

1 HOUSE BILL NO. 50

2 INTRODUCED BY T. BROCKMAN

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LAWS TO REMOVE AN EXCEPTION THAT
6 NO LONGER APPLIES TO RESTAURANT BEER AND WINE LICENSES; AMENDING SECTION 16-4-105,
7 MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

8
9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

10
11 **Section 1.** Section 16-4-105, MCA, is amended to read:

12 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of**
13 **license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110,
14 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
15 accordance with the provisions of this code and the rules of the department, may be issued to any person or
16 business entity that is approved by the department, subject to the following exceptions:

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

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

22 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than
23 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for
24 every 500 inhabitants;

25 (iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of
26 the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next
27 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each
28 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,

1 within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

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

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

10 (f) The number of retail beer licenses that the department may issue for use at premises situated
11 outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate
12 limits or for use at premises situated within any unincorporated area must be determined by the department in
13 its discretion, except that a retail beer license may not be issued for any premises so situated unless the
14 department determines that the issuance of the license is required by public convenience and necessity
15 pursuant to 16-4-203. Subsection (8) does not apply to licenses issued under this subsection (1)(f). The owner
16 of the license whose premises are situated outside of an incorporated city or incorporated town may offer
17 gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter
18 5, part 3, 5, or 6.

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

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

26 (c) If any new retail beer licenses are allowed by license transfers as provided in subsection (2)(a),
27 the department may publish the availability of more than one new license a year until the quota has been
28 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 more than one new beer license becomes available at the same time 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~~ 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 original packaging, prepared servings, or growlers.

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

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

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

2 NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

3 - END -