

1 HOUSE BILL NO. 144

2 INTRODUCED BY P. GREEN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LICENSE LAWS RELATING TO THE
6 COMPETITIVE BIDDING PROCESS; ALLOWING THE DEPARTMENT OF REVENUE TO PUBLISH THE
7 AVAILABILITY OF MORE THAN ONE LICENSE UNTIL THE QUOTA HAS BEEN REACHED; PROVIDING
8 THAT THE DEPARTMENT IS TO PROVIDE SEPARATE COMPETITIVE BIDDING PROCESSES IN THE
9 SAME QUOTA AREA WHEN MORE THAN ONE NEW ALL-BEVERAGES LICENSE BECOMES AVAILABLE;
10 APPLYING TO BEER AND WINE, ALL-BEVERAGES, AND RESTAURANT BEER AND WINE LICENSES;
11 ELIMINATING THE REQUIREMENT FOR A SUCCESSFUL BIDDER TO SUBMIT AN IRREVOCABLE
12 LETTER OF CREDIT IN THE COMPETITIVE BIDDING PROCESS; AMENDING SECTIONS 16-4-105, 16-4-
13 201, 16-4-412, 16-4-420, AND 16-4-430, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

14

15 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
16

17 **Section 1.** Section 16-4-105, MCA, is amended to read:

18 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of**
19 **license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110,
20 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in
21 accordance with the provisions of this code and the rules of the department, may be issued to any person or
22 business entity that is approved by the department, subject to the following exceptions:

23 (a) The number of retail beer licenses that the department may issue for premises situated within
24 incorporated cities and incorporated towns and within 5 miles of the corporate limits of the cities and towns
25 must be determined on the basis of population prescribed in 16-4-502 as follows:

26 (i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of
27 the towns, not more than one retail beer license;

28 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than

2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;

(iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each additional 2,000 inhabitants.

(b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail beer licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of an incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be located farther than:

(i) the county boundary within which the incorporated city or incorporated town is located; or

(ii) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.

(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:

(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.

(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.

(C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017, within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

(d) Retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations.

(e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

(f) The number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (8) does not apply to licenses issued under this subsection (1)(f). The owner of the license whose premises are situated outside of an incorporated city or incorporated town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) ~~(a)~~ For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from applications in process as of November 24, 2017, in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of the combined quota area prior to November 24, 2017.

~~(b) If any new retail beer licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (1)(c), the department shall publish the availability of no more than one new beer license a year until the quota has been reached.~~

~~(c) If any new retail beer licenses are allowed by license transfers as provided in subsection (2)(a), the department may publish the availability of more than one new license a year until the quota has been reached.~~

(3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of the annexation.

(4) When the department determines that a quota area is eligible for a new retail beer license under subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for the new license.

(5) ~~Except as provided in subsection (2)(b), when~~ When more than one new beer license ~~becomes available at the same time in the same quota area~~ is subject to the competitive bidding process in the same quota area, the department shall conduct a separate competitive bidding process at separate times for each available license.

(6) (a) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

(b) A person licensed under this subsection (6) may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

(7) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in

1 original packaging, prepared servings, or growlers.

2 (8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October
3 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is
4 conducted.

5 (9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a
6 \$25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

7 (10) The department may adopt rules to implement this section."
8

9 **Section 2.** Section 16-4-201, MCA, is amended to read:

10 **"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell
11 liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code
12 and the rules of the department, may be issued to any person who is approved by the department as a fit and
13 proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department
14 may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the
15 corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502
16 as follows:

17 (a) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of
18 the towns, not more than two retail licenses;

19 (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than
20 3,000 inhabitants and within 5 miles of the corporate limits of the cities and towns, three retail licenses for the
21 first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

22 (c) in incorporated cities of more than 3,000 inhabitants and within 5 miles of the corporate limits of
23 the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500
24 inhabitants.

