

SENATE BILL NO. 5

INTRODUCED BY S. FITZPATRICK

BY REQUEST OF THE GOVERNOR

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LIQUOR LICENSE LAWS TO PROVIDE FOR A
6 COMPETITIVE BIDDING PROCESS RELATING TO ALCOHOL LICENSES; PROVIDING FOR THE TRANSFER
7 OF ALL-BEVERAGES LICENSES, THE ISSUANCE OF NEW RETAIL BEER LICENSES, AND THE ISSUANCE
8 OF NEW RESTAURANT BEER AND WINE LICENSES; ELIMINATING A LOTTERY PROCESS; REVISING
9 QUOTA AREA REQUIREMENTS; PROVIDING COMPETITIVE BIDDING PROCEDURES; PROVIDING
10 RULEMAKING AUTHORITY; AMENDING SECTIONS 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-305,
11 16-4-306, 16-4-402, 16-4-420, AND 23-5-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND
12 A TERMINATION DATE."

13
14 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

15
16 **Section 1.** Section 16-4-105, MCA, is amended to read:

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

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

26 (i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate
27 limits of the towns, not more than one retail beer license;

28 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000
29 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license
30 for every 500 inhabitants;

1 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate
 2 limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the
 3 next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every
 4 additional 2,000 inhabitants.

5 (b) The number of ~~the~~ inhabitants in each incorporated ~~cities and city or~~ incorporated ~~towns town,~~
 6 exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the ~~cities~~
 7 ~~or towns~~ city or town, governs the number of retail beer licenses that may be issued for use within the ~~cities and~~
 8 ~~towns~~ city or town and within a distance of 5 miles from the corporate limits of the ~~cities and towns~~ city or town.
 9 ~~If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total~~
 10 ~~number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a~~
 11 ~~distance of 5 miles from their respective corporate limits must be determined on the basis of the combined~~
 12 ~~populations of both municipalities and may not exceed the limitations in this section.~~ The distance of 5 miles from
 13 the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the
 14 nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

15 (c) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary
 16 of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line
 17 equidistant between each city or town.

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

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

26 ~~(e)(f)~~ The number of retail beer licenses that the department may issue for use at premises situated
 27 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from
 28 the corporate limits or for use at premises situated within any unincorporated area must be determined by the
 29 department in its discretion, except that a retail beer license may not be issued for any premises so situated
 30 unless the department determines that the issuance of the license is required by public convenience and

1 necessity pursuant to 16-4-203. Subsection ~~(3)~~ (12) does not apply to licenses issued under this subsection
2 ~~(1)(e)(f)~~. The owner of the license whose premises are situated outside of an incorporated city or incorporated
3 town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title
4 23, chapter 5, part 3, 5, or 6.

5 (2) (a) For a period of 12 years after [the effective date of this act], existing licenses as of [the effective
6 date of this act] in either of two quota areas that were established as provided in subsection (1)(c) may be
7 transferred between the two quota areas if they were not part of a combined quota area prior to [the effective date
8 of this act].

9 (b) If any new retail beer licenses are allowed by separating a combined quota area that existed as of
10 [the effective date of this act], as provided in subsection (1)(c), the department shall publish the availability of no
11 more than one new beer license a year until the quota has been reached.

12 (3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated city
13 or town because of annexation after April 15, 2005, may not be transferred to another location within the city
14 quota area for 5 years from the date of the annexation.

15 (4) When the department determines that a quota area is eligible for a new retail beer license under
16 subsection (1) or (2)(b), the department shall use a competitive bidding process to determine the party afforded
17 the opportunity to apply for the new license. The department shall:

18 (a) determine the minimum bid based on 75% of the market value of retail beer licenses in the quota
19 area;

20 (b) publish notice that a quota area is eligible for a new license;

21 (c) notify the bidder with the highest bid; and

22 (d) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has
23 been approved.

24 (5) To enter the competitive bidding process, a bidder shall submit:

25 (a) an application form provided by the department; and

26 (b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary
27 of the bid amount.

