

THE AGENCY LIQUOR STORE



What is it?

How can I own one?

What are the rules of owning one?



Liquor Control Division

WHAT IS AN AGENCY LIQUOR STORE?

An agency liquor store is a privately owned liquor store that is under contract with the State of Montana to sell distilled spirits and wine to the public and liquor licensees.

WHERE DO I START?

If you're thinking of opening an agency liquor store, you first need to find out if the Department of Revenue can, by law, allow it in the community in which you want to open the store. Montana law limits the number of liquor stores in any given community according to its population. By "community," we mean an incorporated city or town, or an area the United States Census Bureau identifies as a community for census purposes.

Here are the numbers of liquor stores that communities of various populations in Montana may legally have:

- One agency liquor store in a community with a population between 0 and 12,000
- Two agency liquor stores in a community with a population between 12,001 and 52,000
- Three agency liquor stores in a community with a population between 52,001 and 92,000
- Four agency liquor stores in a community with a population between 92,001 and 132,000
- Five agency liquor stores in a community with a population between 132,001 and 172,000
- One store per 40,000 inhabitants in community with a population of over 172,001

If you want to open an agency liquor store in a community of fewer than 12,000 people that does not have a liquor store, keep in mind that an agency liquor store may not open in a community if it is within 35 miles of another community where one or more agency liquor stores already exist. (We measure the distance between two communities by the shortest route on a paved road from one community boundary to the other.)



The exception to this law, allowing for more than one liquor store in a community of fewer than 12,000 people, is when the most recent population estimate of a community shows a 25 percent growth or a growth of 1,000 inhabitants within a two year period, whichever is greater, and when that population increase is reasonably expected to continue for at least five years.

To find out if a particular community is eligible for a new agency liquor store, contact the agency liquor store specialist at the Liquor Control Division at (406) 444-6900.

HOW DO I APPLY TO OPEN A NEW AGENCY LIQUOR STORE?

After you find out the community in which you'd like to open your store is eligible for a new agency liquor store, you then need to present to the Department of Revenue a petition signed by either 20 adults in the community or by however many adults in the community it takes to equal five percent of its population, whichever number is greater.

You must clearly state in your petition that you are requesting the department to determine if a new agency liquor store, operated by an agent under contract with the department, should be opened in the community. Make sure the petition shows the printed name, mailing address and signature of each person signing the petition.

Within six months of submitting your petition, you will need to send a letter of interest to the department stating that you are willing to submit a proposal or bid to operate a new agency liquor store. After the department receives the petition and letter of interest, the department holds a public hearing.

A department hearing officer presides over the hearing (which is not a contested-case proceeding) and collects the information you and the general public present. The department's hearing officer determines:

1. if the department should solicit proposals or bids for a new agency liquor store in that community (this allows all interested citizens an equal opportunity to participate in the process).
2. if the department should consider any limitations or restrictions on the location and operation of the new agency liquor store.

3. if the department should consider any other issues or possible effects on the community directly related to the operation of the proposed new agency liquor store.

If the department decides to solicit requests for proposals (RFP), which we do in communities with populations of less than 3,000, or solicit invitations for bids (IFB), which we do in communities with populations of over 3,000, the process to select an agent begins. To learn more about the RFP or IFB process, please contact the agency liquor store specialist at the Liquor Control Division at (406) 444-6900.



The department selects an agent according to the competitive procedures outlined in the Montana Procurement Act. An Agency Franchise Agreement is then drafted. (Agency liquor stores operate under an Agency Franchise Agreement, not a liquor license.) The agreement is for a ten-year period and is renewed every ten years if the agent satisfactorily meets all requirements.

If we receive no proposals or bids in response to an RFP or IFB, or if none of the proposals or bids we receive meet the minimum requirements specified in

the RFP or IFB, the department will wait three years before it again starts soliciting for a new agency liquor store in the community.