25 (2) The number of inhabitants in each incorporated city or incorporated town, exclusive of the
26 number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of
27 retail licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the
28 city or town. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must

1 be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest
2 corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be
3 located farther than:

4 (a) the county boundary within which the incorporated city or incorporated town is located; or

5 (b) the line that separates the incorporated city's or incorporated town's boundary from another
6 incorporated city or incorporated town as specified in this section.

7 (3) (a) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile
8 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a
9 straight line equidistant between each city or town.

10 (b) If there are more than two overlapping quota areas, the quota area for each city or town
11 terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses
12 existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a
13 result of the straight line equidistant between each city or town, except for the following:

14 (i) In the Helena and East Helena previously combined quota area, the straight line will be drawn
15 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area
16 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a
17 Helena license or with a physical address of East Helena will become an East Helena license, regardless of
18 where it falls in the new quota areas.

19 (ii) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn
20 along Mill Creek road to the quota area boundaries.

21 (iii) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west
22 on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area
23 boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson
24 license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017,
25 within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

26 (4) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted
27 from applications in process as of November 24, 2017, in either of two quota areas that were established as
28 provided in subsection (3) may be transferred between the two quota areas if they were part of the combined

1 quota area prior to November 24, 2017.

2 (5) ~~(a) If any new retail all-beverages licenses are allowed by separating a combined quota area~~
3 ~~that existed as of November 24, 2017, as provided in subsection (3), the department shall publish the~~
4 ~~availability of no more than one new retail all-beverages license a year until the quota has been reached. The~~
5 ~~department shall~~ use a competitive bidding process as provided in 16-4-430 to determine the party afforded the
6 opportunity to apply for the new license.

7 ~~(b) If any new all-beverages licenses are allowed by license transfers as provided in subsection (4),~~
8 ~~the department may publish the availability of more than one new license a year until the quota has been~~
9 ~~reached.~~

10 (6) ~~Except as provided in subsection (5)(a), when~~ When more than one new all-beverages license
11 ~~becomes available at the same time in the same quota area is subject to the competitive bidding process in the~~
12 same quota area, the department shall conduct a separate competitive bidding process at separate times for
13 each available license.

14 (7) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued
15 under 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses
16 may not be issued in violation of the limitations.

17 (8) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and
18 nonassignable, as to ownership only, retail license to:

19 (a) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal
20 military reservation on May 13, 1985;

21 (b) any post of a nationally chartered veterans' organization or any lodge of a recognized national
22 fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or
23 more prior to January 1, 1949; or

24 (c) a continuing care retirement community as provided in 16-4-315.

25 (9) The number of retail all-beverages licenses that the department may issue for use at premises
26 situated more than 5 miles outside of any incorporated city or incorporated town may not be more than one
27 license for each 750 in population of the county after excluding the population of incorporated cities and
28 incorporated towns in the county.

(10) An all-beverages license issued under subsection (9) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of annexation.

(11) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in original packaging, prepared servings, or growlers.

(12) A person licensed under this section may apply to the department and pay a fee for an endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

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

Section 3. Section 16-4-412, MCA, is amended to read:

"16-4-412. Limits on concurrent applications. ~~(1)~~ An application for the issuance of a new license or for the transfer of an existing license may not be considered by the department if a previous application for the same premises is pending. An application is considered pending if a final decision:

~~(a)(1)~~ has not been made by the department; or

~~(b)(2)~~ has been made by the department but:

~~(i)(a)~~ a petition for judicial review can still be filed or has been filed; or

~~(ii)(b)~~ an appeal to the Montana supreme court can still be filed or has been filed.

~~(2) This section does not prevent the department from considering more than one application for the same location pursuant to competition for a last available license."~~

Section 4. Section 16-4-420, MCA, is amended to read:

"16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking. (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and conditions:

(a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises

1 consumption license;

2 (b) the applicant operates a restaurant at the location where the restaurant beer and wine license
3 will be used or satisfies the department that:

4 (i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and
5 intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of
6 operation is expected to be the result of the sale of food;

7 (ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the
8 restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be
9 stated on the food bill; and

10 (iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the
11 department by rule;

12 (c) the applicant understands and acknowledges in writing on the application that this license
13 prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling
14 machines and that if any gaming or gambling activity or machine exists at the location where the restaurant
15 beer and wine license will be used, the activity must be discontinued or the machines must be removed before
16 the restaurant beer and wine license takes effect; and

17 (d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the
18 current seating capacity if the restaurant is operating.