28 (6) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must
29 be set at the tied bid amount. To submit a new bid, a tied bidder shall submit:

30 (a) an application form provided by the department; and

1 (b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary
2 of the new bid amount.

3 (7) The highest bidder shall:

4 (a) submit an application provided by the department and applicable fees for the license within 60 days
5 of the department's notification of being the highest bidder;

6 (b) pay the bid amount prior to the license being approved;

7 (c) meet all other requirements to own a retail beer license; and

8 (d) commence business within 1 year of the department's notification unless the department grants an
9 extension because commencement was delayed by circumstances beyond the applicant's control.

10 (8) If the highest bidder is not approved to own the license, the department shall offer the license to the
11 next highest bidder. That bidder shall comply with the requirements of subsection (7).

12 (9) If no bids are received during the competitive bidding process or if a quota area is already eligible
13 for another new license, the department shall process applications for the license in the order received.

14 (10) (a) The successful applicant is subject to forfeiture of the license and the original license fee if the
15 successful applicant:

16 (i) enters into a concession agreement, as defined in rule, for the license awarded by auction in the first
17 5 years;

18 (ii) transfers the awarded license to another person or business entity or transfers the license to another
19 location within 5 years of receiving the license; or

20 (iii) does not use the license within 1 year of receiving the license or stops using the license within 5
21 years. The department may extend the time for use if the successful applicant provides evidence that the delay
22 in use is for reasons outside the applicant's control.

23 (b) If a license is forfeited, the department shall offer the license to the next eligible highest bidder in the
24 auction.

25 ~~(2)~~(11) A person holding a license to sell beer for consumption on the premises at retail may apply to the
26 department for an amendment to the license permitting the holder to sell wine as well as beer. The department
27 may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for
28 consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer
29 and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for
30 consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss

1 of the wine amendment license.

2 ~~(3) (a)(12)~~ Except as provided in ~~subsections subsection~~ subsection (1)(e)(f) and ~~(3)(b)~~, a license issued pursuant
3 to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for
4 premises where gambling is conducted.

5 ~~(b)~~ Subsection ~~(3)(a)~~ does not apply to licenses issued under this section if the department received the
6 application before ~~October 1, 1997~~. For the purposes of this subsection ~~(3)(b)~~, the application is received by the
7 department before ~~October 1, 1997~~, if the application's mail cover is postmarked by the United States postal
8 service before ~~October 1, 1997~~, or if the application was consigned to a private courier service for delivery to the
9 department before ~~October 1, 1997~~. An applicant who consigns an application to a private courier shall provide
10 to the department, upon demand, documentary evidence satisfactory to the department that the application was
11 consigned to a private courier before ~~October 1, 1997~~.

12 ~~(4)~~ A license issued under subsection ~~(1)(e)~~ that becomes located within 5 miles of an incorporated city
13 or town because of annexation after April 15, 2005, may not be transferred to another location within the city
14 quota area for 5 years from the date of the annexation:

15 ~~———— (5) (a)~~ When the department determines that a quota area is eligible for an additional retail beer license
16 as provided in this section, the department shall advertise the availability of the license in the quota area for which
17 the license is available. If there are more applicants than number of licenses available, the license must be
18 awarded to an applicant by a lottery:

19 ~~———— (b)~~ The department shall numerically rank all applicants in the lottery. Only the successful applicants will
20 be required to submit a completed application and a one-time processing fee set by the department by rule. An
21 applicant's ranking may not be sold or transferred to another person or business entity. An applicant's ranking
22 applies only to the intended license advertised by the department or to the number of licenses determined to be
23 available for the lottery when there are more applicants than licenses available. The department shall determine
24 an applicant's qualifications for a retail beer license awarded by lottery prior to the award of a license by lottery:

25 ~~(e)(13)~~ A successful ~~lottery~~ applicant shall pay to the department a \$25,000 original license fee and in
26 subsequent years pay the annual fee for the license as provided in 16-4-501.

