

1 \_\_\_\_\_ BILL NO. \_\_\_\_\_

2 INTRODUCED BY \_\_\_\_\_  
3 (Primary Sponsor)

4 A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING WINE TASTING EVENTS ON THE PREMISES OF  
5 A LICENSED RETAILER OF WINE, BEER, OR ALCOHOLIC BEVERAGES FOR ON-PREMISE  
6 CONSUMPTION; PROVIDING RESTRICTIONS ON TASTING EVENTS; AMENDING SECTIONS 16-2-107,  
7 16-3-302, 16-4-105, 16-4-110, 16-4-115, 16-4-201, 16-4-202, 16-4-208, 16-4-209, 16-4-303, 16-4-304, 16-4-305,  
8 AND 16-4-420, MCA; AND PROVIDING AN EFFECTIVE DATE."

9  
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

11  
12 **NEW SECTION. Section 1. Wine tasting event -- permit -- fee.** (1) An establishment licensed for the  
13 retail sale of wine for off-premises consumption may apply for a permit to host a wine tasting event on the  
14 premises of an establishment licensed for on-premises consumption. The holder of a permit may provide sample  
15 tasting of wine, without charge, on the licensed premises. The size of an individual sample serving at a tasting  
16 event may not exceed 2 ounces.

- 17 (2) The wine for a tasting event must be:  
18 (a) purchased from a distributor or winery;  
19 (b) delivered by the distributor or winery to the on-premises establishment; and  
20 (c) paid for by the off-premises licensee.

21 (3) The department may charge a permit application fee of \$50. The department may not deny a permit  
22 for a tasting event if the applicant's license is in good standing.

23 (4) An establishment may not host more than two tasting events in a calendar year.

24  
25 **Section 2.** Section 16-2-107, MCA, is amended to read:

26 **"16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises**  
27 **of agency store.** An agent and the agent's employees in an agency store may not allow any alcoholic beverage  
28 container to be opened on the premises of an agency liquor store or allow any alcoholic beverage to be  
29 consumed on the premises of an agency liquor store, nor may any person open an alcoholic beverage container  
30 or consume any alcoholic beverage in an agency liquor store. An agency store may not host a tasting event as



1 provided in [section 1]."

2

3 **Section 3.** Section 16-3-302, MCA, is amended to read:

4 **"16-3-302. Sale by retailer for consumption on premises -- tasting event.** (1) It is lawful for a licensed  
5 retailer to sell and serve beer, either on draught or in containers, to the public to be consumed on the premises  
6 of the retailer. A licensed retailer may host a tasting event as provided in [section 1].

7 (2) It is lawful for a licensee who has an all-beverages license that ~~he~~ the licensee uses at a golf course  
8 to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-109  
9 to sell beer and wine:

10 (a) in the building or other structural premises constituting the clubhouse or primary indoor recreational  
11 quarters of the golf course; and

12 (b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other  
13 movable satellite device that is moved from place to place, whether inside or outside of a building or other  
14 structure.

15 (3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within the  
16 boundaries of the golf course, whether inside or outside of a building or other structure."

17

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

19 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license**  
20 **-- exceptions -- tasting event.** (1) Except as otherwise provided by law, a license to sell beer at retail or beer  
21 and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued  
22 to any person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified  
23 to sell beer, except that:

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

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

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

1 for every 500 inhabitants;

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

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

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

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

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

1 regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3,  
2 5, or 6.

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

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

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

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

23 (5) The holder of a license under this section may host a tasting event as provided in [section 1]."  
24

25 **Section 5.** Section 16-4-110, MCA, is amended to read:

26 **"16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted men's,**  
27 **noncommissioned officers', or officers' club -- tasting event.** (1) Upon application and qualification, the  
28 department shall issue a license to sell beer for consumption on the premises to:

29 (a) a tribal alcoholic beverages licensee who operates ~~such~~ the business within the exterior boundaries  
30 of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

1 (b) an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military  
2 reservation in Montana on May 13, 1985.

3 (2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of  
4 16-4-105.

5 (3) Upon application and approval by the department, a license issued under subsection (1)(a) may be  
6 transferred to another qualified applicant, but only to a location within the quota area and the exterior boundaries  
7 of the Montana Indian reservation for which the license was originally issued.

