

HOUSE BILL NO. 643

INTRODUCED BY B. GRUBBS

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LIQUOR LICENSE QUOTA AREAS FOR
5 INCORPORATED CITIES THAT SHARE AN OVERLAPPING 5-MILE ZONE OUTSIDE THE CITY LIMITS;
6 PROVIDING TRANSITION CONDITIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS
7 16-4-105 AND 16-4-201, MCA; AND PROVIDING AN EFFECTIVE DATE."
8

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

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

12 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license**

13 **-- exceptions.** (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail,
14 in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm,
15 or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, except
16 that:

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

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

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

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

29 (b) the number of the inhabitants in each incorporated ~~cities and city~~ or incorporated ~~towns town,~~
30 exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the ~~cities~~

1 ~~city or towns town~~, governs the number of retail beer licenses that may be issued for use within the cities city and
 2 ~~towns town~~ and within a distance of 5 miles from the corporate limits of the cities city and ~~towns town~~ except when
 3 the 5-mile quota area of incorporated cities or towns overlaps, subject to the provisions of subsections (1)(b)(i)
 4 and (1)(b)(iii).

5 (i) Subject to the provisions of subsection (5), if the 5-mile quota area of an incorporated city or town
 6 overlaps the 5-mile quota area of another incorporated city or town, the quota area for each incorporated city or
 7 town terminates equidistant between the two incorporated cities or towns, measured as provided in subsection
 8 (1)(b)(iii).

9 (ii) The 5-mile extension for a quota area continues for areas that are not subject to subsection (1)(b)(i).
 10 ~~If two or more incorporated municipalities are situated within a distance of 5 miles from each other, the total~~
 11 ~~number of retail beer licenses that may be issued for use in both the incorporated municipalities and within a~~
 12 ~~distance of 5 miles from their respective corporate limits must be determined on the basis of the combined~~
 13 ~~populations of both municipalities and may not exceed the limitations in this section. The~~

14 (iii) To determine the distance of 5 miles from the corporate limits of any incorporated city or incorporated
 15 town the measurement to be used must be measured in a straight line from the nearest entrance of the premises
 16 proposed for licensing to the nearest corporate boundary of the city or town.

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

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

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

1 The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling,
2 regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3,
3 5, or 6.

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

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

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

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

24 (5) For a period of 5 years after [the effective date of this act], existing licenses as of [the effective date
25 of this act] in a quota area that is split equidistant between two incorporated cities or towns may be transferred
26 between the two quota areas if they were part of a combined quota area prior to [the effective date of this act].
27 When the 5-year transition period expires, the licenses in each quota area may be transferred only within the new
28 quota area."

29

30 **Section 2.** Section 16-4-201, MCA, is amended to read:

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

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

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

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

16 **(b)** Except as provided in subsection (2), the quota area for a retail license for incorporated cities or
 17 towns extends to a distance of 5 miles from the corporate limits of the city or town. The quota area measurement
 18 is as provided in subsection (2)(b).

19 **(2)** (a) (i) Subject to the provisions of subsection (7), if the 5-mile quota area of an incorporated city or
 20 town overlaps the 5-mile quota area of another incorporated city or town, the quota area for each incorporated
 21 city or town terminates equidistant between the two incorporated cities or towns, measured as provided in
 22 subsection (2)(b).

23 (ii) The 5-mile extension for a quota area continues for areas that are not subject to subsection (2)(a)(i).

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

2 (b) To determine the distance of 5 miles from the corporate limits of any incorporated city or incorporated
3 town the measurement to be used must be measured in a straight line from the nearest entrance of the premises
4 proposed for licensing to the nearest corporate boundary of the city or town.

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

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

13 (5) The number of retail all-beverages licenses that the department may issue for use at premises
14 situated outside of any incorporated city or incorporated town and outside of the area within a the distance of 5
15 miles from the corporate limits of a city or town as provided in subsections (1) and (2) may not be more than one
16 license for each 750 population of the county after excluding the population of incorporated cities and
17 incorporated towns in the county.

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

21 (7) For a period of 5 years after [the effective date of this act], licenses in existence prior to [the effective
22 date of this act] that were in a combined quota area may continue to be transferred between the two quota areas.
23 When the 5-year transition period expires, the licenses in each quota area may be transferred only within the new
24 quota area subject to the provisions of 16-4-204(1)."

25
26 **NEW SECTION. Section 3. Limit on new licenses within 5-mile zones -- rulemaking.** (1) After the
27 department determines that the equidistant provisions for a quota area apply as provided in 16-4-105(1)(b)(i) or
28 16-4-201(2)(a)(i), the department shall make available through lottery one all-beverages license, one retail beer
29 and wine license, and one restaurant beer and wine license each year until the applicable quotas are met.

30 (2) The department may adopt rules to implement this section.

