

1 HOUSE BILL NO. 68

2 INTRODUCED BY G. NIKOLAKAKOS

3 BY REQUEST OF THE DEPARTMENT OF REVENUE

4
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING LAWS RELATING TO THE SALE OF
6 BEER AND WINE LICENSES; CREATING RETAIL BEER AND WINE LICENSES BY COMBINING RETAIL
7 BEER LICENSES WITH WINE AMENDMENTS; ELIMINATING WINE AMENDMENTS; REVISING ANNUAL
8 FEES; REVISING GOLF COURSE BEER AND WINE LICENSES; AMENDING SECTIONS 16-4-105, 16-4-
9 109, 16-4-110, 16-4-111, 16-4-305, 16-4-306, 16-4-420, AND 16-4-501, MCA; AND PROVIDING A DELAYED
10 EFFECTIVE DATE."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **Section 1.** Section 16-4-105, MCA, is amended to read:

15 **"16-4-105. Limit on retail beer and wine licenses -- ~~wine license amendments~~ -- limitation on**
16 **use of license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-
17 110, 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
18 retail, in accordance with the provisions of this code and the rules of the department, may be issued to any
19 person or business entity that is approved by the department, subject to the following exceptions:

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

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

25 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than
26 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer and wine
27 license for every 500 inhabitants;

28 (iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of

the cities, four retail beer and wine licenses for the first 2,000 inhabitants, two additional retail beer and wine licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer and wine 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 and wine 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

1 on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area
2 boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson
3 license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017,
4 within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

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

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

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

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

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

(c) If any new retail beer and wine 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 and wine 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 retail 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.

(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 retail beer and wine license may sell beer and 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)~~ holding a retail beer and wine license 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

1 conducted.

2 (9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a
3 \$25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

4 (10) The department may adopt rules to implement this section."
5

6 **Section 2.** Section 16-4-109, MCA, is amended to read:

7 **"16-4-109. Golf course beer and wine license.** (1) ~~Upon~~On application, the department of revenue
8 shall issue a retail beer and wine license, to be known as a golf course beer and wine license, for use at a golf
9 course. ~~If the owner of the golf course is not the state, a unit of the university system, or a local government, to~~
10 ~~qualify for a license under this section:~~

11 ~~(a) (i) the golf course must consist of at least 9 holes and 2,500 lineal yards;~~

12 ~~(ii) the golf course must be either within the limits of an incorporated city or town or within 5 miles of~~
13 ~~the limits of an incorporated city or town;~~

14 ~~(iii) the applicant for a license under this section may not have held a beer and wine or all beverages~~
15 ~~license within 12 months of the date of application; and~~

16 ~~(iv) the applicant shall pay an initial application fee of \$20,000; or~~

17 ~~(b) (i) the golf course must consist of at least 9 holes and 2,500 lineal yards;~~

18 ~~(ii) the governing body of the golf course must be incorporated under section 501(c)(3) of the Internal~~
19 ~~Revenue Code;~~

20 ~~(iii) the golf course must be within 5 miles of the limits of an incorporated city or town; and~~

21 ~~(iv) the applicant for a license under this section may not have held a beer and wine or all beverages~~
22 ~~license within 12 months of the date of application.~~

23 ~~(2) The application must be made by the person or entity that owns and operates the golf course. If~~
24 ~~the owner of the golf course is not the state, a unit of the university system, or a local government, the owner~~
25 ~~must be approved by the department as provided in this chapter for the issuance of beer licenses.~~

26 ~~(3)(2) The department shall issue a golf course beer and wine license to a qualified applicant~~
27 ~~regardless of the number of beer and wine licenses already issued within the beer and wine license quota area~~
28 ~~in which the golf course is situated. A license issued pursuant to this section is nontransferable.~~

1 (3) If the owner of the golf course is not the state, a unit of the university system, or a local
2 government, the owner must be approved by the department as provided in this chapter for the issuance of
3 retail beer and wine licenses and:

4 (a) the golf course must consist of at least 9 holes and 2,500 lineal yards;

5 (b) the golf course must be either within the limits of an incorporated city or town or within 5 miles
6 of the limits of an incorporated city or town;

7 (c) the applicant for a license under this section may not have held a retail beer and wine or all-
8 beverages license within 12 months of the date of application; and

9 (d) the applicant, except for a golf course under a governing body incorporated under section
10 501(c)(3) of the Internal Revenue Code, shall pay an initial application fee as provided in 16-4-501.

