



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

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

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

**"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions -- lottery competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, ~~firm,~~ or ~~corporation~~ business entity that is approved by the department ~~as a person, firm, or corporation qualified to sell beer,~~ subject to ~~the provisions in subsections (1)(a) through (1)(e).~~ the following exceptions:

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

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

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

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate

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

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

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

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

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

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

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

(2) (a) For a period of 12 years after [the effective date of this act], existing licenses as of [the effective date of this act] in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of a combined quota area prior to [the effective date of this act].

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

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

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

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

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

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

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

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

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

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

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

(a) an application form provided by the department; and  
(b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary of the new bid amount.

(7) The highest bidder shall:

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

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

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

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

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

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

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

(i) transfers the awarded license to another person or business entity after receiving the license unless that transfer is due to a death of an owner;

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

(iii) proposes a location for the license that had the same license type within the previous 12 months.

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

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

consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.

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

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

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

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

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

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

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

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

~~\_\_\_\_\_ (B) transfers a license awarded by lottery within 5 years of receiving the license; or~~

~~\_\_\_\_\_ (C) does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the lottery winner provides evidence the delay in use is for reasons outside the applicant's control.~~

~~\_\_\_\_\_ (ii) In the case of forfeiture, the department shall offer the license to the next eligible ranked applicant in the lottery.~~

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

**Section 2.** Section 16-4-105, MCA, is amended to read:

**"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions -- lottery -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, ~~firm, or corporation~~ business entity that is approved by the department as a person, firm, or corporation qualified to sell beer, subject to the provisions in subsections ~~(1)(a) through (1)(e)~~. the following exceptions:

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

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

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

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

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

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

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

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

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

23, chapter 5, part 3, 5, or 6.

(2) (a) For a period of 7 years after [the effective date of this section], existing licenses as of [the effective date of section 1] in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of a combined quota area prior to [the effective date of section 1].

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

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

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

~~(3)~~~~(a)~~(5) Except as provided in ~~subsections subsection (1)(e)(f) and (3)(b)~~, a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.

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

~~(4) A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city~~

~~or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area for 5 years from the date of the annexation:~~

~~(5)(6)~~ (a) When the department determines that a quota area is eligible for an additional retail beer license as provided in this section, the department shall advertise the availability of the license in the quota area for which the license is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

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

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

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

(A) ~~enters into a concession agreement, as defined in rule, for the license awarded by lottery in the first 5 years~~ proposes a location for the license that had the same license type within the previous 12 months;

(B) transfers a license awarded by lottery within 5 years of receiving the license; or

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

(ii) In the case of forfeiture, the department shall offer the license to the next eligible ranked applicant in the lottery.

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

**Section 3.** Section 16-4-201, MCA, is amended to read:

**"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and

the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

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

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

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

(2) The number of ~~the~~ inhabitants in ~~cities and towns~~ each incorporated city or incorporated town, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the ~~cities or towns~~ city or town, governs the number of retail licenses that may be issued for use within the ~~cities and towns~~ 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 more incorporated municipalities are situated within a distance of 5 miles from each other, the total number of retail licenses that may be issued for use in both of the municipalities and within a distance of 5 miles from their respective corporate limits must be determined on the basis of the combined populations of both of the municipalities and may not exceed the limitations in subsection (1) or this subsection.~~ The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

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

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

of this section].

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

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

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

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

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

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

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

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

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

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred,

exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

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

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

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

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

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

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

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

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

(2) When the department determines that a license may be transferred from one quota area to another under 16-4-201(1) or (4), the department shall use a competitive bidding process to determine the party afforded the opportunity to purchase and transfer a license. The department shall:

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

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

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

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

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

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

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

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

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

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

(5) The highest bidder shall:

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

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

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

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

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

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

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

(i) transfers an awarded license to another person after receiving the license unless that transfer is due to the death of an owner;

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

(iii) proposes a location for the license that had the same license type within the previous 12 months.

