

HOUSE BILL NO. 472

INTRODUCED BY W. GALT

A BILL FOR AN ACT ENTITLED: "AN ACT PROHIBITING A COUNTY ATTORNEY OR DEPUTY COUNTY ATTORNEY FROM POSSESSING A LICENSE TO SELL OR SERVE ALCOHOL OR HAVING AN INTEREST IN A PREMISES THAT SELLS OR SERVES ALCOHOL; AND AMENDING SECTIONS 7-4-2704 AND 16-4-401, MCA."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 7-4-2704, MCA, is amended to read:

"7-4-2704. Limitations on activities of county attorneys and deputy county attorneys. (1) The county attorney, except for the county attorney's personally rendered services, may not present a claim, account, or other demand for allowance against the county or in any way advocate the relief asked on the claim or demand made by another.

(2) Except as provided in subsection (4), in each county in which the office of county attorney is a full-time position pursuant to 7-4-2706, the county attorney is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except that the county attorney may engage in self-representation and may represent the county attorney's immediate family.

(3) Except as provided in subsection (4), a deputy county attorney in a county in which the office of county attorney is a full-time position pursuant to 7-4-2706 who is paid 70% or more of the county attorney's salary is prohibited from engaging in the private practice of law or sharing directly or indirectly in the profits of any private practice of law, except as to those matters in which the deputy county attorney has a direct interest.

(4) Any elected or appointed county attorney and any deputy county attorney must, upon demonstration of need to the board of county commissioners, be granted a period of time, not to exceed 3 months from the date that the person takes office, to complete any pending matters remaining from a previous private practice of law. During that time, the county attorney and any appointed deputy are bound by the customary rules of ethics applicable to attorneys at law.

(5) (a) A county attorney or deputy county attorney may not:

(i) possess a license under Title 16 to sell or serve alcoholic beverages at a premises; or

1 (ii) have any ownership interest in a premises licensed under Title 16 that sells or serves alcoholic
2 beverages.

3 (b) For purposes of this subsection (5), the term "premises" means any location that:

4 (i) sells, serves, or manufactures alcoholic beverages; and

5 (ii) is located in the same county where the county attorney or deputy county attorney is employed, was
6 elected, or was appointed or otherwise has prosecutorial obligations under 7-4-2712."

7
8 **Section 2.** Section 16-4-401, MCA, is amended to read:

9 **"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this code
10 is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

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

14 (a) if the applicant is an individual:

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

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

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

20 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business
21 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all
22 applicable laws of the state and local governments; and

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

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

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

29 (ii) each individual who has control over the operation of the license meets the requirements for an
30 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% 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% 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% 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% 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 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 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners must meet the requirements of subsection (2)(a).

(f) if the applicant is a limited liability company, all managing members and those members whose ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of subsection (2)(a).

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

- 1 approval of the transfer of a license that:
- 2 (a) if the applicant is an individual:
- 3 (i) and the application is approved, the applicant will not possess an ownership interest in more than
- 4 three establishments licensed under this chapter for all-beverages sales;
- 5 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;
- 6 (iii) the applicant or any member of the applicant's immediate family is without financing from or any
- 7 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;
- 8 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
- 9 the applicant's rights have been restored;
- 10 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business
- 11 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all
- 12 applicable laws of the state and local governments; and
- 13 (vi) the applicant is not under 19 years of age;
- 14 (b) if the applicant is a publicly traded corporation:
- 15 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
- 16 in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
- 17 designate two or more officers or board members, each of whom must meet the requirements for an individual
- 18 applicant listed in subsection (3)(a).
- 19 (ii) the corporation is authorized to do business in Montana;
- 20 (c) if the applicant is a privately held corporation:
- 21 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
- 22 applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the
- 23 applicant shall designate two or more officers or board members, each of whom must meet the requirements for
- 24 an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the
- 25 requirements of subsection (3)(a).
- 26 (ii) the corporation is authorized to do business in Montana;
- 27 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
- 28 (3)(a);
- 29 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
- 30 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements

1 of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners
2 must meet the requirements of subsection (3)(a).

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

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

10 (a) if the applicant is an individual:

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

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

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

16 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business
17 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all
18 applicable laws of the state and local governments;

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

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

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

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

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

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

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

(i) each owner of 10% 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% 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 must meet the requirements of subsection (4)(a);

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

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

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

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

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

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

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

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

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

or

(b) has been convicted of a felony offense within 5 years of the date of application or is on probation or

1 parole or under deferred prosecution for committing a felony offense.

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

5 (b) If two or more individuals through business or family relationship share in the profits or liabilities of
6 all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not exceed
7 half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages
8 licenses will be held.

9 (9) A Montana county attorney or deputy county attorney may not possess any license under this code
10 as provided in 7-4-2704."

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