

1 HOUSE BILL NO. 43

2 INTRODUCED BY R. MARSHALL

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

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

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

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

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

18 (2) The department may give the appointed conservator, guardian, personal representative,
19 executor, or administrator or a trustee written approval to continue operation of the licensed business for the
20 duration of the existing license and to renew the license when it expires. The appointed conservator, guardian,
21 personal representative, executor, or administrator or a trustee must qualify for ownership of a license as
22 provided in 16-4-401. If the department does not grant written approval to continue operation of the licensed
23 business or the appointed conservator, guardian, personal representative, executor, or administrator or a
24 trustee does not qualify for ownership of a license as provided in 16-4-401, the license must be placed on
25 nonuse status.

26 (3) Within 60 days of the closing of a decedent's estate or the judicial determination of restored
27 capacity of a previously incapacitated licensee or owner of a license and removal of a conservator or guardian,
28 the department must be provided with a copy of a court order or other documentation resolving the matter and,

1 if a transfer is warranted, the true party of interest shall apply to transfer the license.

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

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

5 **"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license
6 may not be issued until on or after the date set in the notice for hearing protests.

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

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

18 (4) A license may be transferred pursuant to [section 1] to the personal representative, executor, or
19 administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business
20 of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed
21 business under appropriate probate proceedings.

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

24 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

25 (ii) the lease of the licensed premises has expired;

26 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the
27 landlord; or

28 (iv) the licensee has proposed removal of the license to premises that are as substantially suited

1 for the retail alcoholic beverages business as the premises proposed to be vacated.

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

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

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

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23 NEW SECTION. **Section 3. Codification instruction.** [Section 1] is intended to be codified as an
24 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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26 NEW SECTION. **Section 4. Effective date.** [This act] is effective on passage and approval.

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