11 (4) If the owner of the golf course is the state, a unit of the university system, or a local
12 government, the department may approve the application if an owner-designated individual who provides
13 general oversight of the alcoholic beverage operations meets the requirements of 16-4-401(2)(a)(iv) through
14 (2)(a)(vi).

15 (5) (a) Except as provided in subsection ~~(3)(c)~~ (5)(c), a golf course beer and wine license and all
16 retail beer and wine sales under the license are subject to all statutes and rules governing a retail beer and
17 wine license with a wine license amendment.

18 (b) If the owner of the golf course is not the state, a unit of the university system, or a local
19 government:

20 (i) retail beer and wine sales may be made only during the time of the year that the golf course is
21 open for business, and sales on days during that time must stop by 1 hour after sunset;

22 (ii) the seating capacity of the premises where the beer and wine are sold may not exceed 75
23 persons; and

24 (iii) gaming or gambling is not authorized under the license issued under this section.

25 (c) If the owner of a golf course is the state, a unit of the university system, or a local government,
26 the owner may lease the beer and wine license for use at the golf course to an individual or entity approved by
27 the department of revenue.

28 ~~(4) The department of revenue shall issue a golf course beer and wine license to a qualified applicant~~

1 ~~regardless of the number of beer and wine licenses already issued within the beer and wine license quota area~~
2 ~~in which the golf course is situated. A license issued pursuant to this section is nontransferable."~~

3
4 **Section 3.** Section 16-4-110, MCA, is amended to read:

5 **"16-4-110. Beer and wine license for tribal alcoholic beverages licensee or enlisted personnel,**
6 **noncommissioned officers', or officers' club.** (1) ~~Upon~~On application and qualification, the department shall
7 issue a license to sell beer and wine for consumption on the premises to:

8 (a) a tribal alcoholic beverages licensee who operates the business within the exterior boundaries
9 of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

10 (b) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal
11 military reservation in Montana on May 13, 1985.

12 (2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of
13 16-4-105.

14 (3) ~~Upon~~On application and approval by the department, a license issued under subsection (1)(a)
15 may be transferred to another qualified applicant, but only to a location within the quota area and the exterior
16 boundaries of the Montana Indian reservation for which the license was originally issued.

17 (4) A license issued under this section is subject to all statutes and rules governing licenses to sell
18 beer and wine at retail for on-premises consumption.

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

21
22 **Section 4.** Section 16-4-111, MCA, is amended to read:

23 **"16-4-111. Catering endorsement for beer and wine licensees.** (1) (a) A person who is engaged
24 primarily in the business of providing meals with table service and who is licensed to sell ~~beer at retail or beer~~
25 and wine at retail for on-premises consumption may, ~~upon~~on the approval of the department, be granted a
26 catering endorsement to the license to allow the catering and sale of ~~beer or beer~~ and wine to persons
27 attending a special event ~~upon~~on premises not otherwise licensed for the sale of ~~beer or beer~~ and wine for on-
28 premises consumption. The beer or wine must be consumed on the premises where the event is held.

(b) A person who is licensed pursuant to 16-4-420 to sell ~~beer at retail or~~ beer and wine at retail for on-premises consumption may, ~~upon~~on the approval of the department, be granted a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a special event ~~upon~~on premises not otherwise licensed for the sale of ~~beer or~~ beer and wine, along with food equal in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or wine must be consumed on the premises where the event is held.

(2) A written application for a catering endorsement and an annual fee of \$200 must be submitted to the department for its approval.

