

HOUSE BILL NO. 205

INTRODUCED BY D. MOORE

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A BILL FOR AN ACT ENTITLED: "AN ACT CLARIFYING THAT LICENSURE FOR THE SALE OF ALCOHOLIC BEVERAGES IS SOLELY WITHIN THE AUTHORITY OF THE DEPARTMENT OF REVENUE AND THE DEPARTMENT OF JUSTICE; AMENDING SECTION 16-4-401, MCA; REPEALING SECTION 16-4-503, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 16-4-401, MCA, is amended to read:

"16-4-401. License as privilege -- criteria for decision on application. (1) A license under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

(2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in the case of a license that permits on-premises consumption, the department shall find in every case in which it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

(a) if the applicant is an individual:

(i) and the application is approved, the applicant will not possess an ownership interest in more than three establishments licensed under this chapter for all-beverages sales;

(ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

(iii) the applicant or any member of the applicant's immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

(iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all applicable laws of the state and local governments; and

(v) the applicant is not under 19 years of age;

(b) if the applicant is a publicly traded corporation:

(i) each owner of 10% or more of the outstanding stock meets the requirements for an individual applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall designate two or more officers or board members, each of whom must meet the requirements for

1 an individual applicant listed in subsection (2)(a).

2 (ii) each individual who has control over the operation of the license meets the requirements for an
3 individual applicant listed in subsection (2)(a);

4 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an
5 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a
6 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of
7 subsection (8) apply.

8 (iv) the corporation is authorized to do business in Montana;

9 (c) if the applicant is a privately held corporation:

10 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
11 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the
12 applicant shall designate two or more officers or board members, each of whom must meet the requirements for
13 an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the
14 requirements of subsection (2)(a).

15 (ii) each individual who has control over the operation of the license meets the requirements for an
16 individual applicant listed in subsection (2)(a);

17 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an
18 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a
19 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of
20 subsection (8) apply.

21 (iv) the corporation is authorized to do business in Montana;

22 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
23 (2)(a);

24 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
25 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements
26 of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners
27 must meet the requirements of subsection (2)(a).

28 (f) if the applicant is a limited liability company, all managing members and those members whose
29 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If
30 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of

1 subsection (2)(a).

2 (3) In the case of a license that permits only off-premises consumption and subject to subsection (8),
3 the department shall find in every case in which it makes an order for the issuance of a new license or for the
4 approval of the transfer of a license that:

5 (a) if the applicant is an individual:

6 (i) and the application is approved, the applicant will not possess an ownership interest in more than
7 three establishments licensed under this chapter for all-beverages sales;

8 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

9 (iii) the applicant or any member of the applicant's immediate family is without financing from or any
10 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

11 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
12 the applicant's rights have been restored;

13 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business
14 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all
15 applicable laws of the state and local governments; and

16 (vi) the applicant is not under 19 years of age;

17 (b) if the applicant is a publicly traded corporation:

18 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
19 in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
20 designate two or more officers or board members, each of whom must meet the requirements for an individual
21 applicant listed in subsection (3)(a).

22 (ii) the corporation is authorized to do business in Montana;

23 (c) if the applicant is a privately held corporation:

24 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
25 applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the
26 applicant shall designate two or more officers or board members, each of whom must meet the requirements for
27 an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the
28 requirements of subsection (3)(a).

29 (ii) the corporation is authorized to do business in Montana;

30 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection

1 (3)(a);

2 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
3 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements
4 of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners
5 must meet the requirements of subsection (3)(a).

6 (f) if the applicant is a limited liability company, all managing members and those members whose
7 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If
8 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
9 subsection (3)(a).

10 (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling
11 of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of
12 a new license or for the approval of the transfer of a license that:

13 (a) if the applicant is an individual:

14 (i) the applicant has no ownership interest in any establishment licensed under this chapter for retail
15 alcoholic beverages sales;

16 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

17 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,
18 the applicant's rights have been restored;

19 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business
20 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all
21 applicable laws of the state and local governments;

22 (v) the applicant is not under 19 years of age; and

23 (vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
24 controlled by a manufacturer of an alcoholic beverage;

25 (b) if the applicant is a publicly traded corporation:

26 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed
27 in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall
28 designate two or more officers or board members, each of whom must meet the requirements for an individual
29 applicant listed in subsection (4)(a).

30 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or

1 controlled by a manufacturer of an alcoholic beverage; and

2 (iii) the corporation is authorized to do business in Montana;

3 (c) if the applicant is a privately held corporation:

4 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual
5 applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the
6 applicant must designate two or more officers or board members, each of whom must meet the requirements for
7 an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the
8 requirements of subsection (4)(a).

9 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or
10 controlled by a manufacturer of an alcoholic beverage; and

11 (iii) the corporation is authorized to do business in Montana;

12 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection
13 (4)(a);

14 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all
15 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements
16 of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners
17 must meet the requirements of subsection (4)(a).

18 (f) if the applicant is a limited liability company, all managing members and those members whose
19 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If
20 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of
21 subsection (4)(a).

22 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply
23 separately to each class of stock.

24 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to
25 16-4-302.

26 (7) An applicant's source of funding must be from a suitable source. A lender or other source of money
27 or credit may be found unsuitable if the source:

28 (a) is a person whose prior financial or other activities or criminal record:

29 (i) poses a threat to the public interest of the state;

30 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or

1 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business;

2 or

3 (b) has been convicted of a felony offense within 5 years of the date of application or is on probation or
4 parole or under deferred prosecution for committing a felony offense.

5 (8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity
6 applying for an all-beverages license may not, if the application were to be approved, own an interest in more
7 than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

8 (b) If two or more individuals through business or family relationship share in the profits or liabilities of
9 all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not exceed
10 half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages
11 licenses will be held.

12 (9) No other application or licensure process or fee related to an alcohol license other than as authorized
13 in this title or rules promulgated by the department may be required of an applicant."

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15 NEW SECTION. Section 2. Repealer.

16 16-4-503. City and county licenses -- fees.

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18 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

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