

1 HOUSE BILL NO. 705

2 INTRODUCED BY E. BUTTREY

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL AND GAMBLING LAWS;
5 REVISING LAWS RELATED TO ALCOHOL AND GAMBLING LICENSING; PROVIDING FOR AN OUTDOOR
6 RECREATION ALL-BEVERAGES LICENSE; REVISING LAWS RELATING TO SUITABLE PREMISES FOR
7 LICENSED RETAIL ESTABLISHMENTS; REVISING LAWS RELATING TO RESORT ALL-BEVERAGES
8 LICENSES; REVISING LAWS APPLYING TO THE DEPARTMENT OF REVENUE'S REVIEW OF LICENSE
9 APPLICATIONS; REVISING LAWS APPLYING TO LOANS AND FINANCING BY LICENSEES; REVISING
10 LAWS RELATING TO CONCESSION AGREEMENTS; REVISING LAWS RELATING TO BUSINESS
11 OWNERSHIP INTERESTS; REVISING LAWS RELATED TO BOTTLE CLUBS; REVISING LAWS RELATED
12 TO PREMISES SUITABILITY; REVISING LAWS RELATED TO SEATING AND VIDEO GAMBLING
13 MACHINES; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-3-311, 16-4-213, 16-4-
14 401, 16-4-402, 16-4-406, 16-4-414, 16-4-415, 16-6-306, 16-6-314, 23-5-117, AND 23-5-177, MCA; AND
15 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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17
18 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
19

20 NEW SECTION. **Section 1. Outdoor recreation all-beverages license.** (1) The department may
21 issue an outdoor recreation all-beverages license to a seasonal business that operates less than 8 months in
22 any calendar year and that is primarily involved in the business of providing recreation or tourism activities and
23 experiences associated with guest ranches, outfitters, and private campgrounds and lodges.

24 (2) Alcoholic beverage sales must be part of a customer-purchased recreational or tourist package
25 and may not be charged by the drink.

26 (3) An application for a license under this section must be accompanied by a fee of \$200, which
27 constitutes the first annual license fee. The annual license fee renewal is \$200. All license fees collected under
28 this section must be deposited as provided in 16-1-306.

(4) A licensee may purchase alcoholic beverages from a retailer and transport beverages for and allow consumption by its customers while performing recreation or tourism activities or on the property of the guest ranch, outfitting and guide facility, or private campground or lodge. Service of alcoholic beverages may only be conducted between 8 a.m. and 2 a.m.

(5) The license issued pursuant to this section:

(a) is not subject to the quota provisions of 16-4-201(1)(a), (1)(b), and (9);

(b) is nontransferable; and

(c) does not permit gambling activities otherwise allowed under Title 23, chapter 5.

(6) The applicant shall submit proof of compliance with the following requirements:

(a) that the applicant is the owner of a seasonal business;

(b) that the applicant is primarily engaged in recreational or tourism activities; and

(c) that the applicant has procured business liability insurance coverage.

(7) Other than the criteria specified in this part, licenses submitted under this section are not subject to the suitability provisions of this code.

Section 2. Section 16-3-311, MCA, is amended to read:

"16-3-311. Suitable premises for licensed retail establishments. (1) A licensed retailer may use a part of a building as premises licensed for on-premises consumption of alcoholic beverages. The premises must be separated from the rest of the building by permanent walls but may have inside access ~~during lawful hours of operation~~ to the rest of the building at all times even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in which the alcoholic beverages are served. If the premises are located in a portion of a building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access.

(2) A licensee may alter the approved floorplan of the premises without requiring the prior approval of the department to begin. The alteration must be consistent with the requirements of subsection (1). A licensee shall provide notice to the department of the proposed alteration 7 days prior to beginning the alteration whose

premises did not meet the requirements of this section on September 24, 1992, shall meet the requirements when an alteration to the premises has been completed and the department has approved the alteration. An alteration for the purposes of this section is any structural change in a premises that does not increase the square footage of the existing approved premises. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an alteration under this section.

(3) The interior portion of the licensed premises must be a continuous area that is under the control of the licensee and not interrupted by any area in which the licensee does not have adequate control, and includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in order to allow patrons to access other tenant businesses or private dwellings in the same building, including but not limited to entryways, hallways, stairwells, and elevators.