27 ~~———— (d) (i)~~ The successful lottery applicant is subject to forfeiture of the license and the original license fee
28 if the successful lottery applicant:

29 ~~———— (A)~~ enters into a concession agreement, as defined in rule, for the license awarded by lottery in the first
30 5 years;

1 ~~—— (B) transfers a license awarded by lottery within 5 years of receiving the license; or~~
 2 ~~—— (C) does not use the license within 1 year of receiving the license or stops using the license within 5~~
 3 ~~years. The department may extend the time for use if the lottery winner provides evidence the delay in use is for~~
 4 ~~reasons outside the applicant's control.~~
 5 ~~—— (ii) In the case of forfeiture, the department shall offer the license to the next eligible ranked applicant in~~
 6 ~~the lottery.~~

7 ~~(6)(14)~~ The department may adopt rules to implement this section."
 8

9 **Section 2.** Section 16-4-201, MCA, is amended to read:

10 **"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell
 11 liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and
 12 the rules of the department, may be issued to any person who is approved by the department as a fit and proper
 13 person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may
 14 issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from
 15 the corporate limits of those cities and towns must be determined on the basis of population prescribed in
 16 16-4-502 as follows:

17 (a) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate
 18 limits of the towns, not more than two retail licenses;

19 (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 3,000
 20 inhabitants and within a distance of 5 miles from the corporate limits of the cities and towns, three retail licenses
 21 for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

22 (c) in incorporated cities of over 3,000 inhabitants and within a distance of 5 miles from the corporate
 23 limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500
 24 inhabitants.

25 (2) The number of ~~the~~ inhabitants in ~~cities and towns~~ each incorporated city or incorporated town,
 26 exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the ~~cities~~
 27 ~~or towns~~ city or town, governs the number of retail licenses that may be issued for use within the ~~cities and towns~~
 28 city or town and within a distance of 5 miles from the corporate limits of the ~~cities or towns~~ city or town. ~~If two or~~
 29 ~~more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of~~
 30 ~~retail licenses that may be issued for use in both of the municipalities and within a distance of 5 miles from their~~

1 ~~respective corporate limits must be determined on the basis of the combined populations of both of the~~
2 ~~municipalities and may not exceed the limitations in subsection (1) or this subsection.~~ The distance of 5 miles
3 from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from
4 the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

5 (3) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary
6 of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line
7 equidistant between each city or town.

8 (4) For a period of 12 years after [the effective date of this act], existing licenses as of [the effective date
9 of this act] in either of two quota areas that were established as provided in subsection (3) may be transferred
10 between the two quota areas if they were part of a combined quota area prior to [the effective date of this act].

11 (5) If any new retail all-beverages licenses are allowed by separating a combined quota area that existed
12 as of [the effective date of this act], as provided in subsection (3), the department shall publish the availability of
13 no more than one new retail all-beverages license a year until the quota has been reached.

14 ~~(3)(6)~~ Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under
15 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may not
16 be issued in violation of the limitations.

17 ~~(4)(7)~~ The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and
18 nonassignable, as to ownership only, retail license to an enlisted personnel, noncommissioned officers', or
19 officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally
20 chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or
21 fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.

22 ~~(5)(8)~~ The number of retail all-beverages licenses that the department may issue for use at premises
23 situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
24 from the corporate limits of a city or town may not be more than one license for each 750 in population of the
25 county after excluding the population of incorporated cities and incorporated towns in the county.

26 ~~(6)(9)~~ An all-beverages license issued under subsection ~~(5)(8)~~ that becomes located within 5 miles of
27 an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another
28 location within the city quota area for 5 years from the date of annexation.

29 (10) The department may adopt rules to implement this section."
30

1 **Section 3.** Section 16-4-204, MCA, is amended to read:

2 **"16-4-204. Transfer -- catering endorsement -- competitive bidding -- rulemaking.** (1) (a) Except
3 as provided in subsection ~~(1)(d)(9)~~, a license may be transferred to a new ~~ownership~~ owner and to a location
4 outside the quota area ~~for which it was originally issued~~ where the license is currently located only when the
5 following criteria are met:

6 (i) the total number of all-beverages licenses in the ~~original~~ current quota area exceeded the quota for
7 that area by at least 25% in the most recent census prescribed in 16-4-502;

