

RULES – IMPLEMENTATION

JUNE 16, 2023

BUSINESSOWNERS  
GENERAL LIABILITY

LI-BP-2023-083  
LI-GL-2023-133

## MONTANA LIQUOR LIABILITY RULES REVISION FILED AND TO BE IMPLEMENTED

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### KEY MESSAGE

Commercial Lines filing [CL-2023-OLIQ1](#) filed and to be implemented in response to 2023 Montana Laws \_\_\_\_ (former S.B. 107) concerning liquor liability.

**Applicable Lines:** BP, GL

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### BACKGROUND

In circular [LI-BP-2023-045/LI-GL-2023-110](#), we announced our initial review of 2023 Montana Laws \_\_\_\_ (former S.B. 107) effective May 1, 2023, which, in part, amends MONTANA CODE ANN. § 27-1-710 in connection with liquor liability.

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### ISO ACTION

We submitted filing CL-2023-OLIQ1, which revised the Montana General Liability exception to Rule **45**. Liquor Liability Coverage and the Businessowners exception to Rule **29**. Endorsements to reflect the revisions made by 2023 Montana Laws \_\_\_\_ (former S.B. 107).

Refer to the attached explanatory material for complete details about the filing.

*For more information on the status of filings in a particular state, including filed and approved documents, associated circulars and links to Print Ready Manuals and Commercial Lines Manual, please feel free to access our [Filings](#) feature within the ISOnet Circulars product.*

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### EFFECTIVE DATE

The ISO revision is subject to the following rule of application:

These changes are applicable to all policies **written** on or after October 1, 2023.

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### COMPANY ACTION

If you have authorized us to file on your behalf and decide:

- To use our revision and effective date, you are not required to file anything with the Insurance Department.
- To use our revision with a different effective date, to use our revision with modification, or to not use our revision, you must make an appropriate submission with the Insurance Department.

For guidance on submission requirements, consult the ISO State Filing Handbook.

In all correspondence with the Insurance Department on this revision, you should refer to ISO Filing Number [CL-2023-OLIQ1](#) and SERFF Tracking Number ISO-133705390, NOT this circular number. Communications with the regulator concerning a filing affecting multiple lines of business (i.e., CL, PL, AL filing designation) should specify the line(s) of business that you are addressing.

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## **RATING SOFTWARE IMPACT**

No new attributes are being introduced with this revision.

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## **POLICYHOLDER NOTIFICATION**

If you decide to implement this revision, you should check all applicable laws for the state(s) to which this revision applies to determine whether or not a specific policyholder notice requirement may apply. Please note that circular [LI-CL-2023-005](#) contains the ISO Guide To Renewals With Changed Conditions For Commercial Lines, which is available only as a guide to assist participating companies in complying with various conditional renewal statutes or regulations, for the major commercial lines of insurance serviced by ISO. The information in the Guide does not necessarily reflect all requirements or exceptions that may apply, and it is not intended as a substitute for your review of all applicable statutes and regulations concerning policyholder notification.

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## **REVISION DISTRIBUTION**

We will issue a Notice to Manualholders with an edition date of 10-23 (or the earliest possible subsequent date), along with any new and/or revised manual pages.

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## **REFERENCE(S)**

- [LI-BP-2023-045/LI-GL-2023-110](#) (05/15/2023) Montana Former S.B. 107 Concerning Liquor Liability Under Review
  - [LI-CL-2023-005](#) (02/21/2023) Commercial Lines Revised Lead Time Requirements Listing
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## **ATTACHMENT(S)**

Filing CL-2023-OLIQ1

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## CONTACT INFORMATION

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# Montana Liquor Liability Rules Revision

## Applicable Lines of Business

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This filing applies to the following lines of business:

- ◆ Businessowners
- ◆ Commercial General Liability

## About This Filing

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This filing revises Montana state exceptions pertaining to liquor liability in response to 2023 Mont. Laws \_\_ (former S.B. 107).

## Revised Rules

We are revising the following rules:

- ◆ Division Six – General Liability
  - Rule **45**. Liquor Liability Coverage
- ◆ Division Ten – Businessowners
  - Rule **29**. Endorsements

We have used a format of ~~striking-through~~ deletions, underlining additions and inserting a revision bar in the left margin to indicate changes. For the purposes of this filing, asterisks (\* \* \*) indicate undisplayed text that remains unchanged with this filing.