(4) The premises may include one or more exterior patios or decks as long as sufficient physical safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area, such as a water feature, hillside, trees, shrubs, berms, snow, or other landscape features that impede foot traffic.

(5) Premises suitability does not include a minimum number of seats separate from gambling.

(6) A licensed retailer may apply to the department to have a noncontiguous storage area approved for onsite alcohol beverage storage separate from its service area as long as the licensed retailer demonstrates that there are adequate safeguards in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other security features such as rolling gates, locking cabinets, tap locks, or key card access."

Section 3. Section 16-4-213, MCA, is amended to read:

"16-4-213. Resort retail all-beverages licenses. (1) After a resort area has been approved, applications may be filed with the department for the issuance of resort retail all-beverages licenses within the resort area.

(2) (a) Except as provided in subsections (2)(b) and (2)(c), the department may issue one resort retail all-beverages license for the first 100 accommodation units and an additional license for each additional 50 accommodation units within an approved resort area as long as the recreational facilities under 16-4-212 have

1 also been completed.

2 (b) For a resort area with a perimeter containing at least 1,000 contiguous acres that has a current
3 actual valuation of completed recreational facilities, including land and improvements, of not less than \$30
4 million, the department may issue up to 10 resort retail all-beverages licenses regardless of the number of
5 accommodation units.

6 (c) A resort area designation application to the department that received approval prior to January 1,
7 1999, is entitled to the issuance of one resort retail all-beverages license for a \$20,000 license fee. Any
8 additional resort retail all-beverages licenses issued to a resort area under this subsection (2)(c) must meet the
9 accommodation unit requirement in subsection (2)(a) of this section and pay the license fee and renewal fees
10 as provided in 16-4-501.

11 (d) For purposes of this code, "accommodation unit" means a unit that is available for short-term
12 guest rental and includes:

13 (i) a single-family home;

14 (ii) a single unit of an apartment, condominium, or multiplex;

15 (iii) a single room of a hotel or motel; or

16 (iv) similar living space ~~for occupants making up a single household~~. A space under this subsection
17 (2)(d)(iv) must be distinctly separated from other living spaces within the building and have its own sleeping,
18 bath, and toilet facilities.

19 (3) Regardless of how many resort area all-beverages licenses are issued in a resort area, no more
20 than 20 gambling machine permits may be issued for the resort area.

21 (4) A resort retail all-beverages license within the resort area:

22 (a) is subject to all other requirements of an all-beverages license in this code, except:

23 (i) for the purposes of premises suitability under 16-3-311, a licensed retailer may use a part of the
24 building as a licensed premises for the consumption of alcoholic beverages on the premises. The premises
25 must be separated from the rest of the building by permanent walls but may have inside access to the rest of
26 the building at all times even if the businesses or uses in the other part of the building are unrelated to the
27 operation of the premises in which alcoholic beverages are served. If the premises are located in a portion of a
28 building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to

1 prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other
2 security features such as rolling gates, locking cabinets, tap locks, or key card access;

3 (ii) the interior portion of the licensed premises must be a continuous area that is under the control of
4 the licensee and not interrupted by any area in which the licensee does not have adequate control, and
5 includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in
6 order to allow patrons to access other tenant businesses or private dwellings in the same building, including but
7 not limited to entryways, hallways, stairwells, and elevators; and

8 (iii) the premises may include one or more exterior patios or decks as long as sufficient physical
9 safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional
10 perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area, such
11 as a water feature, hillside, trees, shrubs, berms, snow, or other landscape features that impede foot traffic.;

12 (b) is not subject to the quota limitations set forth in 16-4-201; and

13 (c) is transferable to another location within the boundaries of the resort area or to another owner to
14 be used at a location within the boundaries of the resort area.

15 (5) For licenses issued under this section, the delivery of alcohol to guests of accommodation units
16 and the prestocking of alcoholic beverages in accommodation units is allowed to for the accommodation units
17 on within the designated resort area property as long as the purchaser is present, the purchaser's age is
18 verified, and the purchaser is not intoxicated.

19 (6) Employees of the resort licensee who sell, serve, or deliver alcohol must be trained as provided in
20 16-4-1005.