8 (ii) the total number of all-beverages licenses in the quota area to which the license would be transferred,
9 exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent
10 census prescribed in 16-4-502:

11 (A) by more than 33%; or

12 (B) in an incorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its
13 corporate limits, by more than 43%; or

14 (iii) the department finds, after a public hearing, that the public convenience and necessity would be
15 served by a transfer; and

16 ~~—— (iv) an applicant for the new ownership to be awarded on a lottery basis by the department has met the~~
17 ~~following criteria:~~

18 ~~—— (A) the applicant had not made another application under this subsection (1)(a) for a lottery-awarded~~
19 ~~license within the previous 12 months;~~

20 ~~—— (B) the applicant has provided with the application an irrevocable letter of credit from a financial institution~~
21 ~~that guarantees the applicant's ability to pay \$100,000; and~~

22 ~~—— (C) the applicant or, if the applicant is not an individual, a person with an ownership interest in the~~
23 ~~applicant does not have an ownership interest in an all-beverages license.~~

24 (b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a lottery is not eligible
25 to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

26 ~~—— (c) A successful lottery applicant shall commence business within 1 year of the lottery unless the~~
27 ~~department grants an extension because a delay was caused by circumstances beyond the control of the~~
28 ~~applicant.~~

29 (2) When the department determines that a license may be transferred from one quota area to another
30 under 16-4-201(1) or (4), the department shall use a competitive bidding process to determine the party afforded

1 the opportunity to purchase and transfer a license. The department shall:

2 (a) determine the minimum bid based on 75% of the market value of all-beverages licenses in the quota
3 area;

4 (b) publish notice that a quota area is eligible for a license transfer;

5 (c) notify the bidder with the highest bid; and

6 (d) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has
7 been approved.

8 (3) To enter the competitive bidding process, a bidder shall submit:

9 (a) an application form provided by the department; and

10 (b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary
11 of the bid amount.

12 (4) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must
13 be set at the tied bid amount. To submit a new bid, a tied bidder shall submit:

14 (a) an application form provided by the department; and

15 (b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary
16 of the new bid amount.

17 (5) The highest bidder shall:

18 (a) submit an application provided by the department and applicable fees for the license within 60 days
19 of the department's notification of being the highest bidder;

20 (b) pay the bid amount prior to the license being approved;

21 (c) meet all other requirements to own an all-beverages license; and

22 (d) commence business within 1 year of the department's notification unless the department grants an
23 extension because commencement was delayed by circumstances beyond the applicant's control.

24 (6) If the highest bidder is not approved to own the license, the department shall offer the license to the
25 next highest bidder. That bidder shall comply with the requirements of subsection (5).

26 (7) If no bids are received during the competitive bidding process or if a quota area is already eligible
27 for another license transfer under subsection (1), the department shall process applications to transfer a license
28 in the order received.

29 (8) (a) The successful applicant is subject to forfeiture of the license and the original license fee if the
30 successful applicant:

1 (i) enters into a concession agreement, as defined in rule, for the license awarded by auction in the first
 2 5 years;

3 (ii) transfers an awarded license to another person or transfers the license to another location within 5
 4 years of receiving the license; or

5 (iii) does not use the license within 1 year of receiving the license or stops using the license within 5
 6 years. The department may extend the time for use if the successful applicant provides evidence that the delay
 7 in use is for reasons outside the applicant's control.

8 (b) If a license is forfeited, the department shall offer the license to the next eligible highest bidder in the
 9 auction.

10 ~~(d)(9)~~ A license within an incorporated quota area may be transferred to a new ownership owner and to
 11 a new unincorporated location within the same county on application to and with consent of the department when
 12 the ~~quota of the~~ total number of all-beverages licenses in the ~~original~~ current quota area, exclusive of those
 13 issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least 25% in the most recent census
 14 and will not fall below that level because of the transfer.

