who personally sell or serve alcoholic beverages;

(b) any licensee or specific employee of the licensee who sold, served, or gave an alcoholic beverage to a person age 21 must have successfully completed responsible server training within the 12 months preceding the date of the sale to minor violation, and the licensee must provide the department upon request documentary evidence of such training;

(c) any new employees must be given responsible server training within 30 days of the new employee's hire;

(d) if an employee commits a sale to minor violation within 30 days of hire, the licensee must provide the department, upon request, records evidencing the date of the employee's hire and records that demonstrate licensee trains employees on an annual basis.

(8) For sale to minor violations only, for licensees who meet the criteria described in (5), the following penalty chart will be used in place of the chart at (3)

| 1 <sup>st</sup> Offense | 2 <sup>nd</sup> Offense | 3 <sup>rd</sup> Offense | 4 <sup>th</sup> Offense | 5 <sup>th</sup> Offense         | 6 <sup>th</sup> Offense |
|-------------------------|-------------------------|-------------------------|-------------------------|---------------------------------|-------------------------|
| Written Reprimand       | \$100                   | \$250                   | \$750                   | \$1500 and/or 2-day supervision | Revocation              |

(9) Responsible server training, as used in this rule, means any server training program conducted by the department or the department’s designee, or a server training program that has been preapproved in writing by the department. The department may verify employee server training documentation supplied by the license with the records of the server training organization.

(10) The penalty schedule in (8) does not apply to any violations except sale to minor violations. If a licensee commits other violations in conjunction with a sale to minor violation or during the same three-year period, the penalty schedule in (3) shall apply to the other violations, based on the order in which the violations occurred. For example, if a licensee meeting the criteria of (5) commits an open after hours violation in January, then a sale to minor violation in March, then a denial of right to inspect violation in May, the penalty schedules would apply as follows: (i) the January violation would be a first violation, with a \$150 penalty, based on the schedule in (3); (ii) the March violation would be a second violation, with a \$100 penalty, based on the schedule in (8); and (iii) the May violation would be a third violation, with a \$1,000 penalty and/or a 12-day suspension, based on the schedule in (3).

(11) A licensee must meet the criteria in (12) at the time of a sale to minor violation in order for the schedule in (13) to apply. If the licensee does not meet the criteria at the time of a particular sale to minor violation, the schedule in (3) applies to that violation. For example, if a licensee meets the criteria in (12) at the time of a sale to minor violation in October, but subsequently commits a second sale to minor violation in December while not meeting the criteria of (12), the penalty schedules would apply as follows: (i) the October violation would be a first violation, with a written reprimand, based on the schedule in (13); and (ii) the December violation would be a second violation, with a \$1,000 penalty, based on the schedule in (3).

(12) Licensees are responsible for notifying the department in writing when the licensee meets the criteria of (5), and should provide such notice to the department in writing as soon as possible after licensee or licensee’s employees is issued a citation for a sale to a minor violation. In its discretion, the department may choose to initially issue Notices of Violation based on the penalty schedule in (3). Then, if a licensee notifies the department within 23 days of service of the notice that the licensee met the criteria of (5) at the time of the sale to minor violation, the department will issue an Amended Notice of Violation reflecting the penalty schedule in (8). Before issuing an Amended Notice of Violation, the department may, in its discretion, require the licensee to submit documentation demonstrating that the licensee met the requirements of (5) at the time of the sale to minor violation. If the licensee cannot demonstrate to the department’s

satisfaction that it met the criteria of (5) at the time of the sale to minor violation, the department may decline to issue an Amended Notice of Violation and proceed based on the original notice.

#### F. Presumption of legal age

##### **§16-3-30: Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.**

- (1) 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.
- (2) 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.
- (3) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery, winery, or wholesaler licensed or registered under this code.
- (4) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:
  - (a) any person under 21 years of age; or
  - (b) any person actually, apparently, or obviously intoxicated.
- (5) Any person under 21 years of age or any other person who knowingly misrepresents the person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in violation of any federal law.
- (6) All licensees must display in a prominent place in their premises a placard, issued by the department, stating fully the consequences for violations of the provisions of this code by persons under 21 years of age.
- (7) For purposes of 45-5-623 and this title, the establishment of the following facts by a person making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:
  - (a) the purchaser falsely represented and supported with documentary evidence that an ordinary and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;
  - (b) the appearance of the purchaser was such that an ordinary and prudent person would believe the purchaser to be of legal age to purchase alcoholic beverages; and
  - (c) the sale was made in good faith and in reasonable reliance upon the representation and appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages.