8 (4) A license issued under this section is subject to all statutes and rules governing licenses to sell beer  
9 at retail for on-premises consumption.

10 (5) The holder of a license under this section may host a tasting event as provided in [section 1]."

11

12 **Section 6.** Section 16-4-115, MCA, is amended to read:

13 **"16-4-115. Beer and wine licenses for off-premises consumption -- tasting events.** (1) A retail  
14 license to sell beer or table wine, or both, in the original packages for off-premises consumption may be issued  
15 only to a person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified  
16 to sell beer or table wine, or both, and whose premises proposed for licensing are operated as a bona fide  
17 grocery store or a drugstore licensed as a pharmacy. The number of licenses that the department may issue is  
18 not limited by the provisions of 16-4-105 but must be determined by the department in the exercise of its sound  
19 discretion, and the department may in the exercise of its sound discretion grant or deny an application for any  
20 license or suspend or revoke any license for cause.

21 (2) Upon receipt of a completed application for a license under this section, accompanied by the  
22 necessary license fee as provided in 16-4-501, the department shall request that the department of justice make  
23 a background investigation of all matters relating to the application.

24 (3) Based on the results of the investigation or in exercising its sound discretion as provided in  
25 subsection (1), the department shall determine whether:

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

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

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

30 (4) License applications submitted under this section are not subject to the provisions of 16-4-203 and

1 16-4-207.

2 (5) If the premises proposed for licensing under this section are a new or remodeled structure, the  
3 department may issue a conditional license prior to completion of the premises upon reasonable evidence that  
4 the premises will be suitable for the carrying on of business as a bona fide grocery store or a drugstore licensed  
5 as a pharmacy.

6 (6) The holder of a license under this section may host a tasting event as provided in [section 1].  
7

8 **Section 7.** Section 16-4-201, MCA, is amended to read:

9 **"16-4-201. All-beverages license quota -- tasting event.** (1) Except as otherwise provided by law, a  
10 an all-beverages license to sell liquor, beer, and table wine at retail, ~~an all-beverages license~~, in accordance with  
11 the provisions of this code and the rules of the department may be issued to any person who is approved by the  
12 department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages  
13 licenses that the department may issue for premises situated within incorporated cities and incorporated towns  
14 and within a distance of 5 miles from the corporate limits of those cities and towns must be determined on the  
15 basis of population prescribed in 16-4-502 as follows:

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

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

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

24 (2) The number of the inhabitants in cities and towns, exclusive of the number of inhabitants residing  
25 within a distance of 5 miles from the corporate limits of the cities or towns, governs the number of retail licenses  
26 that may be issued for use within the cities and towns and within a distance of 5 miles from the corporate limits  
27 of the cities or towns. If two or more incorporated municipalities are situated within a distance of 5 miles from each  
28 other, the total number of retail licenses that may be issued for use in both of the municipalities and within a  
29 distance of 5 miles from their respective corporate limits must be determined on the basis of the combined  
30 populations of both of the municipalities and may not exceed the limitations in subsection (1) or this subsection.

1 The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured  
2 in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate  
3 boundary of the city or town.

4 (3) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under  
5 16-4-209, which are in excess of the limitations in subsections (1) and (2) must be renewable, but new licenses  
6 may not be issued in violation of the limitations.

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

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

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

19 (7) The holder of a license under this section may host a tasting event as provided in [section 1].  
20

21 **Section 8.** Section 16-4-202, MCA, is amended to read:

22 **"16-4-202. Resort retail all-beverages licenses -- tasting event.** (1) It is the intent and purpose of this  
23 section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to  
24 provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail  
25 all-beverages licenses may be issued by the department under the terms of this section. In addition to the  
26 licenses set forth in this code, the department may issue one resort retail all-beverages license for the first 100  
27 accommodation units and an additional license for each additional 50 accommodation units in a resort area.  
28 Regardless of how many resort area all-beverages licenses are issued, no more than 20 gambling machine  
29 permits may be issued for the resort area.

30 (2) (a) For the purposes of this section, "resort area" means a recreational facility meeting the

1 qualifications determined by the department and as otherwise provided in this section.