15 ~~(e)(10)~~ For 5 years after the transfer of a license ~~between quota areas under subsection (1)(a), to a~~
 16 successful competitive bidding applicant, the license may not be mortgaged or pledged as security, except as
 17 provided in 16-4-801 and may not be transferred to another person except for a transfer by inheritance upon the
 18 ~~death of the licensee.~~

19 ~~(f) Once a license is transferred to a new quota area under subsection (1)(a), it may not be transferred~~
 20 ~~to another quota area or back to the original quota area.~~

21 ~~(g)(11)~~ A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area
 22 and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

23 ~~(2)-(a)(12)~~ (a) Any all-beverages licensee is, upon the approval and in the discretion of the department,
 24 entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of
 25 alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of
 26 alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises
 27 where the event is held.

28 (b) A written application for a catering endorsement and an annual fee of \$250 must be submitted to the
 29 department for its approval.

30 (c) An all-beverages licensee who holds an endorsement granted under this subsection ~~(2)~~(12) may not

1 cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's
2 regular place of business.

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

5 (e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of
6 16-6-103.

7 (f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of
8 16-3-306, unless entities named in 16-3-306 give their written approval.

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

13 (h) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the
14 catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity
15 under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.

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

17

18 **Section 4.** Section 16-4-207, MCA, is amended to read:

19 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application
20 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of
21 a retail license, the department shall review the application for completeness and, based upon review of the
22 application and any other information supplied to the department, determine whether the applicant or the
23 premises to be licensed meets criteria provided by law. The department may make one request for additional
24 information necessary to complete the application. The application is considered complete when the applicant
25 furnishes the application information requested by the department. When the application is complete, the
26 department of justice shall investigate the application as provided in 16-4-402. When the department determines
27 that an application for a license under this code is complete, the department shall publish in a newspaper of
28 general circulation in the city, town, or county from which the application comes a notice that the applicant has
29 made application for a retail on-premises license or a transfer of location and that protests may be made against
30 the approval of the application by residents of the county from which the application comes, residents of adjoining

1 Montana counties, or residents of adjoining counties in another state if the criteria in subsection (4)(d) are met.
 2 Protests must be mailed to the department within 10 days after the final notice is published. Notice of application
 3 for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of
 4 ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be
 5 substantially in the following form:

6 NOTICE OF APPLICATION FOR RETAIL
 7 ALL-BEVERAGES LICENSE

8 Notice is given that on the day of, 20..., one (name of applicant) filed an application for a retail
 9 all-beverages license with the Montana department of revenue to be used at (describe location of premises where
 10 beverages are to be sold). Residents of counties may protest against the approval of the application. Each
 11 protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and
 12 street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures
 13 of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed
 14 to, department of revenue, Helena, Montana, on or before the day of, 20.....

15 Dated

16 Signed

17

18 (2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient
 19 to cover the costs of publishing the notice.

20 (3) (a) If the department receives no written protests, the department may approve the application without
 21 holding a public hearing.

22 (b) A response to a notice of opportunity to protest an application may not be considered unless the
 23 response is a letter satisfying all the requirements contained in the notice in subsection (1).

24 (c) If the department receives sufficient written protests that satisfy the requirements in subsection (1)
 25 against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

26 (4) (a) If the department receives at least one protest but less than the number of protests required for
 27 a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule
 28 a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to
 29 deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for
 30 denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing

1 must be governed by the provisions of Title 2, chapter 4, part 6.

2 (b) If the department receives the number of protests required for a public convenience and necessity
3 determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of
4 location, the department shall schedule a public hearing to be held in the county of the proposed location of the
5 license to determine whether the protest presents sufficient cause to deny the application based on the
6 qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for
7 in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title
8 2, chapter 4, part 6.

9 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an
10 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the
11 proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages
12 licenses determined for that quota area according to 16-4-201(1), (2), and ~~(5)~~(8) but in no case less than two. The
13 minimum number of protests determined in this manner will apply only to applications for either on-premises
14 consumption beer or all-beverages licenses.