## Background

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2023 Mont. Laws \_\_ (former S.B. 107), effective May 1, 2023, amends MONT. CODE ANN. § 27-1-710 concerning liquor liability, which is revised in the following excerpts, as illustrated with deleted text struck through and new text underlined, as follows:

"~~(3)~~(4) 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: [...]"

(b) the consumer was visibly intoxicated when furnished the alcoholic beverage; or [...]

~~(4)(5)~~ 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 In determining the cause of injuries or damages inflicted upon on another by the consumer of an alcoholic beverage, in addition to other admissible evidence, a jury or trier of fact shall consider:

(a) the consumption of the alcoholic beverage;

(b) the actions of the consumer;

(c) the negligence of the person allegedly harmed by the consumer;

(d) the visible and audible intoxication indicators actually observed by the person furnishing the alcoholic beverage to the consumer, including but not limited to bloodshot eyes, loud and boisterous behavior, fighting behavior, stumbling, and slurred speech; and

(e) independent intervening cause or multiple causes.

(6) Because a furnishing person or entity can perceive only visual or audible indicators of intoxication, when determining liability under subsection (4)(b), a jury or trier of fact may not consider:

(a) a hypothetical blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;

(b) an actual blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;

(c) the signs of visible intoxication displayed by the consumer after the furnishing of the alcoholic beverage;

(d) the conduct of the furnishing person or entity after the furnishing of the alcoholic beverage; or

(e) whether the furnishing person or entity holds special events, alcohol specials, happy hours, or similar events or activities.

~~(5)~~ (7) A civil action may not be brought pursuant to subsection ~~(34)~~ by:

(a) a passenger over 18 years of age in the consumer's car or by the passenger's estate, legal guardian, or dependent; or [...]

~~(6)~~ (8) A civil action may not be commenced under this section against a person or entity who furnished alcohol to the consumer unless the person bringing the civil action provides notice of an intent to file the action to the person or entity 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)~~(10) In any civil action brought pursuant to this section, the total liability for noneconomic damages for all claimants may not exceed \$250,000 for each event.

~~(8)~~(11) In any civil action brought pursuant to this section, the total liability for punitive damages may not exceed \$250,000. Service to a visibly intoxicated consumer is not enough to assess punitive damages against the person or entity furnishing the alcoholic beverage to the consumer. Conduct must be shown that meets the criteria in 27-1-221. [...]"

## Explanation of Changes

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We are revising the Montana General Liability exception to Rule **45**. Liquor Liability Coverage and the Businessowners exception to Rule **29**. Endorsements to reflect the revisions made by 2023 Mont. Laws \_\_ (former S.B. 107). We are also making minor editorial revisions to both exceptions.

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## DIVISION SIX – GENERAL LIABILITY

### 45. LIQUOR LIABILITY COVERAGE (Subline Code 332)

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Paragraph G.5. is replaced by the following:

#### G. Liquor Liability Grades

5. The Liquor Liability Numerical Grade is 5.

Citation of Statute: MONT. CODE ANN. Section 27-1-710

Comments:

The statute provides, in part, that:

Furnishing a person with alcoholic beverages is not a cause of, or grounds for finding the vendor liable for, injury or damage wholly or partially arising from an event involving the person who consumed the beverage, unless:

- The consumer was under the legal drinking age (21) and the vendor knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;
- The consumer was visibly intoxicated when furnished the alcoholic beverage; or
- The vendor forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

A civil action may not be brought by a passenger over 18 years of age in the consumer's car or by the passenger's estate, legal guardian, or dependent.

A civil action may not be brought by the consumer or by the consumer's estate, legal guardian, or dependent unless the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age underage, or the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did.

A civil action may not be commenced under this section against a person or entity who furnished alcohol to the consumer unless the person bringing the civil action provides notice of an intent to file the action to the person or entity 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 two years after the sale or service.