21 (7) A resort retail all-beverages licensee whose premises is located outside of a municipal quota area
22 may enter into a maximum of one concession agreement per license with an unlicensed entity to serve
23 alcoholic beverages. The provisions of 16-4-418 apply.

24 (8) If a resort area has two or more resort retail all-beverage licenses or retail all-beverages licenses
25 within the boundaries of the resort, the resort area may also apply for a resort alternate alcoholic beverage
26 storage facility to be located within the resort area. The alternate storage facility must be considered part of one
27 of the existing licensed premises, though it does not need to be contiguous to qualify for approval. The alternate
28 storage facility must meet all requirements to ensure the secure storage of alcoholic beverages and prevent on-

1 site consumption of alcoholic beverages. Alcoholic beverages in sealed containers belonging to multiple
2 licensees within the resort area may be stored in the same storage facility. A resort retail licensee or retail
3 licensee who is approved to use the alternate storage facility may accept delivery of alcoholic beverages at the
4 alternate storage facility and may transfer alcoholic beverages to another approved licensee. Any transfer of
5 alcoholic beverages between approved licensees must be properly accounted for. Approval to use the alternate
6 storage facility must be documented on the face of each license within the resort area that applies to use the
7 alternate storage facility."

8
9 **Section 4.** Section 16-4-401, MCA, is amended to read:

10 **"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this
11 code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

12 (2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in
13 the case of a license that permits on-premises consumption, the department shall find in every case in which it
14 makes an order for the issuance of a new license or for the approval of the transfer of a license that:

15 (a) if the applicant is an individual:

16 (i) and the application is approved, the applicant will not possess an ownership interest in more than
17 three establishments licensed under this chapter for all-beverages sales. However, resort retail all-beverages
18 licenses issued under 16-4-213 do not count toward this limit.

19 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
20 106;

21 (iii) the applicant or any member of the applicant's immediate family is without financing from or any
22 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

23 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
24 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
25 with all applicable laws of the state and local governments; however, nothing in this subsection (2)(a)(iv)
26 authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax
27 protestor; and

28 (v) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) each owner of ~~10%~~ 25% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than ~~10%~~ 25% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a corporation who owns less than ~~10%~~ 25% of the outstanding stock in that corporation except that the provisions of subsection (8) apply.

(iv) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of ~~10%~~ 20% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than ~~10%~~ 20% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the requirements of subsection (2)(a).

(ii) each individual who has control over the operation of the license meets the requirements for an individual applicant listed in subsection (2)(a);

(iii) each person who shares in the profits or liabilities of a license meets the requirements for an individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a corporation who owns less than ~~10%~~ 20% of the outstanding stock in that corporation except that the provisions of subsection (8) apply.

(iv) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner who is substantially involved in the management of the partnership must meet the requirements of subsection (2)(a);

(e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all

1 limited partners whose ownership interest in the partnership equals or exceeds ~~40%~~ 20% must meet the
2 requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds ~~40%~~ 20%, then 51%
3 of all limited partners must meet the requirements of subsection (2)(a).

4 (f) if the applicant is a limited liability company, all managing members and those members whose
5 ownership interest in the company equals or exceeds ~~40%~~ 20% must meet the requirements of subsection
6 (2)(a). If no single member's interest equals or exceeds ~~40%~~ 20%, then 51% of all members must meet the
7 requirements of subsection (2)(a).

8 (3) In the case of a license that permits only off-premises consumption and subject to subsection (8),
9 the department shall find in every case in which it makes an order for the issuance of a new license or for the
10 approval of the transfer of a license that:

11 (a) if the applicant is an individual:

12 (i) and the application is approved, the applicant will not possess an ownership interest in more than
13 three establishments licensed under this chapter for all-beverages sales;

14 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
15 106;

16 (iii) the applicant or any member of the applicant's immediate family is without financing from or any
17 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

18 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
19 the applicant's rights have been restored;

20 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a
21 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance
22 with all applicable laws of the state and local governments; however, nothing in this subsection (2)(a)(iv)
23 authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax
24 protestor; and

25 (vi) the applicant is not under 19 years of age;

26 (b) if the applicant is a publicly traded corporation:

27 (i) each owner of ~~40%~~ 25% or more of the outstanding stock meets the requirements for an individual
28 listed in subsection (3)(a). If no single owner owns more than ~~40%~~ 25% of the outstanding stock, the applicant

1 shall designate two or more officers or board members, each of whom must meet the requirements for an
2 individual applicant listed in subsection (3)(a).

