HOUSE BILL NO. 685

INTRODUCED BY D. MCALPIN

A BILL FOR AN ACT ENTITLED: "AN ACT ALLOWING ALL MUNICIPALITIES AND COUNTIES, BY A VOTE OF THE ELECTORATE, TO ADOPT A LOCAL OPTION SALES TAX ON CERTAIN LUXURY GOODS AND SERVICES; PRECLUDING THE TAXATION OF MEDICINE, MEDICAL SUPPLIES, LEGAL FORMS OF GAMBLING, AND CERTAIN OTHER ITEMS; PROVIDING THAT LOCAL OPTION SALES TAX REVENUE MAY BE USED FOR ANY PURPOSE REFLECTED IN THE RESOLUTION AUTHORIZING THE LOCAL OPTION SALES TAX; PROHIBITING DOUBLE TAXATION; PROVIDING THAT AN EXISTING RESORT TAX IMPOSED BY A RESORT COMMUNITY, RESORT AREA, OR RESORT AREA DISTRICT MAY REMAIN IN EFFECT OR MAY BE DISCONTINUED; REMOVING CERTAIN RESTRICTIONS ON WHAT CONSTITUTES A RESORT COMMUNITY; CLARIFYING THAT A MILL LEVY REDUCTION RESULTING FROM TAX RELIEF DUE TO IMPOSITION OF A LOCAL OPTION SALES TAX MAY NOT BE REINSTATED WHILE THE TAX IS IN EFFECT WITHOUT AN ELECTION; AMENDING SECTIONS 7-6-1501, 7-7-4424, 7-7-4428, 15-10-420, AND 16-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. **Section 1. Local option sales tax -- definitions.** As used in [sections 1 through 8], the following definitions apply:

(1) (a) "Luxury goods and services" means any gift item, luxury item, or other item or any service normally sold to the public, transient visitors, or tourists, including but not limited to the following:

(i) lodging facilities and campgrounds as defined in 15-65-101;

(ii) meals prepared either for onsite consumption or to take out;

(iii) alcoholic beverages sold by the drink;

(iv) rentals of automobiles, boats, snowmobiles, off-highway vehicles, and other vehicles used for travel or recreation;

(v) rentals of camping, hunting, fishing, or other recreational equipment;

(vi) ski lift tickets, hunting and fishing guide services, guided tours, trail rides, and other recreational services and facilities;

(vii) admissions for movies, theatrical presentations, exhibits, and sporting events other than

school-related events or nonprofit events;

(viii) daily fees at golf courses;

(ix) admissions for water slides, amusement parks, or hot springs or other resorts; and

(x) souvenir items.

(b) The term does not include motor fuels, food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, goods used in agricultural production, clothing other than souvenirs, household bedding and furnishings, legal forms of gambling under Title 23, chapter 5, goods and services sold for resale within the municipality or county, or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial purposes, including both physician-prescribed and over-the-counter medications.

NEW SECTION. **Section 2. Local option taxing authority -- specific delegation.** As required by 7-1-112, [sections 1 through 8] specifically delegate to the electors of each respective municipality or county the power to authorize their municipality or county to impose a local option sales tax within the county or within the corporate boundary of the municipality.

NEW SECTION. **Section 3. Limit on local option sales tax rate -- goods and services subject to tax.** (1) The rate of the local option sales tax must be established by the election petition or resolution provided for in [section 4]. The rate may not exceed 4%. The tax rate must be applied uniformly to all luxury goods and services subject to the tax.

(2) (a) The local option sales tax is a tax on the retail value of all luxury goods and services sold as provided in the petition or resolution.

(b) Establishments that sell luxury goods or services, or both, shall collect the sales tax on luxury goods and services subject to the tax.

NEW SECTION. **Section 4. Local option sales tax -- election required -- procedure -- notice.** (1) A municipality or county may not impose or, except as provided in [section 5], amend or repeal a local option sales tax unless the local option sales tax question has been submitted to the electorate of the municipality or county and approved by a majority of the electors voting on the question.

(2) The local option sales tax question may be presented to the electors of:

(a) a municipality by a petition of the electors, as provided by 7-1-4130 and 7-5-131 through 7-5-137, or by a resolution of the governing body of the municipality; or

(b) a county by a resolution of the board of county commissioners or by a petition of electors as provided in 7-5-131 through 7-5-137.