2 (b) The term does not include any land or improvements that lie wholly within the boundaries of a quota  
3 area as described in 16-4-201(1).

4 (3) The department shall determine that the area for which licenses are to be issued is a resort area  
5 pursuant to rules.

6 (4) (a) In addition to the other requirements of this code, a resort area, for the purposes of qualification  
7 for the issuance of a resort retail all-beverages license, must:

8 (i) have a current actual valuation of resort or recreational facilities, including land and improvements,  
9 of not less than \$500,000, at least half of which valuation must be for a structure or structures within the resort  
10 area;

11 (ii) be under the sole ownership or control of one person or entity at the time of the filing of the resort area  
12 plat referred to in subsection (5);

13 (iii) contain a minimum of 50 acres of land;

14 (iv) contain a minimum of 100 overnight guest accommodation units, each unit capable of being  
15 separately locked by the occupants and containing sleeping, bath, and toilet facilities; and

16 (v) provide on the grounds of the resort the recreational facilities that warrant the resort designation being  
17 granted.

18 (b) For the purposes of this section, "control" means land or improvements that are owned or that are  
19 held under contract, lease, option, or permit.

20 (5) The resort area must be determined by the resort area developer or landowner by a plat setting forth  
21 the resort area boundaries and designating the ownership of the lands within the resort area. The plat must be  
22 verified by the resort area developer or landowner and must be filed with the department prior to the filing of any  
23 applications for resort retail all-beverages licenses within the resort area. The plat must show the location and  
24 general design of the buildings and other improvements existing or to be built in the resort area. A master plan  
25 for the development of the resort area may be filed by the resort area developer in satisfaction of this section.

26 (6) Within 7 days after the plat is filed, the department shall schedule a public hearing to be held in the  
27 proposed area to determine whether the facility proposed by the resort area developer or landowner is a resort  
28 area. At least 30 days prior to the date of the hearing, the department shall publish notice of the hearing in a  
29 newspaper published in the county or counties in which the resort area is located, once a week for 4 consecutive  
30 weeks. The notice must include a description of the proposed resort area. Each resort area developer or

1 landowner shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs  
2 of publication.

3 (7) Any person may present, in person or in writing, a statement to the department at the hearing in  
4 opposition to or support of the plat.

5 (8) Within 30 days after the hearing, the department shall accept or reject the plat. If the plat is rejected,  
6 the department shall state its reasons and set forth the conditions, if any, under which the plat will be accepted.  
7 The decision of the department may be reviewed pursuant to the review procedure set forth in 16-4-406.

8 (9) Once filed with the department, the boundaries of a resort area may not be changed without:  
9 (a) a hearing, noticed and conducted in the same manner as provided in subsections (6) and (7); and  
10 (b) the prior approval of the department, determined according to public convenience and necessity.

11 (10) (a) When the department has accepted a plat and a given resort area has been determined,  
12 applications may be filed with the department for the issuance of resort retail all-beverages licenses within the  
13 resort area.

14 (b) Each applicant shall submit plans showing the location, appearance, and floor plan of the premises  
15 for which application for a resort retail all-beverages license is made.

16 (c) If an applicant otherwise qualifies for a resort retail all-beverages license but the premises to be  
17 licensed are still in construction or are otherwise incomplete at the time that application is made, the department  
18 shall issue a letter stating that the license will be issued at the time that the qualifications for a licensed premises  
19 have been met. The letter must set forth specific time limitations and requirements that the department may  
20 establish.

21 (11) In addition to the restrictions on sale or transfer of a license as provided in 16-4-204 and 16-4-404,  
22 a resort retail all-beverages license may not be sold or transferred for operation at a location outside of the  
23 boundaries of the resort area.

24 (12) A resort retail all-beverages license is not subject to the quota limitations set forth in 16-4-201, and  
25 if the requirements of this section have been met, a resort retail all-beverages license must be issued by the  
26 department on the basis that the department has determined that the license is justified by public convenience  
27 and necessity, in accordance with the procedure required in 16-4-207.