HOW DO I PURCHASE AN EXISTING STORE?

If you are interested in purchasing an existing agency liquor store, you may be able to buy one from a current agent. Agents may sell and assign their Agency Franchise Agreement to a person who, upon approval of the department, is named as the agent for the remaining term of the agreement, with all the rights, privileges and responsibilities of the original agent.

Though the selling price is negotiated between the agent and the buyer, the department will need to know who is going to be responsible for any outstanding balances and how those balances will be paid. The process of approving a person or entity to be the agent on an existing Agency Franchise Agreement takes a minimum of 60 days.

Here's a list of the documents we will need from you in order to approve the assignment of an Agency Franchise Agreement to your name:

- Financial records supporting the purchase of the agency liquor store
- Copies of any loan agreements, contracts, notes and all related security agreements. If you took no loans, then we will need to see copies of bank statements.
- Copies of lease, rent and purchase options, as well as financing agreements or other evidence of possessory interest in the premises
- Financial statements (i.e., balance sheet, income statement or tax return for the business)

- Purchase/transfer documents for the agency store (i.e., buy/sell agreement, contract for deed, warranty deed, bill of sale)
- Copy of bank signature card for the business

HOW DO I PROVE OWNERSHIP?

Whether you are opening a new agency liquor store or purchasing an existing one, here's a list of ownership documents we will need to see before you can begin operating your business:



- Copy of partnership agreement documentation (if applicable)
- Copy of Articles of Incorporation and Amendments or Addendums
- Copy of Bylaws and Amendments or Addendums
- Copy of Certificate of Fact (LLCs and LLPs)
- Copy of limited liability company organizational information
- Copies of stock certificates, corporate minutes and attachments
- Stock ledger or register
- Copy of Certificate of Existence (for Montana Corporations)

- Copy of Authority to conduct business in Montana (out-of-state corporations)
- Copy of documentation from the Secretary of State verifying that the use of the Assumed Business Name (ABN) has been approved
- Copy of Federal Employer Identification Number (FEIN) verification from IRS
- Personal History Statement form for each individual with 10% or more interest in the business
- Two fingerprint cards for each individual with 10% or more interest in the business
- Fingerprint card fee for each individual with 10% or more interest in the business

And a few additional documents we will also need to see:

- A Tax Certificate Request or Good Standing Verification (to verify that all involved parties are in good standing with their tax filing and payments)
- A floor plan showing any areas where you intend to sell and store alcohol, including external dimensions and entry ways
- A plat plan showing the adjacent businesses, streets, parking, access for a 40-foot semi-truck and where you intend to hang your signage identifying your business as an Agency Liquor Store

Please send all of these documents to the address on the back of this booklet.

WHAT ARE THE ASSOCIATED COSTS?

There are no department-related costs associated with the IFB/RFP process for a new agency liquor store. In fact, you should not incur any costs associated with opening a new agency liquor store until you have been awarded a contract. Once you are offered the contract, you will be required to provide proof of insurance and proof of control of the premises. You, as the agent, are also responsible for buying the equipment you will need to operate the agency liquor store. The purchase price of an existing agency liquor store is negotiated between the current agent and the buyer. The department plays no role.



WHAT COMPENSATION DO AGENTS RECEIVE?

Agents receive compensation in the form of a commission rate discount. You receive the commission rate discount through a reduction on the posted price of liquor purchased from the state liquor warehouse. The posted price is the department-fixed price of a bottle of liquor and serves as the wholesale price in the sale of liquor to all beverage licensees and as the

minimum retail price for other customers.

Agents for stores in communities with a population of less than 3,000 receive a commission rate that we initially establish at 10% of adjusted gross sales. Agents for stores in communities with a population of 3,000 or more receive a commission rate that's set at the percentage bid by the lowest responsive bidder. For example, an agent with a 10% commission rate discount pays the state liquor warehouse \$108 for a 12-bottle case of liquor that sells at a state-posted price of \$10 per bottle. The commission rate discount may be reviewed and increased every three years.

