



Legislative Audit Division

Performance Audit Summary

On-Premises Liquor Licensing Process

October 2001

Introduction

The Legislative Audit Committee requested a performance audit of the state's liquor licensing process. Establishments that serve alcohol on-site constitute a majority of the licensing workload. As a result, the audit focused on this aspect of liquor licensing. The licensing process involves the Department of Revenue (DOR) and Department of Justice, Gambling Control Division (GCD).

Background

DOR is statutorily responsible for administering the Montana Alcoholic Beverage Code, while GCD is statutorily responsible for conducting any investigations related to the same code. DOR reviews the on-premises liquor application and supporting documents for completeness. Once all applicant information is provided to the department and deemed complete, the applications are sent to GCD for investigation. GCD will conduct personal interviews with applicants, perform reviews of application supporting documents, investigate the background of applicants, physically inspect the proposed premises, make a determination whether the applicant and premises meet statutory liquor licensing criteria, and issue a written report of findings to DOR.

DOR has statutory responsibility for making the final licensing decision using the investigative reports in conjunction with other information obtained during the application process.

On-Premises Liquor License Applications Received (Calendar Years 1999 and 2000)		
Type of License	# Received CY 1999	# Received CY 2000
All-Beverage	157	199
Beer	69	70
RBW	11	28
Total	237	297

Current Process Takes an Average of 193 Days

It takes an average of 193 days to review and approve on-premises liquor applications. The majority of the 193-day timeframe reflects DOR activities. During initial stages of review, it takes department staff an average of 81 days to deem an application complete. GCD investigations are completed in an average of 42 days. When DOR obtains GCD's investigation report, DOR continues processing the

application an average of 70 days to determine whether to grant or deny the license request.

Residency as a Condition of Liquor Licensure

Montana statutes specify in-state residency as a condition to receive on-premises consumption all-beverage, beer, and beer/wine licenses. One of the primary issues investigated during review of liquor license applications is determining the residency status of each applicant and each person with a controlling interest in the business. This work contributes to the time involved to process on-premises liquor applications. In developing business plans for estate planning, residency requirements also add time and complexity to the applicant's submission.

Recent court decisions in Kansas and Texas ruled residency requirements are invalid because they violate the United States Constitution. The Constitution's commerce clause takes precedence over a state's right to regulate alcohol. Courts stated having residency as a requirement to obtain liquor licenses favored in-state economic interests over out-of-state interests and unless valid reasons exists for favoring in-state interests, then a form of "economic protectionism" is created.

Elimination of in-state residency requirements could help streamline the licensing process.

Expedited Procedures are Needed for Minor License Changes

It takes the department several months to approve certain types of changes to existing on-premises liquor licenses. Current license holders making relatively minor requests must go through the same statutorily required review as applicants applying for a license for the first time. The efficiency of the department's on-premises liquor licensing process would be improved by implementing an expedited review process for minor changes. *DOR should seek legislation to allow for an expedited process for minor licensing changes such as moving to a new location or minor changes in business structure.*

DOR Staffing and Supervision

DOR compliance specialists are to perform detailed reviews of supporting documents submitted with applications. Financial information submitted by applicants is complex and some DOR compliance specialists did not believe they could conduct the level of

review necessary to determine issues such as undisclosed financial interests. DOR staff relies on GCD staff who received specific training to conduct these reviews. DOR licensing staff also receives limited supervisory oversight. This general lack of oversight has contributed to delays in the liquor licensing process and has created inappropriate staff performance measures. *DOR needs to assess the capabilities of its liquor licensing staff, establish relevant staff performance measures, and require management to monitor adherence to these performance measures.*

Improvements Needed in Electronic Information

Data on the current electronic licensing processing system used by DOR is inaccurate and limited in its usefulness. Dates often did not correspond to actual documents in the file or reflect all actions or pending issues. *DOR should establish controls that include redesigning needed information and ensuring accuracy to provide better data to licensing staff and to assist in supervision.*

Lottery Drawing Procedures should be Improved

The liquor lottery drawing process takes an average of 146 days to complete. DOR's procedures appear to add unnecessary time to the process. A lack of formal procedures has resulted in inconsistencies. The current administrative rules do not seem to create a fair liquor lottery process. Although the lottery is reasonable for processing an influx of applications, once the application deadline passes and someone submits an application for any last available license or licenses, the application process should not stop and go to a lottery drawing. *DOR needs to establish formal lottery procedures, and change administrative rules to ensure licenses are issued on a first come, first served basis for the last available license.*

Confidential Information in DOR Files

DOR on-premises liquor licensing files are open to public inspection. In contrast, the requirements applicable to GCD file information do not allow public inspection. GCD files are confidential under the Montana Criminal Justice Information Act. We noted several examples where information related to an applicant's criminal background was in DOR files. In addition, we found other confidential records such as income tax returns were left in DOR liquor licensing files. DOR procedures indicate confidential information obtained from GCD should be shredded or returned to GCD. *DOR and GCD need to periodically train liquor licensing staff on procedures related to confidential information.*

Liquor Quota Data Needs More Timely Updates

There are statutory limits on the number of liquor licenses issued in the state. The following table provides statewide data for licenses that have been issued under the quota.

Changes in population and transfers of licenses are reasons for being over the quota in some areas.

License Quota vs. Licenses Issued (Statewide) July 2001			
Types of License	Quota	Issued	Difference
All-Beverage	1,122	1,437	315
Beer	448	430	(18)
RBW	307	84	(223)
Total	1,877	1,951	

The department is not timely in incorporating the most recent census data into the license quota system. As a result, the number of available liquor licenses was not updated in a timely manner. *DOR should make updating quota statistics on liquor license availability a priority.*

Applicants Submit Multiple Lottery Applications

Applicants often submit multiple lottery applications for the same drawing. This impacts process fairness. It also creates bottlenecks in the liquor licensing process because it requires staff to verify information on significantly more applications. The average businessperson trying to get into the liquor business can not compete with "license brokers" because they do not have the financial resources to secure multiple premises locations or set up separate business entities. It is not clear whether the legislature intended applicants to be allowed to submit multiple applications for lottery drawings. *DOR needs to seek legislation to clarify whether liquor license applicants should be allowed to submit multiple applications.*

Further Streamlining of Process May be Needed

Over the last several years, much of the responsibility for on-premises liquor licensing has been transferred to GCD. The 1997 Legislature passed legislation to make it easier for businesses to get licensed from a single agency. However, businesses seeking either liquor or gambling licenses must deal with two agencies. Since 90 percent of businesses with on-premises liquor licenses also have gambling licenses, two agencies are regulating essentially the same business community. Consolidating the process within the GCD could create efficiencies by reducing duplication, eliminating coordination problems, and placing decision-making authority within a single agency.

DOR and GCD are holding discussions to determine potential changes to improve coordination of their respective responsibilities in the process. *These discussions should be expanded to determine if additional liquor license streamlining is needed and whether all liquor licensing functions could be consolidated within a single agency.*

For a complete copy of the report (01P-06) or for further information contact the Legislative Audit Division at 406-444-3122; e-mail to lad@mt.gov; or check the web site at <http://leg.mt.gov/audit>.