28 (13) The holder of a license under this section may host a tasting event as provided in [section 1]."  
29

30 **Section 9.** Section 16-4-208, MCA, is amended to read:

1           **"16-4-208. Airport all-beverages license -- tasting event.** (1) The department of revenue shall issue  
 2 one all-beverages license, to be known as a public airport all-beverages license, for use at each publicly owned  
 3 airport served by scheduled airlines and enplaning and deplaning a minimum total of 20,000 passengers annually  
 4 **when:**

5           (a) when application is made;  
 6           (b) upon finding that this license is justified by public convenience and necessity, including the  
 7 convenience and necessity of the public traveling by scheduled airlines; and  
 8           (c) following a hearing as provided in 16-4-207.

9           (2) Application ~~shall~~ must be made by the agency owning and operating the airport. The agency owning  
 10 and operating the airport may lease the airport all-beverages license to an individual or entity approved by the  
 11 department.

12           (3) A public airport all-beverages license and all retail alcoholic beverage sales ~~thereunder shall be under~~  
 13 the license are subject to all statutes and rules governing all-beverages licenses.

14           (4) The department of revenue shall issue a public airport all-beverages license to a qualified applicant  
 15 regardless of the number of all-beverages licenses already issued within the all-beverages license quota area  
 16 in which the airport is situated.

17           (5) The holder of a license under this section may host a tasting event as provided in [section 1]."  
 18

19           **Section 10.** Section 16-4-209, MCA, is amended to read:

20           **"16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted men's,  
 21 noncommissioned officers', or officers' club -- tasting event.** (1) Upon application and qualification, the  
 22 department shall issue an all-beverages license to:

23           (a) a tribal alcoholic beverages licensee who operates ~~such~~ the business within the exterior boundaries  
 24 of a Montana Indian reservation under a tribal license issued prior to January 1, 1985;

25           (b) an enlisted men's, noncommissioned officers', or officers' club located on a state or federal military  
 26 reservation in Montana on May 13, 1985.

27           (2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of  
 28 16-4-201.

29           (3) Upon application and approval by the department, a license issued under subsection (1)(a) may be  
 30 transferred to another qualified applicant, but ~~such~~ the license may ~~only~~ be transferred only to a location within

1 the quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally  
2 issued.

3 (4) A license issued under this section is subject to all statutes and rules governing all-beverages  
4 licenses.

5 (5) The holder of a license under this section may host a tasting event as provided in [section 1].  
6

7 **Section 11.** Section 16-4-303, MCA, is amended to read:

8 **"16-4-303. Special beer and table wine license for nonprofit arts organizations -- tasting event.**

9 (1)(a) A nonprofit arts organization ~~as defined in subsection (4)~~ is entitled to a special beer and table wine license  
10 to sell beer and table wine to patrons of exhibitions, productions, performances, or programs sponsored or  
11 presented by the organization in a specific theatre or other appropriately designated place for on-premises  
12 consumption.

13 (b) The holder of a license under this section may host a tasting event as provided in [section 1].

14 (2) The proceeds derived from sales of beer and table wine, except for reasonable operating costs, must  
15 be used to further the purposes of the organization.

16 (3) The department ~~shall~~ must have access to the organization's records to determine whether the  
17 organization is entitled to a license under this section.

18 (4) For the purposes of this section, the term "nonprofit arts organization" means an organization  
19 governed under Title 35, chapter 2, that is organized and operated for the principal purpose of providing artistic  
20 or cultural exhibitions, presentations, or performances for viewing or attendance by the general public. Assets  
21 of the corporation must be irrevocably dedicated to the activities for which the license is granted and, on the  
22 liquidation, dissolution, or abandonment by the corporation, may not inure directly or indirectly to the benefit of  
23 a member or individual except a nonprofit organization, association, or corporation. An artistic or cultural  
24 exhibition, presentation, or performance includes:

25 (a) an exhibition or presentation of works of art or objects of cultural or historical significance, such as  
26 those commonly displayed in art or history museums; and

27 (b) a musical or dramatic performance or series of performances.