In addition to the commission percentage discount rate, agents receive a price reduction on purchases from the state liquor warehouse. This additional price reduction, expressed as a percentage, is the agency liquor store's weighted average discount ratio. The reduction serves the purpose of offsetting some or all of the cost that agents incur for providing an 8% discount on the posted price of liquor to any liquor licensee purchasing liquor in unbroken case lots. (The law requires agents to provide liquor licensees with an 8% discount on full-case purchases.)

The weighted average discount percentage is reduced on all purchases the agent makes from the state liquor warehouse, whether or not the liquor is ultimately sold to licensees at the full-case discount. For example, an agent with a 10% commission and a 1.67% weighted average discount percentage pays \$106 for a 12-bottle case of liquor that sells at a state posted price of \$10 per bottle.

You also receive a volume-of-sales discount rate if you operate under a continuous Agency Franchise Agree-

ment for at least three years. There are two volume-of-sales discount rates that an agency may receive-- 0.875% or 1.5%. An agency receives one or the other depending on if its sales volume (based on its invoice dates in the previous fiscal year) falls above or below a certain figure the department establishes each year as the threshold, a figure that changes each year based on inflation (it was \$560,000 in 2008). Those agencies with a sales volume of more than the threshold receive the 0.875% volume-of-sales discount rate. Those with less receive the 1.5% discount rate. By April 1 of each year, the department determines the dollar values of the sales volumes by using an inflation factor, based on the change in the cost of liquor to agency liquor stores during the prior calendar year.



WHAT ARE THE RULES OF OWNING AN AGENCY LIQUOR STORE?

- Montana law requires agency liquor stores be open a minimum of six hours a day between 8 a.m. and 2 a.m. It also requires stores be open Tuesday through Saturday and closed on Sundays, Mondays and all legal holidays. Stores

may, however, be open on Mondays that are not legal holidays if 51% or more of the all-beverage licensees in your immediate market area sign a petition – on a form prescribed by the department – agreeing that the agency liquor store located within the immediate market area may be open on that day. The department will verify the validity of the signatures on the petition, and if the department determines that the petition contains a sufficient number of valid signatures, the agency liquor store within the market area will be allowed to transact business on Mondays that are not legal holidays. Keep in mind, though, that the state liquor warehouse will observe the closure on Monday and not be open.

- Agents must order inventory on a department-prescribed day every week. To be cost effective, we require that agents order a minimum of four cases, which can be a combination of full cases and re-pack units. Agents can order products in less than full cases. The department offers approximately 600 products in re-pack units.
- Agents must pay for all liquor purchased from the liquor warehouse within 60 days of the date on which the department invoices the liquor to the agency liquor store.
- Agents can deliver to licensees and must receive payment upon delivery.
- Agents cannot offer samples at an agency liquor store, nor can they allow containers of any alcoholic beverage to be open or any alcoholic beverage to be consumed on store premises.
- Agents can sell just about anything in an agency liquor store with the exception of beer (which includes malt-based wine coolers). They can

even sell table wine, purchased from a wine distributor, without having to acquire an additional license from our department.

- Agents must sell liquor to all beverage licensees (bars and restaurants) at the state's posted price, as listed in the current quarterly price book for that month. An agent must give an 8% reduction on case lots sales to licensees, but may mark up the price to the general public above the posted price. An agent may never sell for a price less than the posted price unless the product has been discontinued.
- All employees who serve or sell alcohol, including their immediate supervisors and the licensee, must obtain training from a state-approved program within 60 days of hire and every three years thereafter. You can find a list of approved training providers online at revenue.mt.gov/home/liquor/liquor_education.



FOR MORE INFORMATION

If you have any questions regarding agency liquor stores, contact the agency liquor store specialist at the Liquor Control Division at (406) 444-6900.



Department of Revenue

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