(3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that the catered event is to be held. A fee of \$35 must accompany the notice.

(5) The sale of ~~beer or~~ beer and wine pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(6) The sale of ~~beer or~~ beer and wine pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of ~~beer or~~ beer and wine on premises where the event is to be held.

(7) (a) A catering endorsement issued for the purpose of selling and serving ~~beer or~~ beer and wine at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve ~~beer or~~ beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(b) A catering endorsement issued for the purpose of selling and serving ~~beer or~~ beer and wine at a sporting event conducted on the premises of a Montana university as provided in 16-4-112 authorizes the licensee to sell and serve ~~beer or~~ beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana university as provided in 16-4-112, or a qualified entity under section 501(c) of the Internal Revenue Code, 26

1 U.S.C. 501(c), as amended."

2

3 **Section 5.** Section 16-4-305, MCA, is amended to read:

4 **"16-4-305. Montana heritage retail alcoholic beverage licenses -- use -- quota.** (1)~~(a)~~ The
5 Montana heritage preservation and development commission may use Montana heritage retail alcoholic
6 beverage licenses within the quota area in which the licenses were originally issued, for the purpose of
7 providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10.
8 The licenses are to be considered when determining the appropriate quotas for issuance of other retail ~~liquor~~
9 alcoholic beverage licenses.

10 ~~(b) The department may issue a wine amendment pursuant to 16-4-105 (6) if the use of a Montana~~
11 ~~heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.~~

12 (2) The Montana heritage preservation and development commission may lease a Montana
13 heritage retail alcoholic beverage license to an individual or entity approved by the department.

14 (3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing
15 the use and operation of retail ~~liquor~~ alcoholic beverage licenses.

16 (4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-
17 beverages ~~liquor~~ licenses and retail on-premises beer and wine licenses that have been transferred to the
18 Montana heritage preservation and development commission under the provisions of section 2, Chapter 251,
19 Laws of 1999."

20

21 **Section 6.** Section 16-4-306, MCA, is amended to read:

22 **"16-4-306. Transfer of existing license to political subdivision of state -- rulemaking.** (1) A
23 political subdivision of the state of Montana may apply to the department for the transfer of an existing retail
24 ~~beer or~~ beer and wine license and, on ~~upon~~ approval by the department, the political subdivision may own and
25 operate the license or lease the license to a person, firm, corporation, or other entity approved by the
26 department.

27 (2) A license that is transferred to a political subdivision of the state:

28 (a) may be transferred only to another political subdivision of the state and not to any other person,

- 1 firm, corporation, or entity;
- 2 (b) does not authorize and may not be used in conjunction with gambling activities except for
- 3 horseracing as authorized in Title 23, chapter 4;
- 4 (c) may be authorized only for a fairgrounds complex owned by the political subdivision;
- 5 (d) is authorized for use in all facilities contained in the fairgrounds complex;
- 6 ~~(e) is not, with respect to the facilities, subject to the provisions of 16-4-204 (5);~~
- 7 ~~(f)(e)~~ must be taken into account in determining the license quota restrictions of 16-4-105; and
- 8 ~~(g)(f)~~ is subject to all license fees, laws, and rules applicable to retail ~~beer or~~ beer and wine licenses.
- 9 (3) The department may adopt rules to implement the provisions of this section."

10

11 **Section 7.** Section 16-4-420, MCA, is amended to read:

12 **"16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The

13 department shall issue a restaurant beer and wine license to an applicant whenever the department determines

14 that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications

15 and conditions:

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

17 consumption license;

18 (b) the applicant operates a restaurant at the location where the restaurant beer and wine license

19 will be used or satisfies the department that:

20 (i) the applicant intends to open a restaurant that will meet the requirements of subsection (6) and

21 intends to operate the restaurant so that at least 65% of the restaurant's gross income during its first year of

22 operation is expected to be the result of the sale of food;

23 (ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the

24 restaurant will serve beer and wine only to a patron who orders food, and that beer and wine purchases will be