(3) The petition or resolution referring the local option sales tax question must state:

(a) the luxury goods and services subject to the local option sales tax;

(b) the rate of the local option sales tax;

(c) the duration of the local option sales tax, which may not exceed 10 years;

(d) the date when the local option sales tax becomes effective, which may not be earlier than 35 days after the election; and

(e) the purposes that may be funded by the local option sales tax revenue.

(4) Upon receipt of an adequate petition, the governing body may:

(a) call a special election on the local option sales tax question; or

(b) have the local option sales tax question placed on the ballot at the next regularly scheduled election.

(5) (a) Before the local option sales tax question is submitted to the electorate of a municipality or county, the governing body of the municipality or the board of county commissioners in the county, as applicable, shall publish notice of the luxury goods and services subject to the local option sales tax in a newspaper that meets the qualifications of subsection (5)(b). The notice must be published twice, with at least 6 days separating publications. The first publication must be no more than 30 days prior to the election and the last no less than 3 days prior to the election.

(b) The newspaper must be:

(i) of general, paid circulation with a second-class mailing permit;

(ii) published at least once a week; and

(iii) published in the county where the election will take place.

(6) The question of the imposition of a local option sales tax may not be placed before the electors more than once in any fiscal year.

NEW SECTION. **Section 5. Local option sales tax administration.** (1) In this section, "governing body" means:

(a) the governing body of a municipality; or

(b) if the local option sales tax has been approved by the electors of a county, the board of county commissioners.

(2) Not less than 30 days prior to the date that the local option sales tax becomes effective, the governing body shall enact an administrative ordinance governing the collection and reporting of the local option sales tax. This administrative ordinance may be amended at any time as may be necessary to effectively administer the local option sales tax.

(3) The administrative ordinance must specify:

(a) the times that local option sales taxes collected by businesses are to be remitted to the governing body;

(b) the office, officer, or employee of the governing body responsible for receiving and accounting for the local option sales tax receipts;

(c) the office, officer, or employee of the governing body responsible for enforcing the collection of the local option sales tax and the methods and procedures to be used in enforcing the collection of local option sales taxes due; and

(d) the penalties for failure to report local option sales taxes due, failure to remit taxes due, and violations of the administrative ordinance. The penalties may include:

(i) criminal penalties not to exceed a fine of $1,000, imprisonment for 6 months, or both;

(ii) civil penalties if the governing body prevails in a suit for the collection of local option sales taxes, not to exceed 50% of the taxes found due plus the costs and attorney fees incurred by the governing body in the action;

(iii) revocation of a county or municipal business license held by the offender; and

(iv) any other penalties that may be applicable for violation of an ordinance.

(4) The administrative ordinance may include:

(a) further clarification and specificity in the categories of luxury goods and services that are subject to the local option sales tax consistent with [section 3];

(b) authorization for business administration and prepayment discounts. The discount authorization must allow each vendor and commercial establishment to withhold a flat fee or an amount not to exceed 5% of the local option sales tax collected to defray its costs for the administration of the tax collection.

(c) other administrative details necessary for the efficient and effective administration of the tax.

NEW SECTION. **Section 6. Use of local option sales tax revenue -- bond issue -- pledge.** (1) Unless

otherwise restricted by the voter-approved tax authorization provided for in [section 4], a municipality or county may appropriate and expend revenue derived from a local option sales tax for any activity, undertaking, or administrative service that the municipality or county is authorized by law to perform, including costs resulting from the imposition of the tax. The municipality or county may award grants of local option sales tax revenue to local governments in the counties adjoining the county imposing the tax or in which the municipality is located.

(2) A municipality or county may issue bonds to provide, install, or construct any of the public facilities, improvements, or undertakings authorized under 7-7-4101, 7-7-4404, and 7-12-4102. Bonds issued under this section must be authorized by a resolution of the governing body, stating the terms, conditions, and covenants of the municipality or county that the governing body considers appropriate. The bonds may be sold at a discount at a public or private sale.