19 (2) (a) A restaurant that has an existing retail license for the sale of beer, wine, or any other
20 alcoholic beverage may not be considered for a restaurant beer and wine license at the same location.

21 (b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply
22 for a license under this section for a period of 1 year from the date that license is transferred to a new
23 purchaser.

24 (ii) A person, including an individual, with an ownership interest in an existing on-premises retail
25 license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for
26 under this section for a period of 1 year from the date that the existing on-premises retail license is transferred
27 to a new purchaser.

28 (3) A completed application for a license under this section and the appropriate application fee, as

provided in subsection (11), must be submitted to the department. The department shall investigate the items relating to the application as described in subsections (3)(a) and (3)(b). Based on the results of the investigation and the exercise of its sound discretion, the department shall determine whether:

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

(b) (i) the applicant's premises are suitable for the carrying on of the business;

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

(iii) if the applicant has already been issued a license, the proposed premises are suitable for the carrying on of the business and the seating capacity stated on the application is correct.

(4) An application for a beer and wine license submitted under this section is subject to the provisions of 16-4-203, 16-4-207, and 16-4-405.

(5) If a premises proposed for licensing under this section is a new or remodeled structure, then the department may issue a license prior to completion of the premises based on reasonable evidence, including a statement from the applicant's architect or contractor confirming that the seating capacity stated on the application is correct, that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in subsection (6). If a license is issued without a premises, the license will immediately be placed on nonuse status until the premises are approved subject to 16-4-417.

(6) (a) For purposes of this section, "restaurant" means a public eating place:

(i) where individually priced meals are prepared and served for on-premises consumption;

(ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food.

(iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use as a full-service restaurant; and

(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to

1 a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent
2 renewals of that license.

3 (b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a
4 majority of its food and drink in throw-away containers not reused in the same restaurant.

5 (7) (a) A restaurant beer and wine license not issued through a competitive bidding process as
6 provided in 16-4-430 may be transferred, on approval by the department, from the original applicant to a new
7 owner of the restaurant only after 1 year of use by the original owner, unless that transfer is due to the death of
8 an owner.

9 (b) A license issued under this section may be jointly owned, and the license may pass to the
10 surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any
11 other person or entity by operation of the laws of inheritance or succession or any other laws allowing the
12 transfer of property upon the death of the owner in this state or in another state.

13 (c) An estate may, upon the sale of a restaurant that is property of the estate and with the approval
14 of the department, transfer a restaurant beer and wine license to a new owner.

15 (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

16 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a
17 population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of
18 restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer
19 licenses that may be issued in that quota area pursuant to 16-4-105;

20 (ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the
21 quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in
22 that quota area is equal to or less than 160% of the number of beer licenses that may be issued in that quota
23 area pursuant to 16-4-105;

24 (iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the
25 quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in
26 that quota area is equal to or less than 100% of the number of beer licenses that may be issued in that quota
27 area pursuant to 16-4-105;

28 (iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the

1 quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in
2 that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota
3 area pursuant to 16-4-105; and

4 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501,
5 if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is
6 equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-
7 4-105.

8 (b) In determining the number of restaurant beer and wine licenses that may be issued under this
9 subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the
10 department shall round to the nearer whole number.

11 (c) If the department has issued the number of restaurant beer and wine licenses authorized for a
12 quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that
13 quota area.

14 (d) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile
15 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a
16 straight line equidistant between each city or town. A license that is restricted by quota limitations in this section
17 may not be located farther than:

18 (A) the county boundary within which the incorporated city or incorporated town is located; or

19 (B) the line that separates the incorporated city's or incorporated town's boundary from another
20 incorporated city or incorporated town as specified in this section.

