

HOUSE BILL NO. 72

INTRODUCED BY R. MARSHALL

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO RESTAURANT BEER AND WINE LICENSES; ELIMINATING RESTAURANT BEER AND WINE LICENSE OWNERSHIP RESTRICTIONS; ELIMINATING REDUNDANT PROVISIONS RELATING TO THE TRANSFER OF OWNERSHIP; REVISING THE PAYMENT DEADLINE OF THE LICENSING FEE; CLARIFYING THE NUMBER OF SEATING LICENSES THAT MAY BE ISSUED; AND AMENDING SECTION 16-4-420, MCA."

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

Section 1. 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 consumption license;

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

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

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

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the

1 department by rule; and

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

7 ~~(d)(c)~~ the applicant states the planned seating capacity of the restaurant, if it is to be built, or the
8 current seating capacity if the restaurant is operating.

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

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

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

17 ~~(3)(2)~~ A completed application for a license under this section and the appropriate application fee, as
18 provided in subsection ~~(4)~~ (8), must be submitted to the department. The department shall investigate the
19 items relating to the application as described in subsections ~~(3)(a) and (3)(b)~~ (2)(a) and (2)(b). Based on the
20 results of the investigation and the exercise of its sound discretion, the department shall determine whether:

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

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

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

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

27 ~~(4)(3)~~ An application for a ~~beer and wine~~ license submitted under this section is subject to the
28 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)(4)~~ (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 a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.~~

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

(c) The provisions of subsections (4)(a)(iv) and (4)(b) do not apply to a restaurant for which a restaurant beer and wine license was in effect as of April 9, 2009, or to subsequent renewals of that license.

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

~~(b) A license issued under this section may be jointly owned, and the license may pass to the~~

1 surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any
 2 other person or entity by operation of the laws of inheritance or succession or any other laws allowing the
 3 transfer of property upon the death of the owner in this state or in another state.

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

6 ~~(8)(5)~~ (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

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

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

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

19 (iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the
 20 quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in
 21 that quota area is equal to or less than 80% of the number of beer licenses that may be issued in that quota
 22 area pursuant to 16-4-105; and

23 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501,
 24 if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is
 25 equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-
 26 4-105.

27 (b) In determining the number of restaurant beer and wine licenses that may be issued under this
 28 subsection ~~(8)(5)~~ based on the percentage amounts described in subsections ~~(8)(a)(i) through (8)(a)(v)~~ (5)(a)(i)

1 through (5)(a)(v), the department shall round to the nearer whole number.

2 (c) If the department has issued the number of restaurant beer and wine licenses authorized for a
3 quota area under subsection ~~(8)(a)(i)~~ (5)(a)(i), there must be a one-time adjustment of four additional licenses
4 for that quota area.

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

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

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

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

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

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

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

28 ~~(9)(6)~~ (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 16-4-105 and subsection ~~(8)(d)~~ (5)(d) of this section 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 restaurant beer and wine licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in 16-4-105 and subsection ~~(9)(a)~~ (6)(a) of this section, the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached.

(c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in subsection ~~(9)(a)~~ (6)(a), the department may publish the availability of more than one new license a year until the quota has been reached.

~~(10)(7)~~ Except as provided in subsection ~~(9)(b)~~ (6)(b), when more than one new restaurant beer and wine 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.

~~(11)(8)~~ When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in a quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department shall advertise the availability of the license in the quota area for which it is available.

~~(12)(9)~~ When the department determines that a quota area is eligible for a new restaurant beer and wine license under subsection ~~(9)~~ or ~~(11)~~ (6) or (8), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to apply for a new license.

~~(13)(10)~~— (a) Except as provided in subsection ~~(13)(b)~~ (10)(b), beer and wine may be sold for off-premises consumption, including curbside pickup, during the hours of 11 a.m. and 11 p.m. in original packaging, prepared servings, or growlers. If offering off-premises sales, food must also be ordered, the beer or wine must be stated on the food bill, and the sales must count toward the 65% limit as provided in this section.

(b) A restaurant beer and wine licensee 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.

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

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

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

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

~~(15)(12)~~—_____ The annual fee for a restaurant beer and wine license is \$400.

~~(16)~~(13)— ____ If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

~~(17)(14)~~— _____ The number of ~~beer and wine~~ licenses issued under this section to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the ~~total licenses issued~~ number of restaurant ~~beer and wine~~ licenses allowed in the quota area.

~~(18)~~(15)– ____ 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)~~ (16)– The department may adopt rules to implement this section."

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