(3) A municipality or county may pledge for repayment of bonds issued under this section the revenue derived from a local option sales tax, special assessments levied for and revenue collected from the facilities, improvements, or undertakings for which the bonds are issued, and any other source of revenue authorized by the legislature to be imposed or collected by the municipality or county. The bonds do not constitute debt for purposes of any statutory debt limitation, provided that in the resolution authorizing the issuance of the bonds, the municipality or county determines that the local option sales tax revenue, special assessments levied for and revenue from the facilities, improvements, or undertakings, or other sources of revenue, if any, pledged to the payment of the bonds will be sufficient in each year to pay the principal and interest of the bonds when due. Bonds may not be issued pledging proceeds of the local option sales tax for repayment unless the municipality or county that adopted the resolution authorizing issuance of the bonds determines that in any fiscal year the annual revenue expected to be derived from the local option sales tax will pay the amount of the principal and interest payable on the bonds and any other outstanding bonds payable from the local option sales tax, except any bonds to be refunded upon the issuance of the proposed bonds, even if the county in which a municipality is located or other municipalities within a county enact a local option sales tax.

NEW SECTION. **Section 7. Distribution of local option sales tax proceeds.** (1) (a) Revenue from a local option sales tax must be allocated as follows:

(i) 75% must be allocated to the entity imposing the tax;

(ii) 15% must be allocated to the region in which the entity imposing the tax is located; and

(iii) 10% must be allocated to the subregion in which the entity imposing the tax is located.

(b) Local option sales tax revenue received by region or subregion must be distributed, at least quarterly,

to the eligible municipalities and counties and within the region or subregion on a per capita basis. For purposes of distributing the revenue, individuals residing within a municipality are not considered county residents.

(2) A local option sales tax imposed by the county must be levied countywide. Unless otherwise provided by agreements with municipalities, the county shall, at least quarterly, distribute local option sales tax revenue to the municipalities in the following manner:

(a) 50% of the amount of local option sales tax revenue received by the county must be distributed based on population by calculating the ratio of the population of each municipality in the county to the population of the county as derived from the most recent estimates by the U.S. bureau of the census or, if estimates are not available, derived from the most recent federal decennial census; and

(b) the remaining 50% of the amount retained by the county must be distributed based on the point of origin of the local option sales tax revenue.

(3) (a) For purposes of revenue distribution under this section, a resort community, resort area, or resort area district that has imposed a tax pursuant to Title 7, chapter 6, part 15, must be excluded from the revenue distribution and population calculations.

(b) A resort community, resort area, or resort area district that has agreed to not impose its tax and be subject to a county local option tax as provided in [section 8(3)] is entitled to receive county local option sales tax proceeds.

(4) For the purposes of this section:

(a) region 1 consists of the following subregions:

(i) Flathead and Lincoln Counties; and

(ii) Granite, Lake, Mineral, Missoula, Ravalli, and Sanders Counties;

(b) region 2 consists of the following subregions:

(i) Broadwater, Jefferson, Lewis and Clark, and Meagher Counties;

(ii) Beaverhead, Deer Lodge, Powell, and Silver Bow Counties; and

(iii) Gallatin, Madison, and Park Counties;

(c) region 3 consists of the following subregions:

(i) Cascade, Chouteau, Fergus, Glacier, Judith Basin, Pondera, Teton, and Toole Counties; and

(ii) Blaine, Hill, Liberty, and Phillips Counties;

(d) region 4 consists of the following subregions:

(i) Big Horn, Carbon, Golden Valley, Musselshell, Petroleum, Rosebud, Stillwater, Sweet Grass, Treasure, Wheatland, and Yellowstone Counties;

(ii) Daniels, Garfield, McCone, Roosevelt, Sheridan, and Valley Counties; and

(iii) Carter, Custer, Dawson, Fallon, Powder River, Prairie, Richland, and Wibaux Counties.

NEW SECTION. **Section 8. Double taxation prohibited.** (1) Except as provided in subsection (2), a local option sales tax may not be imposed on the same goods or services by more than one local government, including a resort community, resort area, or resort area district imposing a tax under Title 7, chapter 6, part 15.