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

~~(d)~~(9) A license within an incorporated quota area may be transferred to a new ~~ownership~~ owner and to a new unincorporated location within the same county on application to and with consent of the department when the ~~quota of the~~ total number of all-beverages licenses in the ~~original~~ current quota area, exclusive of those 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 and will not fall below that level because of the transfer.

~~(e) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.~~

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

~~(g)~~(10) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

~~(2)~~~~(a)~~(11) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

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

(c) An all-beverages licensee who holds an endorsement granted under this subsection ~~(2)~~(11) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

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

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

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of

16-3-306, unless entities named in 16-3-306 give their written approval.

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

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

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

**Section 5.** Section 16-4-204, MCA, is amended to read:

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

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

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

(A) by more than 33%; or

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

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

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

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

(B) the applicant has provided with the application an irrevocable letter of credit from a financial institution

that guarantees the applicant's ability to pay \$100,000; and

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

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

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

~~(d)~~(2) A license within an incorporated quota area may be transferred to a new ~~ownership~~ owner and to a new unincorporated location within the same county on application to and with consent of the department when the ~~quota of the total number of~~ total number of all-beverages licenses in the ~~original~~ current quota area, exclusive of those 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 and will not fall below that level because of the transfer.

~~(e) For 5 years after the transfer of a license between quota areas under subsection (1)(a), the license may not be mortgaged or pledged as security and may not be transferred to another person except for a transfer by inheritance upon the death of the licensee.~~

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

~~(g)~~(3) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

~~(2)~~(a)(4) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

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

(c) An all-beverages licensee who holds an endorsement granted under this subsection ~~(2)~~(4) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's

regular place of business.

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

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

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

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

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

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

**Section 6.** Section 16-4-207, MCA, is amended to read:

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

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

NOTICE OF APPLICATION FOR RETAIL

ALL-BEVERAGES LICENSE

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

Dated .....

Signed

.....

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

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

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

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

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

denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

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

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

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

**Section 7.** Section 16-4-305, MCA, is amended to read:

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

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

(2) The Montana heritage preservation and development commission may lease a Montana heritage

retail alcoholic beverage license to an individual or entity approved by the department.

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

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

**Section 8.** Section 16-4-305, MCA, is amended to read:

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

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

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

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

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

**Section 9.** Section 16-4-306, MCA, is amended to read:

**"16-4-306. Transfer of existing license to political subdivision of state -- rulemaking.** (1) A political subdivision of the state of Montana may apply to the department for the transfer of an existing retail beer or beer and wine license and, upon approval by the department, the political subdivision may own and operate the license

or lease the license to a person, firm, corporation, or other entity approved by the department.

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

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

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

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

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

(e) is not, with respect to the facilities, subject to the provisions of 16-4-204~~(2)~~(11);

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

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

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

**Section 10.** Section 16-4-306, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

**Section 11.** Section 16-4-402, MCA, is amended to read:

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

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

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

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

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

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(2)(11), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

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

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

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

- (4) The department shall issue a conditional approval letter upon the last occurrence of either:
- (a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or
  - (b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.

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

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

**Section 12.** Section 16-4-402, MCA, is amended to read:

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

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

- (i) the applicant is qualified to receive a license;
- (ii) the applicant's premises are suitable for the carrying on of the business; and
- (iii) the requirements of this code and the rules promulgated by the department are met and complied with.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204~~(2)~~(4).

a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

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

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

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

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

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

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

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

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

(b) the premises are not approved by local building, health, or fire officials;

(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or

(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the

department's final agency decision provided for in subsection (4)."

**Section 13.** Section 16-4-420, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

(b) (i) An on-premises retail licensee who sells the licensee's existing retail license may not apply for a

license under this section for a period of 1 year from the date that license is transferred to a new purchaser.

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

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

- (a) the applicant is qualified to receive a license;
- (b) the applicant's premises are suitable for the carrying on of the business;
- (c) the requirements of this code and the rules promulgated by the department are complied with; and
- (d) the seating capacity stated on the application is correct.