28 (5) A license issued under this section is not subject to the provisions of 16-4-105."  
29

30 **Section 12.** Section 16-4-304, MCA, is amended to read:

1           **"16-4-304. Beer and wine license for Yellowstone airport -- tasting event.** (1) Upon application, the  
 2 department of revenue shall issue a retail beer and wine license to the Yellowstone airport, which is an airport  
 3 near West Yellowstone, Montana, owned by the state of Montana and operated by the department of  
 4 transportation.

5           (2) The application must be made by the department of transportation. The department of transportation  
 6 may lease the license of use at the airport to an individual or entity approved by the department of revenue.

7           (3) The license is valid for the retail sale of beer and wine.

8           (4) The lessee shall pay to the department of revenue an annual license fee as provided in 16-4-501.

9           (5) The license issued pursuant to this section:

10          (a) is not subject to the quota provisions of 16-4-105;

11          (b) is nontransferable;

12          (c) does not permit gambling activities otherwise allowed under Title 23, part 5.

13          (6) The holder of a license under this section may host a tasting event as provided in [section 1]."  
 14

15           **Section 13.** Section 16-4-305, MCA, is amended to read:

16           **"16-4-305. Montana heritage retail alcoholic beverage licenses -- use -- quota -- tasting event.**

17          (1) (a) The Montana heritage preservation and development commission may use Montana heritage retail  
 18 alcoholic beverage licenses<sub>2</sub> within the quota area in which the licenses were originally issued, for the purpose  
 19 of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10.  
 20 The licenses are to be considered when determining the appropriate quotas for issuance of other retail liquor  
 21 licenses.

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

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

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

28          (b) The holder of a license under this section may host a tasting event as provided in [section 1].

29          (4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are  
 30 all-beverages liquor licenses and retail on-premises beer licenses that have been transferred to the Montana

1 heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of  
2 1999."

3

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

5 **"16-4-420. Restaurant beer and wine license -- tasting event.** (1) The department shall issue a  
6 restaurant beer and wine license to an applicant whenever the department determines that the applicant, in  
7 addition to satisfying the requirements of this section, meets the following qualifications and conditions:

8 (a) in the case of an individual applicant:

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

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

13 (b) in the case of a corporate applicant:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6 (6) For purposes of this section, "restaurant" means a public eating place where individually priced meals  
7 are prepared and served for on-premises consumption. At least 65% of the restaurant's annual gross income from  
8 the operation must be from the sale of food and not from the sale of alcoholic beverages. Each year after a  
9 license is issued, the applicant shall file with the department a statement, in a form approved by the department,  
10 attesting that at least 65% of the gross income of the restaurant during the prior year resulted from the sale of  
11 food. The restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for  
12 the preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for  
13 use as a full-service restaurant. A full-service restaurant is a restaurant that provides an evening dinner meal.

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

18 (ii) A new owner may not transfer the license to a new location for a period of 1 year following the transfer  
19 of the license to the new owner.

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

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

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

27 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of  
28 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer  
29 and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may  
30 be issued in that quota area pursuant to 16-4-105;

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

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

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

13 (v) for a restaurant located in a quota area that is also a resort community, as the resort community is  
14 designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses  
15 issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer  
16 licenses that may be issued in that quota area pursuant to 16-4-105.

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

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

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

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

30 (b) Any applicant who operates a restaurant that meets the qualifications of subsection (6) for at least

1 12 months prior to the filing of an application must be given a preference, and any unsuccessful lottery applicants  
2 from previous selections must also be given a preference. An applicant with both preferences must be awarded  
3 a license before any applicant with only one preference.

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

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

12 (11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20%  
13 of the initial licensing fee. If the department does not make a decision either granting or denying the license within  
14 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate  
15 of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that  
16 the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the  
17 department denies an application, the application fee, plus any interest, less a processing fee established by rule,  
18 must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial  
19 licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

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

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

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

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

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

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

30 (15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming

1 or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a  
2 restaurant beer and wine license.

3 (16) The holder of a license under this section may host a tasting event as provided in [section 1]."

4  
5 NEW SECTION. Section 15. Codification instruction. [Section 1] is intended to be codified as an  
6 integral part of Title 16, chapter 4, part 3, and the provisions of Title 16, chapter 4, part 3, apply to [section 1].

7  
8 NEW SECTION. Section 16. Effective date. [This act] is effective July 1, 2009.

9 - END -