(2) (a) If both a county and a municipality adopt a local option sales tax, the combined rate may not exceed 4%. The second entity to adopt the tax is limited to imposing a tax rate that is equal to or less than the difference between the amount of the existing rate and 4%. If a county adopts a 4% sales tax on any item, no municipality within the county may impose a local option sales tax on that item. However, a municipality within a county may impose a local option sales tax on items that are not subject to the county local option sales tax, and the rate of tax imposed by the municipality may be 4% on those items. If a county adopts a 4% sales tax, a municipality within the county shall repeal or amend the municipal tax without a vote of the electorate.

(b) To coordinate two local option sales taxes imposed within the same area, the rate of the local option sales tax, the goods and services to be taxed, the duration of the tax, and restrictions on the use of tax revenue may be changed by submitting the question to the electorate of the local government that has an existing local option sales tax. The ballot question may be submitted contingent upon adoption of a local option sales tax by another entity. The governing bodies of the municipality and county may, by agreement, establish common administrative procedures for the administration and collection of the tax.

(3) A county local option sales tax may not be imposed in an existing resort community, resort area, or resort area district. However, an existing resort community, resort area, or resort area district may agree to not impose its tax and be subject to a county local option sales tax.

Section 9. Section 7-6-1501, MCA, is amended to read:

"7-6-1501. Resort tax -- definitions. As used in 7-6-1501 through 7-6-1509, the following definitions apply:

(1) "Luxuries" means any gift item, luxury item, or other item normally sold to the public or to transient visitors or tourists. The term does not include food purchased unprepared or unserved, medicine, medical supplies and services, appliances, hardware supplies and tools, or any necessities of life.

(2) "Medical supplies" means items that are sold to be used for curative, prosthetic, or medical maintenance purposes, whether or not prescribed by a physician.

(3) "Medicine" means substances sold for curative or remedial properties, including both physician prescribed and over-the-counter medications.

(4) "Resort area" means an area that:

(a) is an unincorporated area and is a defined contiguous geographic area;

(b) has a population of less than 2,500 according to the most recent federal census or federal estimate;

(c) derives the major portion of its economic well-being from businesses catering to the recreational and personal needs of persons traveling to or through the area for purposes not related to their income production; and

(d) has been designated by the department of commerce as a resort area prior to its establishment by the county commissioners as provided in 7-6-1508.

(5) "Resort community" means a community that~~:~~

~~(a) is an incorporated municipality;~~

~~(b) has a population of less than 5,500 according to the most recent federal census or federal estimate;~~

~~(c) derives the primary portion of its economic well-being related to current employment from businesses catering to the recreational and personal needs of persons traveling to or through the municipality for purposes not related to their income production; and~~

~~(d) has been designated by the department of commerce as a resort community~~ has a resort tax in effect prior to [the effective date of this act]."

Section 10. Section 7-7-4424, MCA, is amended to read:

"7-7-4424. Undertakings to be self-supporting. (1) The governing body of a municipality issuing bonds pursuant to this part shall prescribe and collect reasonable rates, fees, or charges for the services, facilities, and commodities of the undertaking and shall revise the rates, fees, or charges from time to time whenever necessary so that the undertaking is and remains self-supporting. The property taxes specifically authorized to be levied for the general purpose served by an undertaking, ~~or~~ any resort taxes approved, levied, and appropriated to an undertaking in compliance with 7-6-1501 through 7-6-1509, and any local option sales taxes approved, levied, and appropriated to an undertaking in compliance with [sections 1 through 8] constitute revenue of the undertaking and may not result in an undertaking being considered not self-supporting.

(2) The rates, fees, or charges prescribed, along with any appropriated property or resort tax collections, must produce revenue at least sufficient to:

(a) pay when due all bonds and interest on the bonds, the payment of which the revenue has been

pledged, charged, or otherwise encumbered, including reserves for the bonds; and

(b) provide for all expenses of operation and maintenance of the undertaking, including reserves."

