

Emerging Issue: Medical Marijuana Alcohol and Gambling Regulation in Montana

Prepared for the CFHHS Subcommittee on Medical Marijuana
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Background

Since the repeal of Prohibition in 1933, the state has regulated the alcohol industry in Montana. Until 1973, a three-member Liquor Control Board oversaw the industry. The 1973 Legislature abolished the Board and gave regulatory duties to the Department of Revenue.¹ Likewise, the state has regulated gambling activities since the 1989 Legislature moved to a statewide, rather than local, regulatory structure. The 1989 Legislature gave oversight responsibility to the Montana Department of Justice.²

The Montana Legislature authorized state regulation for these two activities in order to protect the public health, welfare, and safety.³ The state's costs are covered by licensing fees.

This briefing paper looks at a few key aspects of state regulation of the two industries, to provide context for discussions related to regulation of the medical marijuana industry.

Regulation of Alcoholic Beverages

The state maintains control over the manufacture, distribution, and sale of alcoholic beverages through the Liquor Control Division of the Department of Revenue, which:

- purchases, imports, and stores alcoholic beverages;
- arranges for the distribution of the beverages;
- determines where agency liquor stores may be established;
- sets minimum retail prices;
- reviews license applications, with the assistance of the Department of Justice; and
- inspects licensees, establishes recordkeeping requirements, and collects taxes.

State law establishes that a license to manufacture, distribute, or sell alcoholic beverages is a privilege that the state may grant and is not a right to which an applicant is entitled.⁴

The licensing provisions of Title 16, chapter 4, part 4, include requirements that:

- applicants undergo a fingerprint background check and investigation of all matters related to the application;
- all individuals with an interest in the business be named on the application;
- the application contain the street address where the business is to be conducted; and
- the Department publish notice in local newspapers that a license may be issued and that

¹ Chapter 207, L. 1973.

² "Biennial Report: Fiscal Years 2007-2008, *Montana Department of Justice Gambling Control Division*, December 2008, P. 5.

³ 16-1-101, MCA, and 34-5-110, MCA.

⁴ 16-4-401, MCA.

it hold a public hearing if anyone files a protest related to the license.

A license may be denied for a number of reasons, including:

- the location is off regular police beats and cannot be properly policed;
- the premises are not approved by local building, health, or fire officials; and
- evidence presented at a public hearing shows that the welfare of the people living in the vicinity of the premises would be adversely affected.

In addition, the state monitors the sale of liquor, beer, and wine by requiring licensees to file regular reports. Agency liquor stores must file a copy of the invoice for each liquor or table wine sale they make to any licensee. Distilleries, brewers, beer importers and wholesalers, and wine distributors must file monthly reports detailing the amount of liquor, beer, or wine produced or imported during the previous month, the amount sold, and the inventory on hand. Beer and wine retailers must report the amount of beer or wine they purchased from out-of-state breweries or wineries. The Department may inspect a licensee's premises and records.

The Division's operational budget is about \$1 million per year, which includes the costs of 11 employees; the Division also pays the Department of Justice about \$1.2 million a year to perform background checks and investigations. The Division regulates about 4,000 licensees.⁵

Regulation of Gambling

The Department of Justice regulates most gambling activities in the state, including the manufacture, distribution, sale, and use of gambling machines. Video gambling licensing and oversight make up the majority of the Department's regulatory activities. The Gambling Control Division issued 20,420 video gambling machine permits in 2008.⁶ As with alcoholic beverages, the state has established that a gambling license is a privilege and not a right.⁷

The Division licenses individuals and businesses that own and operate machines and conducts a fingerprint background check as part of the licensing process. Licensed machine owners must keep records of the gross income derived from each machine and must allow the Department to inspect the records at any time. They also must file quarterly reports on gross income and other information requested by the Department. The state also tests machines prototypes submitted by manufacturers.

For the current biennium, the Legislature appropriated about \$8 million for the Division, which has about 50 employees.⁸

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⁵ E-mail from Liquor Control Division Administrator Shauna Helfert, Aug. 11, 2010.

⁶ "Biennial Report: Fiscal Years 2007-2008, *Montana Department of Justice Gambling Control Division*, December 2008, P. 12.

⁷ 23-5-110, MCA.

⁸ "Legislative Fiscal Report: 2011 Biennium," *Legislative Fiscal Division*, June 2009, P. D-43.