

HOUSE BILL NO. 43

INTRODUCED BY R. MARSHALL

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LAWS RELATING TO THE DEATH OR INCAPACITY OF A LICENSEE OR OWNER OF A LICENSE; PROVIDING REQUIREMENTS FOR CERTAIN PARTIES TO NOTIFY THE DEPARTMENT; PROVIDING FOR DEPARTMENT RULEMAKING; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTION 16-4-404, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Death or incapacity of licensee or owner of license -- rulemaking. (1)

The appointed conservator, guardian, personal representative, executor, or administrator shall notify the department within ~~60~~90 days of appointment in the event of the death or the judicial determination of incapacity of a licensee or owner of the licensee if the licensee is an entity. In any event, the department must be notified within 180 days of the death or the judicial determination of incapacity of the licensee or owner of the licensee.

(2) The department may give the appointed conservator, guardian, personal representative, executor, or administrator or a trustee, OR A DESIGNEE OF THE APPOINTED CONSERVATOR, GUARDIAN, PERSONAL REPRESENTATIVE, EXECUTOR, OR ADMINISTRATOR OR A TRUSTEE, written approval to continue operation of the licensed business for the duration of the existing license and to renew the license when it expires. The appointed conservator, guardian, personal representative, executor, or administrator or a trustee, OR A DESIGNEE, must qualify for ownership of a license as provided in 16-4-401. If the department does not grant written approval to continue operation of the licensed business or the appointed conservator, guardian, personal representative, executor, or administrator or a trustee, OR A DESIGNEE, does not qualify for ownership of a license as provided in 16-4-401, the license must be placed on nonuse status.

(3) Within 60 days of the closing of a decedent's estate or the judicial determination of restored capacity of a previously incapacitated licensee or owner of a license and removal of a conservator or guardian,

the department must be provided with a copy of a court order or other documentation resolving the matter and, if a transfer is warranted, the true party of interest shall apply to transfer the license.

(4) The department may adopt rules to implement this section.

Section 2. Section 16-4-404, MCA, is amended to read:

"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer. (1) A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code must state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited upon request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred pursuant to [section 1] to the personal representative, executor, or administrator of the estate of a deceased licensee, OR TO A DESIGNEE OF THE PERSONAL REPRESENTATIVE, EXECUTOR, OR ADMINISTRATOR, when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) (a) A licensee may apply to the department for a transfer of the license to different premises within the quota area if:

- (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;
- (ii) the lease of the licensed premises has expired;
- (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the

1 landlord; or

2 (iv) the licensee has proposed removal of the license to premises that are as substantially suited
3 for the retail alcoholic beverages business as the premises proposed to be vacated.

4 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases
5 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the
6 licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant to
7 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department may not
8 allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than
9 facilities that exist or had existed at the premises from which the transfer is proposed to be made.

10 (6) Upon a bona fide sale of the business operated under a license, the license may be transferred
11 to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the
12 department. A licensee or transferee or proposed transferee who operates or attempts to operate under a
13 supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the
14 license in writing, is considered to be operating without a license and the license affected may be revoked or
15 suspended by the department. The department may, within its discretion, permit a qualified purchaser to
16 operate the business to be transferred pending final approval if there has not been a change in location and the
17 application for transfer has been filed with the department.

18 (7) Except as provided in 16-4-204 and subsections (2) through (6) of this section, a license may
19 not be transferred or sold or used for any place of business not described in the license. A license may be
20 subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and
21 approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit
22 pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a subsequent licensee has the
23 obligation to pay for the beer or wine."

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25 **NEW SECTION. Section 3. Codification instruction.** [Section 1] is intended to be codified as an
26 integral part of Title 16, chapter 4, part 4, and the provisions of Title 16, chapter 4, part 4, apply to [section 1].

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28 **NEW SECTION. Section 4. Effective date.** [This act] is effective on passage and approval.

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