15 (d) A resident of a county in another state that adjoins the county in Montana from which an application
16 comes may protest an application only if the county or state of residence of the person has certified to the
17 department that a similarly situated Montana resident would be able to make formal protest of a liquor license
18 application in that state or county. The department may, by rule, establish how the certification is to be made."
19

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

21 **"16-4-305. Montana heritage retail alcoholic beverage licenses -- use -- quota.** (1) (a) The Montana
22 heritage preservation and development commission may use Montana heritage retail alcoholic beverage licenses
23 within the quota area in which the licenses were originally issued, for the purpose of providing retail alcoholic
24 beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be
25 considered when determining the appropriate quotas for issuance of other retail liquor licenses.

26 (b) The department may issue a wine amendment pursuant to 16-4-105~~(2)~~(11) if the use of a Montana
27 heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.

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

30 (3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the

1 use and operation of retail liquor licenses.

2 (4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are
3 all-beverages liquor licenses and retail on-premises beer licenses that have been transferred to the Montana
4 heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of
5 1999."

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

8 **"16-4-306. Transfer of existing license to political subdivision of state -- rulemaking.** (1) A political
9 subdivision of the state of Montana may apply to the department for the transfer of an existing retail beer or beer
10 and wine license and, upon approval by the department, the political subdivision may own and operate the license
11 or lease the license to a person, firm, corporation, or other entity approved by the department.

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

13 (a) may be transferred only to another political subdivision of the state and not to any other person, firm,
14 corporation, or entity;

15 (b) does not authorize and may not be used in conjunction with gambling activities except for horseracing
16 as authorized in Title 23, chapter 4;

17 (c) may be authorized only for a fairgrounds complex owned by the political subdivision;

18 (d) is authorized for use in all facilities contained in the fairgrounds complex;

19 (e) is not, with respect to the facilities, subject to the provisions of 16-4-204~~(2)~~(12);

20 (f) must be taken into account in determining the license quota restrictions of 16-4-105; and

21 (g) is subject to all license fees, laws, and rules applicable to retail beer or beer and wine licenses.

22 (3) The department may adopt rules to implement the provisions of this section."
23

24 **Section 7.** Section 16-4-402, MCA, is amended to read:

25 **"16-4-402. Application -- investigation.** (1) Prior to the issuance of a license under this chapter, the
26 applicant shall file with the department an application containing information and statements relative to the
27 applicant and the premises where the alcoholic beverage is to be sold as required by the department.

28 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
29 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department of justice shall make a
30 thorough investigation of all matters relating to the application. Based on the results of the investigation or on

1 other information, the department shall determine whether:

2 (i) the applicant is qualified to receive a license;

3 (ii) the applicant's premises are suitable for the carrying on of the business; and

4 (iii) the requirements of this code and the rules promulgated by the department are met and complied
5 with.

6 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or
7 16-4-204~~(2)~~(12), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special
8 permit provided in 16-4-301.

9 (c) For an original license application and an application for transfer of location of a license, the
10 department of justice's investigation and the department's determination under this subsection (2) must be
11 completed within 90 days of the receipt of a completed application. If information is requested from the applicant
12 by either department, the time period in this subsection (2)(c) is tolled until the requested information is received
13 by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in
14 the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly
15 constructed. The basis for the tolling of the deadline must be documented.

16 (3) (a) Upon proof that an applicant made a false statement in any part of the original application, in any
17 part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for
18 the license may be denied, and if issued, the license may be revoked.

19 (b) A statement on an application or at a hearing that is based upon a verifiable assertion made by a
20 governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the basis
21 of a false statement for a denial or revocation of a license.

22 (4) The department shall issue a conditional approval letter upon the last occurrence of either:

23 (a) completion of the investigation and determination provided for in subsection (2) if the department has
24 not received information that would cause the department to deny the application; or

25 (b) a final agency decision that either denies or dismisses a protest against the approval of an application
26 pursuant to 16-4-207.

27 (5) The conditional approval letter must state the reasons upon which the future denial of the application
28 may be based. The reasons for denial of the application after the issuance of the conditional approval letter are
29 as follows:

30 (a) there is false or erroneous information in the application;

- 1 (b) the premises are not approved by local building, health, or fire officials;
- 2 (c) there are physical changes to the premises that if known prior to the issuance of the conditional
- 3 approval letter would have constituted grounds for the denial of the application or denial of the issuance of the
- 4 conditional approval; or
- 5 (d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the
- 6 department's final agency decision provided for in subsection (4)."

