

HOUSE BILL NO. 113
INTRODUCED BY B. MCCHESENEY
BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LIQUOR LICENSING LAWS TO ELIMINATE THE RESIDENCE REQUIREMENT FOR LIQUOR LICENSES AND TO ALLOW ALL ENTITIES TO OBTAIN A LIQUOR LICENSE; REQUIRING SUITABLE FUNDING SOURCES FOR INDIVIDUAL APPLICANTS; CLARIFYING OTHER APPLICATION REQUIREMENTS FOR OWNERS, STOCKHOLDERS, PARTNERSHIPS, AND MEMBERS OF DIFFERENT BUSINESS ENTITIES; AND AMENDING SECTION 16-4-401, MCA."

WHEREAS, the Montana District Court decision in Hotel Venture East v. State, Cause No. CDV-2002-493(2005), requires the elimination of the residence requirement for liquor licenses.

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

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

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

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

(a) ~~in the case of~~ if the applicant is an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

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

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

~~(iv) the applicant is a resident of the state and is qualified to vote in a state election;~~

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

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

~~(b) in the case of a corporate if the applicant is a publicly traded corporation:~~

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (2)(a)(iv);~~

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

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

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

~~(v)(iv) the corporation is authorized to do business in Montana; ~~and~~~~

~~(vi) in the case of a corporation not listed on a national stock exchange, each owner of stock meets the requirements of subsections (2)(a)(i) and (2)(a)(ii); and~~

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

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

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

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

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

~~(c) in the case of any other business entity as applicant:~~

~~—— (i) if the applicant consists of more than one individual, all must meet the requirements of subsection (2)(a); and~~

~~—— (ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection~~

~~(2)(b):~~

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

(2)(a):

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

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

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

(a) ~~in the case of~~ if the applicant is an individual applicant:

(i) the applicant will not possess an ownership interest in more than one establishment licensed under this chapter for all-beverages sales;

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

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

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

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

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

(b) ~~in the case of a corporate~~ if the applicant is a publicly traded corporation:

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (3)(a)(iv);~~

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

applicant listed in subsection (3)(a); and

~~———(iii)(ii) the corporation is authorized to do business in Montana; and~~

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

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

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

~~(e) in the case of any other business entity as applicant:~~

~~———(i) if the applicant consists of more than one individual, all must meet the requirements of subsection (3)(a); and~~

~~———(ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (3)(b)~~

(d) if the applicant is a general partnership, each partner must meet the requirements of subsection (3)(a);

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

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

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

~~(a) in the case of~~ if the applicant is an individual applicant:

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

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

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

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

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

(vi) an applicant for a wholesale license is ~~neither not~~ a manufacturer of an alcoholic beverage ~~nor is or~~ owned or controlled by a manufacturer of an alcoholic beverage; ~~and~~

~~(b) in the case of a corporate~~ if the applicant is a publicly traded corporation:

~~(i) the owners of at least 51% of the outstanding stock meet the requirements of subsection (4)(a)(iii);~~

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

~~(iii)(ii) an applicant for a wholesale license is neither not a manufacturer of an alcoholic beverage nor is or~~ owned or controlled by a manufacturer of an alcoholic beverage; and

~~(iv)(iii) the corporation is authorized to do business in Montana; and~~

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

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

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

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

~~(e) in the case of any other business entity as applicant:~~

~~—— (i) if the applicant consists of more than one individual, all must meet the requirements of subsection (4)(a); and~~

~~—— (ii) if the applicant consists of more than one corporation, all must meet the requirements of subsection (4)(b)~~

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

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

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

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

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

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

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

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

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

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

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

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