

HOUSE BILL NO. 165

INTRODUCED BY D. HARVEY, J. KARLEN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO THE NUMBER AND LOCATION OF AGENCY STORES; CLARIFYING THAT A COMMUNITY WITH AN EXISTING AGENCY LIQUOR STORE MAY OBTAIN ADDITIONAL AGENCY LIQUOR STORES IF CERTAIN POPULATION REQUIREMENTS ARE MET; PROVIDING FOR COMPETITIVE BIDDING OF AGENCY LIQUOR STORES; PROVIDING COMMISSION RATES FOR NEW AGENCY LIQUOR STORES; AMENDING SECTION SECTIONS 16-2-101 AND 16-2-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. SECTION 1. COMPETITIVE BIDDING. (1) (A) WHEN THE DEPARTMENT DETERMINES THAT AN AREA IS ELIGIBLE FOR AN AGENCY STORE UNDER 16-2-109, THE DEPARTMENT SHALL USE A COMPETITIVE BIDDING PROCESS TO DETERMINE THE PARTY AFFORDED THE OPPORTUNITY TO BE AWARDED THE AGENCY FRANCHISE AGREEMENT.

(B) THE DEPARTMENT SHALL DETERMINE THE MINIMUM BID BASED ON POPULATION AS FOLLOWS:

(i) \$225,000 FOR A QUOTA AREA WITH A POPULATION OF 1,000 OR LESS;

(ii) \$425,000 FOR A QUOTA AREA WITH A POPULATION BETWEEN 1,001 AND 2,000;

(iii) \$900,000 FOR A QUOTA AREA WITH A POPULATION BETWEEN 2,001 AND 5,000;

(iv) \$2,000,000 FOR A QUOTA AREA WITH A POPULATION BETWEEN 5,001 AND 10,000; AND

(v) \$3,250,000 FOR A QUOTA AREA WITH A POPULATION GREATER THAN 10,000.

(2) (A) TO ENTER THE COMPETITIVE BIDDING PROCESS, A BIDDER SHALL SUBMIT AN ELECTRONIC BID FORM PROVIDED BY THE DEPARTMENT.

(B) THE DEPARTMENT SHALL CONTACT ANY BIDDER WHOSE TIMELY SUBMITTED BID FORM HAS A DEFICIENCY AND SHALL PROVIDE THE BIDDER WITH AN OPPORTUNITY TO RESUBMIT THE BID FORM WITHIN 5 BUSINESS DAYS TO CORRECT ANY DEFICIENCY.

1 (3) IN THE CASE OF A TIE FOR THE HIGHEST BID, THE TIED BIDDERS MAY SUBMIT NEW BIDS. THE MINIMUM
 2 BID MUST BE THE TIED BID AMOUNT. TO SUBMIT A NEW BID, A TIED BIDDER SHALL SUBMIT AN ELECTRONIC BID FORM
 3 PROVIDED BY THE DEPARTMENT.

4 (4) TO BE AWARDED THE AGENCY FRANCHISE AGREEMENT, THE HIGHEST BIDDER SHALL:

5 (A) SUBMIT ALL THE INFORMATION NECESSARY FOR THE DEPARTMENT TO DETERMINE SUITABILITY TO
 6 OPERATE AN AGENCY LIQUOR STORE WITHIN 60 DAYS OF THE DEPARTMENT'S NOTIFICATION OF BEING THE HIGHEST
 7 BIDDER;

8 (B) PAY THE BID AMOUNT PRIOR TO BEING AWARDED THE AGENCY FRANCHISE AGREEMENT;

9 (C) MEET ALL OTHER REQUIREMENTS TO OPERATE AN AGENCY LIQUOR STORE; AND

10 (D) COMMENCE BUSINESS WITHIN 1 YEAR OF THE DEPARTMENT'S NOTIFICATION, UNLESS THE DEPARTMENT
 11 GRANTS AN EXTENSION BECAUSE COMMENCEMENT WAS DELAYED BY CIRCUMSTANCES BEYOND THE BIDDER'S CONTROL.
 12 ANY EXTENSION REQUEST MUST BE MADE IN WRITING TO THE DEPARTMENT PRIOR TO THE DEADLINE FOR COMMENCING
 13 BUSINESS.