3 (ii) the corporation is authorized to do business in Montana;

4 (c) if the applicant is a privately held corporation:

5 (i) each owner of ~~10%~~ 20% or more of the outstanding stock meets the requirements for an individual
6 applicant listed in subsection (3)(a). If no single owner owns more than ~~10%~~ 20% of the outstanding stock, the
7 applicant shall designate two or more officers or board members, each of whom must meet the requirements
8 for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet
9 the requirements of subsection (3)(a).

10 (ii) the corporation is authorized to do business in Montana;

11 (d) if the applicant is a general partnership, each partner who is substantially involved in the
12 management of the partnership must meet the requirements of subsection (3)(a);

13 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
14 limited partners whose ownership interest in the partnership equals or exceeds ~~10%~~ 20% must meet the
15 requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds ~~10%~~ 20%, then 51%
16 of all limited partners must meet the requirements of subsection (3)(a).

17 (f) if the applicant is a limited liability company, all managing members and those members whose
18 ownership interest in the company equals or exceeds ~~10%~~ 20% must meet the requirements of subsection
19 (3)(a). If no single member's interest equals or exceeds ~~10%~~ 20%, then 51% of all members must meet the
20 requirements of subsection (3)(a).

21 (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or
22 wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the
23 issuance of a new license or for the approval of the transfer of a license that:

24 (a) if the applicant is an individual:

25 (i) the applicant has no ownership interest in any establishment licensed under this chapter for retail
26 alcoholic beverages sales;

27 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-
28 106;

(iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony, the applicant's rights have been restored;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; however, nothing in this subsection (2)(a)(iv) authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax protestor;

(v) the applicant is not under 19 years of age; and

(vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage;

(b) if the applicant is a publicly traded corporation:

(i) each owner of ~~10%~~ 25% or more of the outstanding stock meets the requirements for an individual listed in subsection (4)(a). If no single owner owns more than ~~10%~~ 25% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

(c) if the applicant is a privately held corporation:

(i) each owner of ~~10%~~ 20% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (4)(a). If no single owner owns more than ~~10%~~ 20% of the outstanding stock, the applicant must designate two or more officers or board members, each of whom must meet the requirements for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the requirements of subsection (4)(a).

(ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or controlled by a manufacturer of an alcoholic beverage; and

(iii) the corporation is authorized to do business in Montana;

(d) if the applicant is a general partnership, each partner who is substantially involved in the

1 management of the partnership must meet the requirements of subsection (4)(a);

2 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
3 limited partners whose ownership interest in the partnership equals or exceeds ~~10%~~ 20% must meet the
4 requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds ~~10%~~ 20%, then 51%
5 of all limited partners must meet the requirements of subsection (4)(a).

6 (f) if the applicant is a limited liability company, all managing members and those members whose
7 ownership interest in the company equals or exceeds ~~10%~~ 20% must meet the requirements of subsection
8 (4)(a). If no single member's interest equals or exceeds ~~10%~~ 20%, then 51% of all members must meet the
9 requirements of subsection (4)(a).

10 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)
11 apply separately to each class of stock.

12 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to
13 16-4-302.

14 (7) An applicant's source of funding must be from a suitable source. A lender or other source of
15 money or credit may be found unsuitable if the source:

16 (a) is a person whose prior financial or other activities or criminal record:

17 (i) poses a threat to the public interest of the state;

18 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or

19 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business;

20 or

21 (b) has been convicted of a felony offense within 5 years of the date of application or is on probation
22 or parole or under deferred prosecution for committing a felony offense.

23 (8) (a) An individual applying for an all-beverages license or having any ownership interest in an
24 entity applying for an all-beverages license may not, if the application were to be approved, own an interest in
25 more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

26 (b) If two or more individuals through business or family relationship share in the profits or liabilities of
27 all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not
28 exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-

1 beverages licenses will be held.

