

HOUSE BILL NO. 525

INTRODUCED BY E. BUTTREY, M. BLASDEL, J. ELLSWORTH, T. JACOBSON, J. SMALL, A. BUCKLEY, W.

GALT, D. HARVEY

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL CONCESSION AGREEMENT LAWS; REQUIRING DEPARTMENT APPROVAL OF CONCESSION AGREEMENTS; PROVIDING CONCESSION AGREEMENT CRITERIA; PROVIDING FOR PARTY RESPONSIBILITY IN CONCESSION AGREEMENTS; PROVIDING FOR A CHANGE IN CONCESSION AGREEMENT OWNERSHIP; AMENDING SECTION 16-4-418, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND APPLICABILITY DATES."

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) The 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 ~~16-4-104~~ 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

1 violation of Title 16, and the sale or transfer of the license; and

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

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

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

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

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

8 (i) a percentage of gross alcoholic beverage sales;

9 (ii) a percentage of employee overhead; and

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

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

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

22 (b) Parties with a concession agreement existing prior to [the effective date of this act] that elect to
23 operate under the provisions of this section shall ~~provide notice to the department of changes to the~~
24 ~~compensation arrangement. Department approval under subsection (6)(b) is not required~~ OPERATE UNDER THE
25 EXISTING CONCESSION AGREEMENT PENDING DEPARTMENT APPROVAL OF THE NEW CONCESSION AGREEMENT.

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

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

1 (10) The concessionaire shall pay the department an application fee of \$500 for each new concession
2 agreement OR FOR EXISTING CONCESSION AGREEMENTS THAT ELECT TO OPERATE UNDER THE PROVISIONS OF THIS
3 SECTION. THE NEW CONCESSION AGREEMENT APPLICATION FEE DOES NOT APPLY TO MODIFICATION OF EXISTING
4 CONCESSION AGREEMENTS. The annual renewal fee for each concession agreement is \$100.

5 (11) (a) For the purposes of this section, the term "contiguous premises" means the interior portion of
6 the premises that must be a continuous area under the control of the licensee or the concessionaire and not
7 interrupted by any area in which one of the parties does not have control.

8 (b) The term includes multiple floors on the premises and common areas necessarily shared by
9 multiple building tenants in order to allow patrons to access other tenant businesses or private dwellings in the
10 same OR AN ADJACENT building, including but not limited to entryways, hallways, stairwells, and elevators."

11
12 NEW SECTION. Section 2. Grandfather clause. (1) [This act] EXCEPT AS PROVIDED FOR ENTITIES
13 THAT ELECT TO COMPLY WITH [THIS ACT] IN 16-4-418(7)(B), [THIS ACT] does not apply to concession agreements in
14 effect or submitted to the department for approval prior to January 1, 2021. Concession agreements in effect or
15 submitted to the department for approval prior to January 1, 2021, may remain in effect until a licensee applies
16 for and receives department approval to change ownership or location of the license OR WHEN AN EXISTING
17 LICENSE AND CONCESSIONAIRE ELECT TO COMPLY WITH [THIS ACT]. Concession agreements in effect or submitted to
18 the department prior to January 1, 2021, may have their terms extended indefinitely and may be assigned to
19 new concessionaires operating in the same premises as long as the provisions of the concession agreements
20 are otherwise unmodified.

21 (2) [This act] does not extinguish concession agreements already in existence for entities licensed
22 under 16-4-201(8) or 16-4-213, including those agreements previously subject to an expiration date, or the
23 rights of licenses under 16-4-201(8) existing before January 1, 2021, to enter into concession agreements.

24 (3) [THIS ACT] DOES NOT IMPAIR THE RIGHTS OF VETERAN AND FRATERNAL ORGANIZATIONS THAT HAVE HAD A
25 LICENSE UNDER 16-4-201(8) AND CONCESSION AGREEMENT IN PLACE ON OR AFTER JANUARY 1, 2016, FROM USING OR
26 OBTAINING A VETERAN OR FRATERNAL LICENSE AND ENTERING INTO CONCESSION AGREEMENTS PURSUANT TO 16-4-
27 418.

NEW SECTION. **Section 3. Severability.** If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

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

NEW SECTION. SECTION 5. APPLICABILITY. FOR ENTITIES ENTERING INTO A CONCESSION AGREEMENT WHERE ONE HAS NOT PREVIOUSLY EXISTED, THE PROVISIONS OF [THIS ACT] APPLY IMMEDIATELY. FOR ENTITIES ELECTING TO COMPLY WITH [THIS ACT] UNDER [SECTION 1(7)(B)], THE PROVISIONS OF [THIS ACT] APPLY SEPTEMBER 1, 2021.

- END -