

HOUSE BILL NO. 391

INTRODUCED BY C. SCHOMER, E. BUTTREY

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LAWS TO PROVIDE THAT A LICENSEE MAY COMPENSATE A CONCESSIONAIRE BASED ON A PERCENTAGE OF GROSS OR NET ALCOHOLIC BEVERAGE SALES; AND AMENDING SECTION 16-4-418, MCA."

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

Section 1. Section 16-4-418, MCA, is amended to read:

"16-4-418. Concession agreements. (1) Except for entities licensed under 16-4-105(1)(e) or 16-4-201(8) on or after January 1, 2021, the department may allow entities licensed under 16-4-105 or 16-4-201 to enter into concession agreements with unlicensed entities to serve alcoholic beverages. A licensee may enter into a maximum of three concession agreements for each license at any given time.

(2) To be considered for approval, a concession agreement must:

(a) demonstrate that the licensed premises is a contiguous premises that includes the space utilized by the concessionaire; and

(b) provide that the licensee retains ultimate control over and responsibility for operating the license, including:

(i) the ordering, purchase, sale, and service of alcoholic beverages;

(ii) the right to discipline or otherwise sanction any employee in relation to the service of alcoholic beverages;

(iii) reconciling the proceeds of alcoholic beverage sales at least monthly;

(iv) terminating the concession agreement with cause where cause includes but is not limited to any violation of Title 16 and the sale or transfer of the license; and

(v) the exclusive operation of all gaming activities if the licensee offers any gaming.

(3) A licensee's gaming endorsement may not be extended through a concession agreement.

(4) Nothing in this section precludes a licensee and a concessionaire from sharing employees.

1 (5) A licensee may enter into a management agreement to satisfy the provisions of subsection
2 (2)(b).

3 (6) (a) The licensee may compensate the concessionaire for the sale of alcoholic beverages based
4 only on one of the following or a combination of the following considerations:

5 (i) a percentage of gross or net alcoholic beverage sales;

6 (ii) a percentage of employee overhead; and

7 (iii) a fixed dollar amount to be negotiated by the parties.

8 (b) If the licensee and concessionaire change the structure of the compensation arrangement, the
9 department must be provided with a copy of the amended compensation arrangement but does not have the
10 ability to deny the amended compensation arrangement as long as it meets the requirements of this section.

11 (7) (a) Other than changes provided in subsection (6)(b), a licensee shall submit any proposed
12 modification to an existing concession agreement for review and approval by the department. Changes include
13 but are not limited to proposed changes in ownership of the license and the parties of an existing concession
14 agreement choosing to operate under the provisions of this section. The department shall approve or deny the
15 application within 30 business days unless additional information is required. The existing concession
16 agreement may remain in place pending department approval or denial. An applicant may apply for temporary
17 operating authority pending approval for a change in ownership of a license or to operate under the provisions
18 of this section without terminating an existing concession agreement.

19 (b) Parties with a concession agreement existing prior to May 14, 2021, that elect to operate under
20 the provisions of this section shall operate under the existing concession agreement pending department
21 approval of the new concession agreement.

22 (8) A concession agreement does not constitute an ownership interest in the license.

23 (9) The department shall create a standardized concession agreement that includes only the
24 requirements of this section.

25 (10) The concessionaire shall pay the department an application fee of \$500 for each new
26 concession agreement or for existing concession agreements that elect to operate under the provisions of this
27 section. The new concession agreement application fee does not apply to modification of existing concession
28 agreements. The annual renewal fee for each concession agreement is \$100.