2 (9) Except as specifically provided in this code relating to financial interests in licenses, nothing in this
3 section applies or otherwise prohibits an applicant or licensee from obtaining personal financing from a licensed
4 financial institution, taking advantage of consumer credit, or using a personal credit card to make purchases on
5 behalf of a licensed entity if the applicant or licensee is reimbursed by the licensed entity in a timely manner. An
6 applicant or individual may obtain multiple transactions up to an aggregate maximum of \$100,000 with each
7 individual transaction not to exceed \$25,000 to be used on behalf of the licensed entity. It is the intent of this
8 subsection to facilitate the efficient administration of an entity licensed under this code."

9
10 **Section 5.** Section 16-4-402, MCA, is amended to read:

11 **"16-4-402. Application -- investigation.** (1) Prior to the issuance of a license under this chapter, the
12 applicant shall file with the department an application containing information and statements relative to the
13 applicant and the premises where the alcoholic beverage is to be sold as required by the department.

14 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
15 necessary license fee, the department of justice shall make a thorough investigation of all matters relating to
16 the application. Based on the results of the investigation or on other information, the department shall
17 determine whether:

18 (i) the applicant is qualified to receive a license; and

19 (ii) (A) the applicant's premises are suitable for the carrying on of the business;

20 (B) the applicant is qualified to receive a license prior to a determination that the applicant's premises
21 are suitable for carrying on with the business in accordance with 16-4-417; or

22 (C) if the applicant has already been issued a license, the proposed premises are suitable for the
23 carrying on of the business.

24 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(5),
25 a retail beer and wine license for off-premises consumption as provided in 16-4-115, an outdoor recreation all-
26 beverages license as provided in [section 1], or a special permit provided in 16-4-301.

27 (c) For an original license application and an application for transfer of ownership or location of a
28 license, the department of justice's investigation and the department's determination under this subsection (2)

1 must be completed within 90 days of the receipt of a completed application. If information is requested from the
2 applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information
3 is received by the requesting department. The time period is also tolled if the applicant requests and is granted
4 a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-
5 311, or newly constructed. The basis for the tolling of the deadline must be documented.

6 (3) (a) Upon proof that an applicant made a false statement in any part of the original application, in
7 any part of an annual renewal application, or in any hearing conducted pursuant to an application, the
8 application for the license may be denied, and if issued, the license may be revoked.

9 (b) A statement on an application or at a hearing that is based upon a verifiable assertion made by a
10 governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the
11 basis of a false statement for a denial or revocation of a license."
12

13 **Section 6.** Section 16-4-406, MCA, is amended to read:

14 **"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating**
15 **circumstances.** (1) The department shall upon a written, verified complaint of a person request that the
16 department of justice investigate the action and operation of a brewer, winery, wholesaler, domestic distillery,
17 table wine distributor, beer or wine importer, retailer, concessionaire, or any other person or business licensed
18 or registered under this code.

19 (2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the
20 department, after reviewing admissions of either the licensee or concessionaire or receiving the results of the
21 department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that
22 a licensee or concessionaire has violated a provision of this code or a rule of the department, it may, in its
23 discretion and in addition to the other penalties prescribed:

24 (a) reprimand a licensee or concessionaire or both;

25 (b) proceed to revoke the license of the licensee or the concession agreement of the concessionaire
26 or both, but may only revoke a license if the licensee or concessionaire has violated a provision of Title 16,
27 chapter 6, part 3;

28 (c) suspend the license or the concession agreement or both for a period of not more than 3 months;

(d) refuse to grant a renewal of the license or concession agreement or both after its expiration; or

(e) impose a civil penalty not to exceed \$1,500.

(3) The department shall consider mitigating circumstances and may adjust penalties within penalty ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:

(a) there have been no violations by the licensee or concessionaire or both within the past 3 years;

(b) there have been good faith efforts by the licensee or concessionaire or both to prevent a violation;

(c) written policies exist that govern the conduct of the licensee's employees or the concessionaire's employees or both;

(d) there has been cooperation in the investigation of the violation that shows that the licensee or concessionaire or both or an employee or agent of the licensee or concessionaire or both accepts responsibility;

(e) the investigation was not based on complaints received or on observed misconduct, but was based solely on the investigating authority creating the opportunity for a violation; or

(f) the licensee or concessionaire or both have provided responsible alcohol server training to all of their employees.