14 (5) IF THE HIGHEST BIDDER IS NOT AWARDED THE AGENCY FRANCHISE AGREEMENT, THE DEPARTMENT
 15 SHALL OFFER THE OPPORTUNITY TO BE AWARDED THE AGENCY FRANCHISE AGREEMENT TO THE NEXT HIGHEST BIDDER.
 16 THAT BIDDER SHALL COMPLY WITH THE REQUIREMENTS OF SUBSECTION (4). IF NO QUALIFIED BIDDER IS APPROVED TO
 17 OPERATE THE AGENCY LIQUOR STORE, THE DEPARTMENT SHALL REOPEN THE COMPETITIVE BIDDING PROCESS.

18 (6) IF NO BIDS ARE RECEIVED DURING THE COMPETITIVE BIDDING PROCESS, THE DEPARTMENT SHALL
 19 REOPEN THE BID AT A LOWER BID AMOUNT THAN INITIALLY DETERMINED IN SUBSECTION (1).

20
 21 **SECTION 2. SECTION 16-2-101, MCA, IS AMENDED TO READ:**
 22 **"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement --**

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

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

27 (b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the
 28 various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor

1 licenses and to all other persons at the retail price established by the agent.

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

5 (B) The agency liquor store's purchase price is the department's posted price less the agency
6 liquor store's commission rate. The commission rates constitute the only compensation the department
7 provides to agency liquor stores and reflect that agency liquor stores sell at retail and wholesale and must
8 provide the discount in 16-2-201.

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

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

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

14 (4) (a) Beginning February 1, 2016, each agency liquor store's commission rate is equal to the
15 agency liquor store's combined commission rate on December 31, 2015, plus 1/3 of the difference between the
16 agency liquor store's commission rate as determined in subsection (4)(b) and the agency liquor store's
17 combined commission rate on December 31, 2015. Beginning February 1, 2017, each agency liquor store's
18 commission rate is equal to the agency liquor store's combined commission rate on December 31, 2015, plus
19 2/3 of the difference between the agency liquor store's commission rate as determined in subsection (4)(b) and
20 the agency liquor store's combined commission rate on December 31, 2015. Beginning February 1, 2018, each
21 agency liquor store's commission rate is determined as in subsection (4)(b).

22 (b) Agency liquor stores must receive an annual commission rate based on the total posted price
23 of liquor purchased in the previous calendar year, as follows:

24 (i) 16% commission for stores that purchased not more than \$250,000;

25 (ii) 15.5% commission for stores that purchased more than \$250,000 but not more than \$500,000;

26 (iii) 15% commission for stores that purchased more than \$500,000 but not more than \$720,000;

27 (iv) 14.5% commission for stores that purchased more than \$720,000 but not more than \$950,000;

28 (v) 14% commission for stores that purchased more than \$950,000 but not more than \$1.525