25 stated on the food bill; and

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

27 department by rule;

28 (c) the applicant understands and acknowledges in writing on the application that this license

1 prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling
2 machines and that if any gaming or gambling activity or machine exists at the location where the restaurant
3 beer and wine license will be used, the activity must be discontinued or the machines must be removed before
4 the restaurant beer and wine license takes effect; and

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

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

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

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

16 (3) A completed application for a license under this section and the appropriate application fee, as
17 provided in subsection (11), must be submitted to the department. The department shall investigate the items
18 relating to the application as described in subsections (3)(a) and (3)(b). Based on the results of the investigation
19 and the exercise of its sound discretion, the department shall determine whether:

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

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

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

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

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

28 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then

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

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

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

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

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

15 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between
16 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
17 a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent
18 renewals of that license.

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

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

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

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

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

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

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

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

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

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

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

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

1 quota area.

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

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

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

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

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

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

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

25 (9) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted
26 from applications in process as of November 24, 2017, in either of two quota areas that were established as
27 provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if
28 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) 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), the department may publish the availability of more than one new license a year until the quota has been reached.

(10) Except as provided in subsection (9)(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) 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) When the department determines that a quota area is eligible for a new restaurant beer and wine license under subsection (9) or (11), 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) (a) Except as provided in subsection (13)(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) 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

1 of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period
2 that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If
3 the department denies an application, the application fee, plus any interest, less a processing fee established
4 by rule, must be refunded to the applicant. ~~Upon~~On the issuance of a license, the licensee shall pay the
5 balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the
6 following schedule:

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

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

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

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

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

15 (17) The number of beer and wine licenses issued to restaurants with a stated seating capacity of
16 101 persons or more may not exceed 25% of the total licenses issued.

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

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

21
22 **Section 8.** Section 16-4-501, MCA, is amended to read:

23 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table wine
24 only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise
25 specified in this section, the fee is an annual fee and is imposed as follows:

26 (a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for
27 sale within the state, \$500;

28 (ii) for each storage depot, \$400;

- (b) (i) each beer wholesaler, \$400; each winery, \$200; each table wine distributor, \$400;
- (ii) for each subwarehouse, \$400;
- (c) each beer and wine retailer, ~~\$200~~ \$400;
- (d) (i) for a license to sell beer at retail for off-premises consumption only, ~~the same as a retail beer license~~ \$200;
- (ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, \$200;
- (e) any unit of a nationally chartered veterans' organization, \$50.
- (2) The permit fee under 16-4-301(1) is computed at the following rate:
- (a) \$10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and
- (b) \$1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).
- (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the sale of all alcoholic beverages.
- (4) Passenger carrier licenses must be issued ~~upon~~ on payment by the applicant of an annual license fee in the sum of \$300.
- ~~(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is \$200.~~
- ~~(6)~~ (5) The annual renewal fee for:
- (a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is \$200;
- (b) resort retail all-beverages licenses within a given resort area is \$2,000 for each license; and
- (c) a continuing care retirement community limited all-beverages license is \$500 for each license.
- ~~(7)~~ (6) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:
- (a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

(b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a unit of a nationally chartered veterans' organization and \$500 for all other licensees;

(c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a unit of a nationally chartered veterans' organization and \$650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of a resort retail all-beverages license shall pay a \$100,000 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another location within the boundaries of the resort area or to another owner to be used at a location within the boundaries of the resort area.

~~(8)(7)~~ The fee for one all-beverages license to a public airport is \$800. This license is nontransferable.

~~(9)(8)~~ The annual fee for a retail beer and wine license to the Yellowstone airport is \$400.

~~(10)(9)~~ The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is \$250.

~~(11)(10)~~— _____ The annual fee for a distillery is \$600.

~~(12)(11)~~— _____ The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

~~(13)(12)~~— _____ In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

~~(14)(13)~~— _____ All license and permit fees collected under this section must be deposited as provided in 16-2-108."

NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 2024.

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