7

8 **Section 8.** Section 16-4-420, MCA, is amended to read:

9 **"16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The
10 department shall issue a restaurant beer and wine license to an applicant whenever the department determines
11 that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and
12 conditions:

13 (a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises
14 consumption license;

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

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

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

23 (iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the department
24 by rule;

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

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

1 seating capacity if the restaurant is operating.

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

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

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

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

14 (a) the applicant is qualified to receive a license;

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

16 (c) the requirements of this code and the rules promulgated by the department are complied with; and

17 (d) the seating capacity stated on the application is correct.

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

20 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the
21 department may issue a conditional license prior to completion of the premises based on reasonable evidence,
22 including a statement from the applicant's architect or contractor confirming that the seating capacity stated on
23 the application is correct, that the premises will be suitable for the carrying on of business as a bona fide
24 restaurant, as defined in subsection (6).

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

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

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

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

4 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the
5 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
6 restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals
7 of that license.

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

10 (7) (a) A restaurant beer and wine license may be transferred, on approval by the department, from the
11 original applicant to a new owner of the restaurant only after 1 year of use by the original owner.

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

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

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

19 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of
20 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer
21 and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may
22 be issued in that quota area pursuant to 16-4-105;

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

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

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

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

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

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

14 ~~(d) If there are more applicants than licenses available in a quota area, then the license must be awarded
 15 by lottery as provided in subsection (9).~~

16 (9) If any new restaurant beer and wine licenses are allowed by separating a combined quota area,
 17 pursuant to 16-4-105 as of [the effective date of this act], the department shall publish the availability of no more
 18 than one new restaurant beer and wine license a year until the quota has been reached.

19 ~~(9) (a)(10) When a restaurant beer and wine license becomes available by the initial issuance of licenses
 20 under this section or as the result of an increase in the population in the a quota area, the nonrenewal of a
 21 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department
 22 shall advertise the availability of the license in the quota area for which it is available. If there are more applicants
 23 than number of licenses available, the license must be awarded to an applicant by a lottery.~~

24 ~~———— (b) A preference must be given to an applicant who does not yet have in any quota area a restaurant
 25 beer and wine license or a retail beer license and who operates a restaurant that is in the quota area described
 26 in subsection (8) in which the license has become available and that meets the qualifications of subsection (6)
 27 for at least 12 months prior to the filing of an application. An applicant with a preference must be awarded a
 28 license before any applicant without a preference.~~

29 ~~———— (c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will
 30 be required to submit a completed application and a one-time required fee. An applicant's ranking may not be~~

~~1 sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the
2 intended license advertised by the department or to the number of licenses determined under subsection (8)
3 when there are more applicants than licenses available. The applicant's qualifications for any other restaurant
4 beer and wine license awarded by lottery must be determined at the time of the lottery.~~

~~5 (d) If a successful lottery applicant does not use a license within 1 year of notification by the department
6 of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the
7 application fee and offer the license to the next eligible ranked applicant in the lottery.~~

8 (11) When the department determines that a quota area is eligible for a new restaurant beer and wine
9 license under subsection (9) or (10), the department shall use a competitive bidding process to determine the
10 party afforded the opportunity to apply for a new license. The department shall:

11 (a) determine the minimum bid based on 75% of the market value of all restaurant beer and wine
12 licenses in the quota area;

13 (b) publish notice that a quota area is eligible for a new license;

14 (c) notify the bidder with the highest bid; and

15 (d) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has
16 been approved.

17 (12) To enter the competitive bidding process, a bidder shall submit:

18 (a) an application form provided by the department; and

19 (b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary
20 of the bid amount.

21 (13) The highest bidder shall:

22 (a) submit an application provided by the department and applicable fees for the license within 60 days
23 of the department's notification of being the highest bidder;

24 (b) pay the bid amount prior to the license being approved;

25 (c) meet all other requirements to own a restaurant beer and wine license; and

26 (d) commence business within 1 year of the department's notification unless the department grants an
27 extension because commencement was delayed by circumstances beyond the applicant's control.