21 (ii) If there are more than two overlapping quota areas, the quota area for each city or town
22 terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses
23 existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a
24 result of the straight line equidistant between each city or town, except for the following:

25 (A) In the Helena and East Helena previously combined quota area, the straight line will be drawn
26 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area
27 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a
28 Helena license or with a physical address of East Helena will become an East Helena license, regardless of

1 where it falls in the new quota areas.

2 (B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn
3 along Mill Creek road to the quota area boundaries.

4 (C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west
5 on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area
6 boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson
7 license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017,
8 within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

9 (9) ~~(a)~~ For a period of 12 years after November 24, 2017, existing licenses or licenses that
10 resulted from applications in process as of November 24, 2017, in either of two quota areas that were
11 established as provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two
12 quota areas if they were part of the combined quota area prior to November 24, 2017.

13 ~~(b) If any new restaurant beer and wine licenses are allowed by separating a combined quota area~~
14 ~~that existed as of November 24, 2017, as provided in 16-4-105 and subsection (9)(a) of this section, the~~
15 ~~department shall publish the availability of no more than one new restaurant beer and wine license a year until~~
16 ~~the quota has been reached.~~

17 ~~(c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in~~
18 ~~subsection (9)(a), the department may publish the availability of more than one new license a year until the~~
19 ~~quota has been reached.~~

20 (10) ~~Except as provided in subsection (9)(b), when~~ When more than one new restaurant beer and
21 wine license ~~becomes available at the same time in the same quota area is subject to the competitive bidding~~
22 process in the same quota area, the department shall conduct a separate competitive bidding process at
23 separate times for each available license.

24 (11) When a restaurant beer and wine license becomes available by the initial issuance of licenses
25 under this section or as the result of an increase in the population in a quota area, the nonrenewal of a
26 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the
27 department shall advertise the availability of the license in the quota area for which it is available.

28 (12) When the department determines that a quota area is eligible for a new restaurant beer and

1 wine license under subsection (9) or (11), the department shall use a competitive bidding process as provided
2 in 16-4-430 to determine the party afforded the opportunity to apply for a new license.

3 (13) (a) Except as provided in subsection (13)(b), beer and wine may be sold for off-premises
4 consumption, including curbside pickup, ~~during-between~~ the hours of 11 a.m. and 11 p.m. in original packaging,
5 prepared servings, or growlers. If offering off-premises sales, food must also be ordered, the beer or wine must
6 be stated on the food bill, and the sales must count toward the 65% limit as provided in this section.

7 (b) A restaurant beer and wine licensee may apply to the department and pay a fee for an
8 endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original
9 packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The
10 purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

11 (14) An application for a restaurant beer and wine license must be accompanied by a fee equal to
12 20% of the initial licensing fee. If the department does not decide either to grant or to deny the license within 4
13 months of receipt of a complete application, the department shall pay interest on the application fee at the rate
14 of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period
15 that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If
16 the department denies an application, the application fee, plus any interest, less a processing fee established
17 by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of
18 the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

19 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or fewer;

20 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

21 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

22 (15) The annual fee for a restaurant beer and wine license is \$400.

23 (16) If a restaurant licensed under this part increases the stated seating capacity of the licensed
24 restaurant or if the department determines that a licensee has increased the stated seating capacity of the
25 licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the
26 time of filing the original application and issuance of a license and the applicable fees for the additional seating.

27 (17) The number of beer and wine licenses issued to restaurants with a stated seating capacity of
28 101 persons or more may not exceed 25% of the total licenses issued.

(18) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

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

Section 5. Section 16-4-430, MCA, is amended to read:

"16-4-430. Competitive bidding process -- all-beverages, retail beer and wine, and restaurant beer and wine licenses. (1) (a) When the department determines that a quota area is eligible for a license under 16-4-105, 16-4-201, 16-4-204, or 16-4-420, the department shall use a competitive bidding process to determine the party afforded the opportunity to apply for the license. The department shall use a competitive bidding process when:

(i) a new license becomes available in a quota area where a license of the same type is not currently available in the quota area;

(ii) the opportunity to transfer a license into a quota area becomes available where a license of the same type is not currently available in the quota area;

(iii) the lapse, revocation, or issuance of a license within the quota area where the license is located has created the last remaining license for that license type in the quota area; or

(iv) the department's denial of an application for licensure or an applicant's withdrawal of an application for licensure has created the last remaining license for that license type in a quota area.