(4) The department shall consider aggravating circumstances and may adjust penalties within penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:

(a) prior warnings about compliance problems;

(b) prior violations within the past 3 years;

(c) lack of written policies governing employee conduct;

(d) multiple violations during the course of the investigation;

(e) efforts to conceal a violation;

(f) the intentional nature of the violation; or

(g) involvement of more than one patron or employee in a violation."

Section 7. Section 16-4-414, MCA, is amended to read:

"16-4-414. Fingerprints required of applicants -- exceptions. (1) Except as provided in subsections (2) ~~and~~, (3), and (4), an applicant for a license under this code, any person employed by the

applicant as a manager, and, if the applicant is a corporation, each ~~person holding 10% or more of the outstanding stock and each officer~~ responsible for operating the licensed establishment ~~and director~~ shall submit their fingerprints with the application to facilitate a fingerprint and background check by the department of justice and the federal bureau of investigation. The results of the investigation must be used by the department in determining the applicant's eligibility for a license.

(2) (a) When the applicant is seeking a license for off-premises consumption, the following persons are subject to the fingerprint and background check described in subsection (1):

(i) the applicant;

(ii) a person designated by the applicant as responsible for operating the licensed establishment on behalf of the licensee; or

(iii) if the applicant is a corporation, each ~~person holding 10% or more of the outstanding stock and each officer and director~~ responsible for operating the licensed establishment.

(b) Additional fingerprint and background checks may be required at renewal only for new persons described in subsection (2)(a).

(c) A change in the form of a licensee's business entity that does not result in any person having a new ownership interest in the business is not grounds for the department to require a fingerprint or background check.

(3) When the applicant is seeking a license for off-premises consumption, a person employed by the applicant as a manager is not subject to the fingerprint and background check described in subsection (1).

(4) If the applicant is a business entity, the fingerprinting requirements set forth in this section apply only to the officers of the applicant entity and not to any owners or shareholders of that entity. However, business entity applicants are required to report to the department each person or business entity owning 25% or more of its outstanding stock for a publicly traded corporation or 20% or more of its outstanding stock for all other entities to ensure that a person or business entity under common control or management complies with 16-4-205."

Section 8. Section 16-4-415, MCA, is amended to read:

"16-4-415. Changes in business entity ownership -- department approval required. (1) In the

1 case of corporate licensees, a person or entity that does not own stock or owns less than ~~10%~~ 20% of the stock
2 in the corporation or 25% of the stock in the publicly traded corporation may not receive stock that results in the
3 person or entity's share of stock in the corporation being ~~10%~~ 20% or greater for a private corporation or 25%
4 or greater for a publicly traded corporation, unless the department reviews and determines that the person or
5 entity qualifies for ownership of a liquor license as provided in 16-4-401.

6 (2) In the case of all other business entities, when a proposed transfer of ownership would result in a
7 party who prior to the transfer owned no interest in the license owning ~~an~~ 20% or more interest in the license,
8 the proposed transfer must be submitted to the department for review. The proposed new party must qualify for
9 ownership of a liquor license as provided in 16-4-401.

10 (3) In the case of a proposed change in business entity, the proposed new business entity shall apply
11 for a transfer of ownership of the license with the department prior to changing the business entity. The
12 proposed new business entity must qualify for ownership of a liquor license as provided in 16-4-401. If the
13 existing owners and ownership percentages do not change under the proposed change in business entity, the
14 new entity shall notify the department of the new business entity type, but prior department approval is not
15 required."

16
17 **Section 9.** Section 16-6-306, MCA, is amended to read:

18 **"16-6-306. Bottle clubs prohibited.** (1) The operation of alcoholic beverage bottle clubs is hereby
19 prohibited by any person, persons, partnership, firm, corporation, or association. A bottle club is defined as any
20 person, persons, partnership, firm, corporation, or association maintaining premises not licensed for the sale of
21 alcoholic beverages, for a fee or other consideration, including the sale of food, mixes, ice, or any other fluids
22 for alcoholic beverages, or otherwise furnishing premises for ~~such~~ these purposes and from which they would
23 derive revenue.

24 (2) Nothing in this section prohibits a licensed on-premises retailer from opening and serving to
25 patrons 21 years of age or older wine from a sealed bottle brought to the premises by the patron for on-
26 premises consumption. This service may not constitute a violation of 16-3-301 or this section, regardless of
27 whether the licensed retailer charges a corkage fee."