28 (14) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must
29 be set at the tied bid amount. To submit a new bid, a tied bidder shall submit:

30 (a) an application form provided by the department; and

1 (b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary
 2 of the new bid amount.

3 (15) If the highest bidder is not approved to own the license, the department shall offer the license to the
 4 next highest bidder. That bidder shall comply with the requirements of subsection (13).

5 (16) If no bids are received during the competitive bidding process or if a quota area is already eligible
 6 for another new license, the department shall process applications for the license in the order received.

7 (17) (a) The successful applicant is subject to forfeiture of the license and the original license fee if the
 8 successful applicant:

9 (i) enters into a concession agreement, as defined in rule, for the license awarded by auction in the first
 10 5 years;

11 (ii) transfers an awarded license to another person or transfers the license to another location within 5
 12 years of receiving the license; or

13 (iii) does not use the license within 1 year of receiving the license or stops using the license within 5
 14 years. The department may extend the time for use if the successful applicant provides evidence that the delay
 15 in use is for reasons outside the applicant's control.

16 (b) If a license is forfeited, the department shall offer the license to the next eligible highest bidder in the
 17 auction.

18 ~~(18)~~ Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
 19 consumption.

20 ~~(19)~~ An application for a restaurant beer and wine license must be accompanied by a fee equal to
 21 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license
 22 within 4 months of receipt of a complete application, the department shall pay interest on the application fee at
 23 the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any
 24 period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or
 25 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee
 26 established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the
 27 balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following
 28 schedule:

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

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

- 1 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.
- 2 ~~(12)(20)~~ The annual fee for a restaurant beer and wine license is \$400.
- 3 ~~(13)(21)~~ If a restaurant licensed under this part increases the stated seating capacity of the licensed
- 4 restaurant or if the department determines that a licensee has increased the stated seating capacity of the
- 5 licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time
- 6 of filing the original application and issuance of a license and the applicable fees for the additional seating.
- 7 ~~(14)(22)~~ The number of beer and wine licenses issued to restaurants with a stated seating capacity of
- 8 101 persons or more may not exceed 25% of the total licenses issued.
- 9 ~~(15)(23)~~ Possession of a restaurant beer and wine license is not a qualification for licensure of any
- 10 gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with
- 11 a restaurant beer and wine license.
- 12 (24) The department may adopt rules to implement this section."

- 13
- 14 **Section 9.** Section 23-5-119, MCA, is amended to read:
- 15 **"23-5-119. Appropriate alcoholic beverage license for certain gambling activities.** (1) Except as
- 16 provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant
- 17 must own in the applicant's name:
- 18 (a) a retail all-beverages license issued under 16-4-201, but the owner of a license transferred after July
- 19 1, 2007, to a quota area pursuant to a department-conducted lottery under 16-4-204~~(1)~~(a) is not eligible to offer
- 20 gambling;
- 21 (b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105,
- 22 authorizing the sale of beer and wine for consumption on the licensed premises;
- 23 (c) a beer and wine license issued in an area outside of an incorporated city or town as provided in
- 24 16-4-105~~(1)(e)~~(f). The owner of the license whose premises are situated outside of an incorporated city or town
- 25 may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23,
- 26 chapter 5, part 3, 5, or 6.
- 27 (d) a retail beer and wine license issued under 16-4-109;
- 28 (e) a retail all-beverages license issued under 16-4-202; or
- 29 (f) a retail all-beverages license issued under 16-4-208.
- 30 (2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may

1 be transferred to a new owner or to a new location or transferred to a new owner and location by the department
2 of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred
3 may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

4 (3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued
5 under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible
6 to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

7 (4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who
8 has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title
9 23, chapter 5, part 3, 5, or 6."

10

11 NEW SECTION. **Section 10. Effective date.** [This act] is effective on passage and approval.

12

13 NEW SECTION. **Section 11. Termination.** [This act] terminates December 31, 2023.

14

- END -