(b) The department shall:

(i) determine the minimum bid based on 75% of the market value of applicable licenses in the quota area;

(ii) publish notice that a quota area is eligible for a new license;

(iii) notify the bidder with the highest bid; and

(iv) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has been approved.

(2) (a) To enter the competitive bidding process, a bidder shall submit:

~~(i) an electronic bid form provided by the department; and~~

1 ~~(ii) an irrevocable letter of credit from a financial institution establishing the department as the~~
2 ~~beneficiary of at least the bid amount. The financial institution may issue the irrevocable letter of credit in the~~
3 ~~name of the bidder, if the bidder is a business entity, or in the name of an individual who is an owner of the~~
4 ~~business entity.~~

5 (b) The department shall contact any bidder whose timely submitted bid form has a deficiency and
6 shall provide that bidder with an opportunity to resubmit the bid form within 5 business days to correct any
7 deficiency.

8 (3) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid
9 must be the tied bid amount. To submit a new bid, a tied bidder shall submit:

10 ~~(a) an electronic bid form provided by the department; and~~
11 ~~(b) an irrevocable letter of credit from a financial institution establishing the department as the~~
12 ~~beneficiary of at least the new bid amount. The financial institution may issue the irrevocable letter of credit in~~
13 ~~the name of the bidder, if the bidder is a business entity, or in the name of an individual who is an owner of the~~
14 ~~business entity.~~

15 (4) The highest bidder shall:

16 (a) submit an application provided by the department and applicable fees for the license within 60
17 days of the department's notification of being the highest bidder;

18 (b) pay the bid amount prior to approval of the license;

19 (c) meet all other requirements to own the license; and

20 (d) commence business within 1 year of the department's notification, unless the department
21 grants an extension because commencement was delayed by circumstances beyond the applicant's control.
22 Any extension request must be made in writing to the department prior to the deadline for commencing
23 business.

24 (5) If the highest bidder is not approved to own the license, the department shall offer the license
25 to the next highest bidder. That bidder shall comply with the requirements of subsection (4). If no qualified
26 bidder is approved to own the license, the department shall reopen the competitive bidding process for the
27 license.

28 (6) (a) If no bids are received during the competitive bidding process, the department shall reopen

the bid at a lower bid amount than initially determined in subsection (1).

(b) If, after holding a competitive bidding process, the department determines that there is no significant market value for a particular license, the department may withdraw that license from the competitive bidding process and process applications for the license in the order received.

(c) If a quota area is already eligible for a license as of November 24, 2017, the department shall process applications for the license in the order received.

(7) (a) The successful applicant is subject to forfeiture of the license, the license fees, and the original bid amount if the successful applicant:

(i) ~~transfers~~ applies to transfer the awarded license to another person or business entity within 1 year after receiving the license unless that transfer is due to a death of an owner;

(ii) proposes a location for the license within the first year of operation that had the same license type within the previous 12 months; or

(iii) does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the successful applicant provides evidence that the delay in use is for reasons outside the applicant's control. Evidence of the delay must be made in writing to the department prior to the deadline for commencing business.

(b) If a license is forfeited, the department shall determine whether there is a lien against the license. If there is a lien, the department shall notify the lienholder or secured party of the forfeiture and the lienholder or secured party may foreclose on the license and request transfer of the license pursuant to 16-4-801. If there is not a lien on the license or if the lienholder or secured party does not foreclose on the license pursuant to 16-4-801, the department shall conduct another competitive bidding process for the license.

(8) A license issued under this section is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(9) Nothing in subsection (7) relating to forfeiture prohibits a lienholder or secured party from foreclosing on a license. A lien may be placed on a license issued under this section and may be foreclosed on. If a license is foreclosed on, the department shall keep the license fees and the original bid amount and the lienholder or secured party may resell the license, pending department approval of the applicant."

2 - END -