- 1 million;
- 2 (vi) 13.5% commission for stores that purchased more than \$1.525 million but not more than \$1.85
- 3 million;
- 4 (vii) 13% commission for stores that purchased more than \$1.85 million but not more than \$2.25
- 5 million;
- 6 (viii) 12.75% commission for stores that purchased more than \$2.25 million but not more than \$3.25
- 7 million;
- 8 (ix) 12.5% commission for stores that purchased more than \$3.25 million but not more than \$7
- 9 million; or
- 10 (x) 12.15% commission for stores that purchased more than \$7 million.
- 11 (c) For commissions determined under subsection (4)(b), the department shall by February 1 of
- 12 each year:
- 13 (i) calculate purchases based on all liquor invoiced to the agency liquor store during the previous
- 14 calendar year;
- 15 (ii) notify agency liquor stores of their commission rate to be applied for the period beginning
- 16 February 1 and ending January 31; and
- 17 (iii) adjust the dollar values for purchase amounts under subsection (4)(b) based on the consumer
- 18 price index for the prior calendar year and notify all agency liquor stores of the adjustment.
- 19 (d) New stores must receive a commission ~~established by competitive bidding~~ of 16% for quota
- 20 areas with a population of 1,000 or less, 15.5% for quota areas with a population between 1,001 and 2,000,
- 21 15% for quota areas with a population between 2,001 and 5,000, 14.5% for quota areas with a population
- 22 between 5,001 and 10,000, and 14% for quota areas with a population over 10,000, which is guaranteed for 3
- 23 calendar years, after which time the agency liquor store's commission is subject to subsection (4)(b).
- 24 (5) An agency franchise agreement must:
- 25 (a) be effective for a 10-year period, renewable for additional 10-year periods, if the requirements
- 26 of the agency franchise agreement have been satisfactorily performed;
- 27 (b) require the agent to maintain comprehensive general liability insurance and liquor liability
- 28 insurance throughout the term of the agency franchise agreement in an amount established by the department

1 of administration. The insurance policy must:

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

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

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

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

11 (6) The liability insurance requirement may be reviewed every 3 years at the request of either the
12 agent or the department. If the agent concurs, the department may adjust the requirements to be effective
13 during the remaining term of the agency franchise agreement if the adjustments adequately protect the state
14 from risks associated with the agent's negligent acts or activities in the execution and performance of the
15 agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum
16 requirements of the department of administration.

17 (7) (a) The department may terminate an agency franchise agreement if the agent has not
18 satisfactorily performed the requirements of the agency franchise agreement because the agent:

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

22 (ii) fails to maintain sufficient liability insurance;

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

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

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

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

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

13 (8) An agency franchise agreement may be terminated upon mutual agreement by the agent and
14 the department.

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

20 (10) A person or entity may not hold an ownership interest in more than one agency liquor store.

21 (11) The department shall maintain sufficient inventory in the state warehouse in order to meet a
22 monthly service level of at least 97%.

23 (12) For the purposes of this section, the term "combined commission rate" means the agency
24 liquor store's weighted average discount rate plus the discount rate provided for sales volume plus the agency
25 liquor store's commission rate that existed on December 31, 2015."

26

27 **Section 3.** Section 16-2-109, MCA, is amended to read:

28 **"16-2-109. Number and location of agency liquor stores.** (1) (a) In a community with a population

1 of 12,000 or less, there may be one agency liquor store. In communities with populations greater than 12,000,
2 there may be one agency liquor store for the first 12,000 inhabitants and one additional agency liquor store
3 within increments of population of 40,000 inhabitants above 12,000 inhabitants. In determining population, the
4 department shall use the same methods used for determining increases in the retail license quota system as
5 provided in 16-4-201.

6 (b) In communities that are eligible for more than one agency liquor store, an agency liquor store
7 established after April 25, 1995, may not be located within a 1-mile radius of any other agency liquor store in
8 the community.

9 (2) An agency liquor store established after April 25, 1995, may not be located in a community that
10 is closer than 35 miles to another community in which an agency liquor store is presently located, except in the
11 circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000
12 inhabitants within a 2-year period, whichever is greater, and when this population increase is reasonably
13 expected to continue for at least 5 years.

14 (3) Nothing in subsection (2) prohibits a community with an existing agency liquor store from
15 obtaining additional agency liquor stores when the population allows as provided in subsection (1).

16 (4) THE DEPARTMENT SHALL USE A COMPETITIVE BIDDING PROCESS AS PROVIDED IN [SECTION 1] TO
17 DETERMINE THE PARTY AFFORDED THE OPPORTUNITY TO APPLY FOR THE NEW AGENCY FRANCHISE AGREEMENT."

18
19 NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN
20 INTEGRAL PART OF TITLE 16, CHAPTER 2, AND THE PROVISIONS OF TITLE 16, CHAPTER 2, APPLY TO [SECTION 1].

21
22 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

23 - END -