Section 11. Section 7-7-4428, MCA, is amended to read:

"7-7-4428. Covenants in resolution authorizing issuance of bonds. Any resolution or resolutions authorizing the issuance of bonds under this part may contain covenants as to:

(1) the purpose or purposes to which the proceeds of sale of the bonds may be applied and the disposition of the proceeds;

(2) the use and disposition of the revenue of the undertaking for which the bonds are to be issued, including the creation and maintenance of reserves and including the pledge or appropriation of all or a portion of the property and resort tax revenue referred to in 7-7-4424 or local option sales tax revenue referred to in [section 6];

(3) the transfer, from the general fund of the municipality to the account or accounts of the undertaking, of an amount equal to the cost of furnishing the municipality or any of its departments, boards, or agencies with the services, facilities, or commodities of the undertaking;

(4) the issuance of other or additional bonds payable from the revenue of the undertaking;

(5) the operation and maintenance of the undertaking;

(6) the insurance to be carried on the undertaking and the use and disposition of insurance money;

(7) books of account and the inspection and audit of the books; and

(8) the terms and conditions upon which the holders or trustees of the bonds or any proportion of the bonds are entitled to the appointment of a receiver by the district court having jurisdiction. The receiver may:

(a) enter and take possession of the undertaking;

(b) operate and maintain the undertaking;

(c) prescribe rates, fees, or charges, subject to the approval of the public service commission; and

(d) collect, receive, and apply all revenue thereafter arising from the undertaking in the same manner as the municipality itself might do."

Section 12. Section 15-10-420, MCA, is amended to read:

"15-10-420. Procedure for calculating levy. (1) (a) Subject to the provisions of this section, a governmental entity that is authorized to impose mills may impose a mill levy sufficient to generate the amount of property taxes actually assessed in the prior year plus one-half of the average rate of inflation for the prior 3

years. ~~The~~ Subject to subsection (10), the maximum number of mills that a governmental entity may impose is established by calculating the number of mills required to generate the amount of property tax actually assessed in the governmental unit in the prior year based on the current year taxable value, less the current year's value of newly taxable property, plus one-half of the average rate of inflation for the prior 3 years.

(b) A governmental entity that does not impose the maximum number of mills authorized under subsection (1)(a) may carry forward the authority to impose the number of mills equal to the difference between the actual number of mills imposed and the maximum number of mills authorized to be imposed. The mill authority carried forward may be imposed in a subsequent tax year.

(c) For the purposes of subsection (1)(a), the department shall calculate one-half of the average rate of inflation for the prior 3 years by using the consumer price index, U.S. city average, all urban consumers, using the 1982-84 base of 100, as published by the bureau of labor statistics of the United States department of labor.

(2) A governmental entity may apply the levy calculated pursuant to subsection (1)(a) plus any additional levies authorized by the voters, as provided in 15-10-425, to all property in the governmental unit, including newly taxable property.

(3) (a) For purposes of this section, newly taxable property includes:

(i) annexation of real property and improvements into a taxing unit;

(ii) construction, expansion, or remodeling of improvements;

(iii) transfer of property into a taxing unit;

(iv) subdivision of real property; and

(v) transfer of property from tax-exempt to taxable status.

(b) Newly taxable property does not include an increase in value that arises because of an increase in the incremental value within a tax increment financing district.

(4) (a) For the purposes of subsection (1), the taxable value of newly taxable property includes the release of taxable value from the incremental taxable value of a tax increment financing district because of:

(i) a change in the boundary of a tax increment financing district;

(ii) an increase in the base value of the tax increment financing district pursuant to 7-15-4287; or

(iii) the termination of a tax increment financing district.

(b) If a tax increment financing district terminates prior to the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the year in which the tax increment financing district terminates. If a tax increment financing district terminates after the certification of taxable values as required in 15-10-202, the increment value is reported as newly taxable property in the following tax year.

(c) For the purpose of subsection (3)(a)(iv), the subdivision of real property includes the first sale of real property that results in the property being taxable as class four property or as nonqualified agricultural land as described in 15-6-133(1)(c).

(5) Subject to subsection (8), subsection (1)(a) does not apply to:

(a) school district levies established in Title 20; or

(b) the portion of a governmental entity's property tax levy for premium contributions for group benefits excluded under 2-9-212 or 2-18-703.

(6) For purposes of subsection (1)(a), taxes imposed do not include net or gross proceeds taxes received under 15-6-131 and 15-6-132.

(7) In determining the maximum number of mills in subsection (1)(a), the governmental entity may increase the number of mills to account for a decrease in reimbursements.