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

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

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

- (i) where individually priced meals are prepared and served for on-premises consumption;
- (ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file with the department a statement, in a form approved by the department, attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of food.

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

(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.

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

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

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

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

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

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

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

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

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota

area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

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

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

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

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

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

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

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

~~———(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the~~

~~intended license advertised by the department or to the number of licenses determined under subsection (9) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.~~

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

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

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

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

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

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

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

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

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

(13) The highest bidder shall:

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

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

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

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

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

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

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

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

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

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

(i) transfers an awarded license to another person after receiving the license unless that transfer is due to the death of an owner;

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

(iii) proposes a location for the license that had the same license type within the previous 12 months.

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

~~(10)~~(18) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

~~(11)~~(19) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

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

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

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

~~(12)~~(20) The annual fee for a restaurant beer and wine license is \$400.

~~(13)~~(21) If a restaurant licensed under this part increases the stated seating capacity of the licensed restaurant or if the department determines that a licensee has increased the stated seating capacity of the licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time of filing the original application and issuance of a license and the applicable fees for the additional seating.

~~(14)~~(22) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

~~(15)~~(23) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

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

**Section 14.** Section 16-4-420, MCA, is amended to read:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

restaurant, as defined in subsection (6).

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

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

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

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

(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.

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

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

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

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

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

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

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

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

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

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

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

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

(d) If there are more applicants than licenses available in a quota area, then the license must be awarded by lottery as provided in subsection ~~(9)~~(10).

(9) If any new restaurant beer and wine licenses are allowed by separating a combined quota area, pursuant to 16-4-105 as of [the effective date of section 13], the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached.

~~(9)(a)~~(10) When a restaurant beer and wine license becomes available by the initial issuance of licenses under this section or as the result of an increase in the population in ~~the~~ a quota area, the nonrenewal of a restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department

shall advertise the availability of the license in the quota area for which it is available. If there are more applicants than number of licenses available, the license must be awarded to an applicant by a lottery.

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

(c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will be required to submit a completed application and a one-time required fee. An applicant's ranking may not be sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the intended license advertised by the department or to the number of licenses determined under subsection (8) when there are more applicants than licenses available. The applicant's qualifications for any other restaurant beer and wine license awarded by lottery must be determined at the time of the lottery.

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

~~(10)~~(11) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.

~~(11)~~(12) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20% of the initial licensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the department denies an application, the application fee, plus any interest, less a processing fee established by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

- (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;
- (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

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

~~(12)~~(13) The annual fee for a restaurant beer and wine license is \$400.

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

~~(14)~~(15) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101 persons or more may not exceed 25% of the total licenses issued.

~~(15)~~(16) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a restaurant beer and wine license.

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

**Section 15.** Section 23-5-119, MCA, is amended to read:

**"23-5-119. Appropriate alcoholic beverage license for certain gambling activities.** (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant must own in the applicant's name:

(a) a retail all-beverages license issued under 16-4-201, but the owner of a license transferred after July 1, 2007, ~~to a quota area pursuant to a department-conducted lottery under 16-4-204~~~~(1)~~(a) is not eligible to offer gambling;

(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;

(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)~~(e)~~(f). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(d) a retail beer and wine license issued under 16-4-109;

(e) a retail all-beverages license issued under 16-4-202; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

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

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

**Section 16. Effective dates.** (1) Except as provided in subsection (2), [this act] is effective on passage and approval.

(2) [Sections 2, 5, 8, 10, 12, and 14] are effective January 1, 2024.

**Section 17. Termination.** [Sections 1, 4, 7, 9, 11, and 13] terminate December 31, 2023.

- END -

I hereby certify that the within bill,  
SB 0005, originated in the Senate.

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President of the Senate

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

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Secretary of the Senate

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Speaker of the House

Signed this \_\_\_\_\_ day  
of \_\_\_\_\_, 2017.

SENATE BILL NO. 5  
INTRODUCED BY S. FITZPATRICK  
BY REQUEST OF THE GOVERNOR

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