

1 HOUSE BILL NO. 436

2 INTRODUCED BY R. SOMERVILLE

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT RELATING TO THE OPERATION OF AGENCY LIQUOR STORES;
5 DELETING THE PROVISION THAT AN AGENCY LIQUOR STORE MAY NOT BE LOCATED IN OR
6 ADJACENT TO GROCERY STORES IN COMMUNITIES WITH POPULATIONS OVER 3,000; DELETING THE
7 REQUIREMENT THAT AGENCY LIQUOR STORES MUST BE CLOSED ON HOLIDAYS, SUNDAYS, AND
8 MONDAYS; AND AMENDING SECTIONS 16-2-101 AND 16-2-104, MCA."

9

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

11

12 **Section 1.** Section 16-2-101, MCA, is amended to read:13 **"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement --**

14 **kinds and prices of liquor.** (1) The department shall enter into agency franchise agreements to operate
15 agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

16 (2) (a) The department may from time to time fix the posted prices at which the various classes,
17 varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor
18 stores.

19 (b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the
20 various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold
21 liquor licenses and to all other persons at the retail price established by the agent.

22 (ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor
23 store may place a liquor order with the department at its state liquor warehouse in the manner to be
24 established by the department.

25 (B) The agency liquor store's purchase price is the department's posted price less the agency
26 liquor store's commission rate in the state agency franchise agreement and less the agency liquor store's
27 weighed average discount ratio. For purposes of this subsection (2)(b)(ii)(B), for agency liquor stores or
28 employee-operated state liquor stores that were operating June 30, 1994, the weighted average discount
29 ratio is the ratio between an agency liquor store's or the employee-operated state liquor store's full case
30 discount sales divided by the agency liquor store's or employee-operated state liquor store's gross sales,

1 based on fiscal year 1994 reported sales, times the state discount rate for case lot sales, as provided in
2 16-2-201, divided by the state discount rate for full case lot sales in effect on June 30, 1994. For all other
3 stores that are placed in service after June 30, 1994, the weighted average discount ratio is the average
4 ratio in fiscal year 1994 for similar sized stores for 1 year of operation. The weighted discount ratio must
5 be computed on the store's first 12 months of operation.

6 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid
7 for within 60 days of the date on which the department invoices the liquor to the agency liquor store.

8 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

9 ~~(3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with~~
10 ~~populations over 3,000.~~

11 ~~(4)~~(3) Agency liquor stores must receive commissions payable as follows:

12 (a) a 10% commission for agencies in communities with less than 3,000 in population, unless
13 adjusted pursuant to subsection ~~(6)~~ (5) or ~~(8)~~ (7);

14 (b) a commission established by competitive bidding unless adjusted pursuant to subsection ~~(6)~~
15 (5) or ~~(8)~~ (7) for agencies in communities with 3,000 or more in population.

16 ~~(5)~~(4) An agency franchise agreement must:

17 (a) be effective for a 10-year period and may be renewed every 10 years if the requirements of
18 the agency franchise agreement have been satisfactorily performed;

19 (b) require the agent to maintain comprehensive general liability insurance and liquor liability
20 insurance throughout the term of the agency franchise agreement in an amount established by the
21 department of administration. The insurance policy must:

22 (i) declare the department as an additional insured; and

23 (ii) hold the state harmless and agree to defend and indemnify the state in a cause of action arising
24 from or in connection with the agent's negligent acts or activities in the execution and performance of the
25 agency franchise agreement.

26 (c) provide that upon termination by the department for cause or upon mutual termination, the
27 agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate
28 time, the department may immediately repossess all liquor inventory, wherever located.

29 (d) specify the reasonable service and space requirements that the agent will provide throughout
30 the term of the agency franchise agreement.

1 ~~(6)~~(5) (a) The commission percentage that the department pays the agent under an agency
 2 franchise agreement may be reviewed on July 1, 1998, and every 3 years thereafter at the request of
 3 either party. If the agent concurs, the department may adjust the commission percentage to be paid during
 4 the remaining term of the agency franchise agreement or until the next time the commission percentage
 5 is reviewed, if that is sooner than the term of the agency franchise agreement, to a commission
 6 percentage that is equal to the average commission percentage being paid agents with similar sales
 7 volumes if:

8 (i) the agent's commission percentage is less than the average; and

9 (ii) all the requirements of the agency franchise agreement have been satisfactorily performed.

10 (b) The adjusted commission percentage determined under subsection ~~(6)(a)~~ (5)(a) may be greater
 11 than the average commission paid agents with similar sales volume:

12 (i) if the agent demonstrates that:

13 (A) the agent has experienced cost increases that are beyond the agent's control, including but
 14 not limited to increases in the federally established minimum wage or escalation in prevailing rent; and

15 (B) the average commission percentage is insufficient to yield net income commensurate with net
 16 income experienced before the cost increases occurred; and

17 (ii) if the department demonstrates that it is unable to indicate adjustments in the requirements
 18 specified in the agent's franchise agreement that will eliminate the impact of cost increases.