(8) The department shall calculate, on a statewide basis, the number of mills to be imposed for purposes of 15-10-107, 20-9-331, 20-9-333, 20-9-360, 20-25-423, and 20-25-439. However, the number of mills calculated by the department may not exceed the mill levy limits established in those sections. The mill calculation must be established in whole mills. If the mill levy calculation does not result in a whole number of mills, then the calculation must be rounded up to the nearest whole mill.

(9) (a) The provisions of subsection (1) do not prevent or restrict:

(i) a judgment levy under 2-9-316, 7-6-4015, or 7-7-2202;

(ii) a levy to repay taxes paid under protest as provided in 15-1-402; or

(iii) an emergency levy authorized under 10-3-405, 20-9-168, or 20-15-326.

(b) A levy authorized under subsection (9)(a) may not be included in the amount of property taxes actually assessed in a subsequent year.

(10) A mill levy that has been reduced because of tax relief resulting from imposition of a local option sales tax as provided in [sections 1 through 8] may not be reinstated while the local option sales tax is in effect unless the levy increase is approved at an election pursuant to 15-10-425.

~~(10)~~(11) A governmental entity may levy mills for the support of airports as authorized in 67-10-402, 67-11-301, or 67-11-302 even though the governmental entity has not imposed a levy for the airport or the airport authority in either of the previous 2 years and the airport or airport authority has not been appropriated operating funds by a county or municipality during that time.

~~(11)~~(12) The department may adopt rules to implement this section. The rules may include a method for calculating the percentage of change in valuation for purposes of determining the elimination of property, new

improvements, or newly taxable property in a governmental unit."

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

"16-4-420. Restaurant beer and wine license. (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) in the case of an individual applicant:

(i) 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

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

(b) in the case of a corporate applicant:

(i) in the case of a corporation listed on a national stock exchange, the corporate officers and the board of directors must meet the requirements of subsection (1)(a);

(ii) in the case of a corporation not listed on a national stock exchange, each owner of 10% or more of the outstanding stock must meet the requirements for an individual listed in subsection (1)(a); and

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

(c) in the case of any other business entity, including but not limited to partnerships, including limited liability partnerships, limited partnerships, and limited liability companies, but not including any form of a trust:

(i) if the applicant consists of more than one individual, all individuals must meet the requirements of subsection (1)(a); and

(ii) if the applicant consists of more than one corporation, all corporations listed on a national stock exchange must meet the requirements of subsection (1)(b)(i) and corporations not listed on a national stock exchange must meet the requirements of subsection (1)(b)(ii);

(d) 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;

(e) 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

(f) 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) A restaurant that sells its 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.

(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) For purposes of this section, "restaurant" means a public eating place where individually priced meals are prepared and served for on-premises consumption. 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. The restaurant must have 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. A full-service restaurant is a restaurant that provides an evening dinner meal.

(7) (a) (i) Subject to the conditions of subsection (7)(a)(ii), a restaurant beer and wine license may be transferred, upon approval by the department, from the original applicant to a new owner of the restaurant if there is no change of location, and the original owner may transfer location after the license is issued by the department to a new location, upon approval by the department.

(ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer of the license to the new 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) for a restaurant located in a quota area with a population of 20,000 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 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 50% 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 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 40% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and

(iv) for a restaurant located in a quota area that ~~is~~ was also a resort community prior to [the effective date of this act]~~, as the resort community is~~ that had been designated by the department of commerce under 7-6-1501(5) as that section read prior to [the effective date of this act], if the number of restaurant beer and wine licenses issued in the quota area that ~~is~~ was also a resort community 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.

(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)(iii), 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 subsections (8)(a)(i) through (8)(a)(iii), there must be a one-time adjustment of one additional license 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) (a) 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 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) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants from previous selections must also be given a preference. An applicant with both preferences must be awarded a license before any applicant with only one 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.

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

(11) 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) The annual fee for a restaurant beer and wine license is $400.

(13) 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) 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) 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."

NEW SECTION. **Section 14. Codification instruction.** [Sections 1 through 8] are intended to be codified as an integral part of Title 7, chapter 6, and the provisions of Title 7, chapter 6, apply to [sections 1 through 8].

NEW SECTION. **Section 15. Saving clause.** [This act] does not affect rights and duties that matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

NEW SECTION. **Section 16. Effective date.** [This act] is effective on passage and approval.

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