1 **Section 10.** Section 16-6-314, MCA, is amended to read:

2 **"16-6-314. Penalty for violating code -- revocation of license -- penalty for violation by**
3 **underage person.** (1) A person who violates a provision of ~~this code~~ Title 16, chapter 6, part 3, is guilty of a
4 misdemeanor punishable as provided in 46-18-212, except as otherwise provided in this section.

5 (2) If a retail licensee is convicted of an offense under this ~~code~~ part, the licensee's license must be
6 immediately revoked or, in the discretion of the department, another sanction must be imposed as provided
7 under 16-4-406.

8 (3) A person under 21 years of age who violates 16-3-301(5) or 16-6-305(3) is subject to the penalty
9 provided in 45-5-624(2) or (3). (See compiler's comments for contingent termination of certain text.)"

10
11 **Section 11.** Section 23-5-117, MCA, is amended to read:

12 **"23-5-117. Premises approval.** (1) The department may approve a premises for issuance or
13 operation of an operator's license if the premises meets the requirements contained in subsections (2) and (3).

14 (2) The premises may include any concessioned area provided for in 16-4-418 and must:

15 (a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor
16 to ceiling;

17 (b) have a unique address assigned by the local government in which the premises is located;

18 (c) have a public external entrance, leading to a street or other common area, that is not shared with
19 another premises for which an operator's license has been issued; and

20 (d) be designed and arranged to allow for observation and control of all gambling activities by the
21 gambling operator.

22 (3) If the premises shares a common internal wall with another premises for which an operator's
23 license has been issued, the common wall must be permanently installed, opaque, and extend from floor to
24 ceiling and may not contain an internal entrance through which public access is allowed.

25 (4) The department may not provide additional requirements in rulemaking for premises suitability
26 related to seating that is not attached to gaming."

27
28 **Section 12.** Section 23-5-177, MCA, is amended to read:

1 **"23-5-177. Operator of gambling establishment -- license -- fee.** (1) Except as provided in 23-5-

2 310 and 23-5-410, it is a misdemeanor for a person who is not licensed by the department as an operator to
3 make available to the public for play a gambling device or gambling enterprise for which a permit must be
4 obtained from the department.

5 (2) To obtain an operator's license, a person shall submit to the department:

6 (a) a completed operator's license application on a form prescribed and furnished by the department;

7 (b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each ~~person~~
8 ~~holding 10% or more of the outstanding stock of the corporation and of each officer responsible for operating~~
9 ~~the gambling establishment and director of the corporation~~, to be used for a fingerprint and background check
10 that must be used by the department in determining eligibility for a license;

11 (c) any other relevant information requested by the department; and

12 (d) a license application processing fee, as required in subsection (8).

13 (3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117,
14 the premises in which the gambling activity is to be conducted. However, for applicants issued an alcoholic
15 beverage license under 16-4-417, the department may approve the gambling operator license prior to approval
16 of the premises. Gambling activities may not occur until the premises has been approved in accordance with
17 23-5-117.

18 (4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage
19 licenses issued for a premises, the department may issue only one operator's license for the premises.

20 (5) An operator's license must include the following information:

21 (a) a description of the premises upon which the gambling will take place;

22 (b) the operator's name;

23 (c) a description of each gambling device or card game table for which a permit has been issued to
24 the operator by the department for play upon the premises, including the type of game and permit number for
25 each game; and

26 (d) any other relevant information determined necessary by the department.

27 (6) The operator's license must be issued annually along with all other permits for gambling devices
28 or games issued to the operator.

(7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card game table permit is newly issued or the machine or game is removed from the premises.

(8) The department shall charge an applicant who has submitted an operator's license application on or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the department in determining whether the applicant qualifies for licensure under 23-5-176. After making its determination, the department shall refund any overpayment or charge and collect amounts sufficient to reimburse the department for any underpayment of actual costs.

(9) The operator's license must be prominently displayed upon the premises for which it is issued."

NEW SECTION. Section 13. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, and the provisions of Title 16 apply to [section 1].

NEW SECTION. Section 14. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 15. Effective date. [This act] is effective on passage and approval.

- END -