19 ~~(7)(6)~~ The liability insurance requirement may be reviewed every 3 years ~~after July 1, 1995,~~ at
 20 the request of either the agent or the department. If the agent concurs, the department may adjust the
 21 requirements to be effective during the remaining term of the agency franchise agreement if the
 22 adjustments adequately protect the state from risks associated with the agent's negligent acts or activities
 23 in the execution and performance of the agency franchise agreement. The amount of liability insurance
 24 coverage may not be less than the minimum requirements of the department of administration.

25 ~~(8)(7)~~ (a) Except as provided in subsection ~~(8)(b)~~ (7)(b), an agency franchise agreement must be
 26 renewed for additional 10-year periods if the agent has satisfactorily performed all the requirements of the
 27 agency franchise agreement. Except for establishing the new term and except for a commission percentage
 28 that may be negotiated as provided in subsection ~~(8)(b)~~ (7)(b), changes in the agency franchise agreement
 29 as a result of a renewal may not be made unless the agent and the department mutually agree.

30 (b) If at least 90 days prior to the expiration of a 10-year agency franchise agreement, the

1 department determines that an adjustment of the commission percentage paid to the agent is in the best
2 interests of the state, the department shall notify the agent of that determination.

3 (c) If the agent does not concur with the department's commission percentage adjustment, the
4 department shall advertise for bids for the agency franchise at the adjusted commission percentage,
5 subject to the provisions of this chapter. If bids from persons who meet the criteria provided in this chapter
6 are received by the department for the agency franchise at the adjusted commission percentage, the agent
7 under the existing franchise agreement has a preference right to renew the franchise agreement by
8 concurring in the adjusted commission percentage.

9 (d) If the agent under the existing franchise agreement declines to exercise the preference right
10 under subsection ~~(8)(e)~~ (7)(c), the department shall enter into an agency franchise agreement, as provided
11 in this chapter, with a person who accepted the adjusted commission percentage.

12 (e) If the agent exercises the preference right and believes the adjusted commission percentage
13 to be inadequate or not in the best interests of the state, the agent may request an administrative hearing.
14 The request must contain a statement of reasons why the agent believes the commission percentage to
15 be inadequate or not in the state's best interests. The department shall grant the request for a hearing if
16 it determines that the statement indicates evidence that the adjusted commission percentage is inadequate
17 or not in the state's best interests. The department may, after the hearing, adjust the commission
18 percentage if the agent shows that the commission percentage is inadequate or not in the best interests
19 of the state. If the department increases the commission percentage rate, the department shall set forth
20 its findings and conclusions in writing and inform the agent and the other persons who offered to enter
21 into an agency agreement at the adjusted commission rate.

22 ~~(9)(8)~~ (a) The department may terminate an agency franchise agreement if the agent has not
23 satisfactorily performed the requirements of the agency franchise agreement because the agent:

24 (i) charges retail prices that are less than the department's posted price for liquor, sells liquor to
25 persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than
26 the discount provided for in 16-2-201 to persons who hold liquor licenses;

27 (ii) fails to maintain sufficient liability insurance;

28 (iii) has not maintained a quantity and variety of product available for sale commensurate with
29 demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability
30 to purchase special orders;

1 (iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has
 2 operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the
 3 purpose of making purchases of liquor; or

4 (v) fails to comply with the express terms of the agency franchise agreement.

5 (b) The department shall give an agent 30 days' notice of its intent to terminate the agency
 6 franchise agreement for cause and specify the unmet requirements. The agent may contest the termination
 7 and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall
 8 suspend its termination order until after a final decision has been made pursuant to the Montana
 9 Administrative Procedure Act.

10 (c) In the case of failure to make timely payments to the department for liquor purchased, the
 11 department may terminate the agency franchise agreement and immediately repossess any liquor
 12 purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent
 13 may contest the termination and request a hearing within 30 days of the department's repossession of the
 14 liquor. The agency liquor store ~~shall~~ must remain closed until a final decision has been reached following
 15 a hearing held pursuant to the Montana Administrative Procedure Act.

16 ~~(10)~~(9) An agency franchise agreement may be terminated upon mutual agreement by the agent
 17 and the department.

18 ~~(11)~~(10) An agent may assign an agency franchise agreement to a person who, upon approval of
 19 the department, is named agent in the agency franchise agreement, with the rights, privileges, and
 20 responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent
 21 shall notify the department of an intent to assign the agency franchise agreement 60 days before the
 22 intended effective date of the assignment. The department may not unreasonably withhold approval of an
 23 assignment request.

24 ~~(12)~~(11) A person or entity may not hold an ownership interest in more than one agency liquor
 25 store.

26 ~~(13)~~(12) The department shall maintain sufficient inventory in the state warehouse in order to meet
 27 a monthly service level of at least 97%."

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29 **Section 2.** Section 16-2-104, MCA, is amended to read:

30 "**16-2-104. Hours.** ~~(1)~~ Agency liquor stores may remain open during the period between 8 a.m.