#### G. Minor possession of alcohol

Minors that are in possession of alcohol can receive a criminal citation. Penalties can range from \$100 to \$900 fine, from 20 to 60 hours of community service and license confiscation from 30 days to 6 month's depending on the number of violations received.

#### H. Minor on premises

Minors may enter licensed establishment if the establishment has no house policy stating “No one under 21 Allowed”. It is unlawful to serve or sell alcohol to anyone under the age of 21. Parents may give their minor children alcohol in their own homes in a non-intoxicating amount (law defines intoxication of a minor as .02 or higher).

#### I. Drink Promotion

A licensee may not sell "Liquor" for less than the posted price. Currently there is no regulation regarding food and drink combinations.

#### J. Advertising Promotions

Promotions are considered items such as neck hangers, coupons, rebates, etc. Every promotion must be approved by the state liquor commission prior to conducting it. There are no definitions in the state statute for happy hour and drink specials.

#### K. Liabilities:

##### **§27-1-710: Civil liability for injuries involving alcohol consumption.**

(1) The purpose of this section is to set statutory criteria governing the liability of a person or entity that furnishes an alcoholic beverage for injury or damage arising from an event involving the person who consumed the beverage.

(2) Except as provided in [16-6-305](#), a person or entity furnishing an alcoholic beverage may not be found liable for injury or damage arising from an event involving the consumer wholly or partially on the basis of a provision or a violation of a provision of Title 16.

(3) Furnishing a person with an alcoholic beverage is not a cause of, or grounds for finding the furnishing person or entity liable for, injury or damage wholly or partly arising from an event involving the person who consumed the beverage unless:

- (a) the consumer was under the legal drinking age and the furnishing person knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;
- (b) the consumer was visibly intoxicated; or
- (c) the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

(4) A jury or trier of fact may consider the consumption of an alcoholic beverage in addition to the sale, service, or provision of the alcoholic beverage in determining the cause of injuries or damages inflicted upon another by the consumer.

(5) A civil action may not be brought pursuant to subsection (3) by the consumer or by the consumer's estate, legal guardian, or dependent unless:

- (a) the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age; or
- (b) the furnishing person forced or coerced the consumption or told the

consumer that the beverage contained no alcohol while knowing that it did contain alcohol.

(6) A civil action may not be commenced under this section against a person who furnished alcohol unless the person bringing the civil action provides notice of an intent to file the action to the person who furnished the alcohol by certified mail within 180 days from the date of sale or service. The civil action must be commenced pursuant to this section within 2 years after the sale or service.

(7) In any civil action brought pursuant to this section, the total liability for noneconomic damages may not exceed \$250,000.

(8) In any civil action brought pursuant to this section, the total liability for punitive damages may not exceed \$250,000.

(9) Evidence of intentional or criminal activity by a person causing injury in connection with any event or injury commenced pursuant to this part is admissible in any action brought pursuant to this section.

## ***2. Checking Identification***

- A. In addition to the acceptable forms listed in the text, the State of Montana recognizes these forms of Identification for use of purchase of beverage alcohol.
- Any unexpired state or Canadian province driver's license
  - Any unexpired armed services ID card
  - Any unexpired Passport or US Passport Card
  - Any unexpired state or Canadian province Issued ID Card
  - Any unexpired immigration card
  - Montana tribal ID's (tribal ID cards have no expiration date)
- B. Recommended Age to Card
- It is recommended that anyone who appears 30 years of age or younger, to be requested to show a valid identification.
- C. ID Confiscation
- You are permitted to retain an ID that appears to be fake until law enforcement has an opportunity to review the presented identification. You must turn over the confiscated identification to law enforcement.

## ***3. Handling Difficult Situations***

- A. Opened Wine / Partially Consumed Bottles
- Patron is allowed to remove partially consumed bottle of wine from a licensed premises except for a Restaurant/Beer/Wine licensed establishment. The wine must be placed in an area of the car not accessible by the driver.
- B. Providing alcohol to already intoxicated guest {**§16-6-304**}
- No store manager, retail licensee or any employee of a store manager or retail licensee may sell any alcoholic beverage or permit any alcoholic beverage to be sold to any person apparently under the influence of an alcoholic beverage.
  - No person may give an alcoholic beverage to a person apparently under the influence of alcohol.