~~In addition, 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 of an alcoholic beverage, in addition to other admissible evidence, a jury or trier of fact shall consider:-~~

- The consumption of the alcoholic beverage;
- The actions of the consumer;
- The negligence of the person allegedly harmed by the consumer;
- The visible and audible intoxication indicators actually observed by the person furnishing the alcoholic beverage to the consumer, including but not limited to bloodshot eyes, loud and boisterous behavior, fighting behavior, stumbling, and slurred speech; and
- Independent intervening cause or multiple causes.

Also, because a furnishing person or entity can perceive only visual or audible indicators of intoxication, when determining liability, a jury or trier of fact may not consider:

- A hypothetical blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;
- An actual blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;
- The signs of visible intoxication displayed by the consumer after the furnishing of the alcoholic beverage;
- The conduct of the furnishing person or entity after the furnishing of the alcoholic beverage; or
- Whether the furnishing person or entity holds special events, alcohol specials, happy hours, or similar events or activities.

The maximum total liability is \$250,000 for each event for noneconomic damages for all claimants and \$250,000 for punitive damages. Service to a visibly intoxicated consumer is not enough to assess punitive damages against the person or entity furnishing the alcoholic beverage to the consumer. Conduct must be shown that meets the criteria of actual malice or fraud. The "5" designation reflects this limitation and the other statutory provisions.

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## DIVISION TEN – BUSINESSOWNERS

### 29. ENDORSEMENTS

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Paragraph **B.13.b.(4)** is replaced by the following:

#### 13. Liquor Liability Coverage

##### b. Liquor Liability Grades

- (4) The Liquor Liability Numerical Grade is 5.

Citation of Statute: MONT. CODE ANN. Section 27-1-710

Comments:

The statute provides, in part, that:

Furnishing a person with alcoholic beverages is not a cause of, or grounds for finding the vendor liable for, injury or damage wholly or partially arising from an event involving the person who consumed the beverage, unless:

- The consumer was under the legal drinking age (21) and the vendor knew that the consumer was underage or did not make a reasonable attempt to determine the consumer's age;
- The consumer was visibly intoxicated when furnished the alcoholic beverage; or
- The vendor forced or coerced the consumption or told the consumer that the beverage contained no alcohol.

A civil action may not be brought by a passenger over 18 years of age in the consumer's car or by the passenger's estate, legal guardian, or dependent.

A civil action may not be brought by the consumer or by the consumer's estate, legal guardian, or dependent unless the consumer was under the legal age and the furnishing person knew or should have known that the consumer was under age ~~underage~~, or the furnishing person forced or coerced the consumption or told the consumer that the beverage contained no alcohol while knowing that it did.

A civil action may not be commenced under this section against a person or entity who furnished alcohol to the consumer unless the person bringing the civil action provides notice of an intent to file the action to the person or entity 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 two years after the sale or service.

~~In addition, 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 of an alcoholic beverage, in addition to other admissible evidence, a jury or trier of fact shall consider:-~~

- The consumption of the alcoholic beverage;
- The actions of the consumer;
- The negligence of the person allegedly harmed by the consumer;
- The visible and audible intoxication indicators actually observed by the person furnishing the alcoholic beverage to the consumer, including but not limited to bloodshot eyes, loud and boisterous behavior, fighting behavior, stumbling, and slurred speech; and
- Independent intervening cause or multiple causes.

Also, because a furnishing person or entity can perceive only visual or audible indicators of intoxication, when determining liability, a jury or trier of fact may not consider:

- A hypothetical blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;
- An actual blood alcohol level in any way to impute that the server observed visibly intoxicated behavior of the consumer prior to service;
- The signs of visible intoxication displayed by the consumer after the furnishing of the alcoholic beverage;
- The conduct of the furnishing person or entity after the furnishing of the alcoholic beverage; or
- Whether the furnishing person or entity holds special events, alcohol specials, happy hours, or similar events or activities.



The maximum total liability is \$250,000 for each event for non-economic damages for all claimants and \$250,000 for punitive damages. Service to a visibly intoxicated consumer is not enough to assess punitive damages against the person or entity furnishing the alcoholic beverage to the consumer. Conduct must be shown that meets the criteria of actual malice or fraud. The "5" designation reflects this limitation and the other statutory provisions.

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