

SENATE BILL NO. 344

INTRODUCED BY F. MOORE

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A BILL FOR AN ACT ENTITLED: "AN ACT REVISING LAWS PERTAINING TO LIQUOR LICENSE FINANCING; PROVIDING THAT REGULATED LENDERS MAY USE LIQUOR LICENSES AS COLLATERAL; PROVIDING THAT LIQUOR LICENSE COLLATERAL IS ACCORDING TO THE SAME CREDIT TERMS AND STRUCTURE AS USED FOR ANY OTHER COMMERCIAL OR REAL ESTATE FINANCING TRANSACTION; PROVIDING FOR A FEE; AMENDING SECTIONS 16-4-801 AND 23-5-118, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

Section 1. Section 16-4-801, MCA, is amended to read:

"16-4-801. Security interest in liquor license. (1) (a) A security interest in a liquor license is an interest in the liquor license that secures payment or performance of an obligation. A contract for the sale of a liquor license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) "default" means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the liquor license;

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; or

(C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department; and

(ii) "liquor license" means a license issued under this chapter.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of a liquor license subject to a security interest as provided in subsection (1). A person

1 holding a security interest may not have any control in the operation of the business operated under a license
2 subject to a security interest nor may that person share in the profits or the liabilities of the business other than
3 the payment or performance of the licensee's obligation under a security agreement.

4 (3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice
5 to the department of the licensee's default and either apply to have the license transferred to that person, subject
6 to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person
7 shall place the license on nonuser status. Upon receipt of an application to transfer the license, the department
8 may, pursuant to 16-4-404, grant the applicant temporary authority to operate the license. If the person holding
9 the license places the license on nonuser status, the person shall transfer ownership of the license within 180
10 days from the date on which the notice of the default was given to the department. The operation of a business
11 under a license by a person holding a security interest for more than 7 days after default of the licensee or without
12 temporary authority issued by the department must be considered to be a violation of this code and constitutes
13 grounds for the department to either deny an application for transfer of the license or for the revocation of the
14 license pursuant to 16-4-406.

15 (b) If the person holding the security interest does not qualify for or cannot qualify for ownership of a
16 liquor license under 16-4-401, the secured party shall transfer ownership of the liquor license within 180 days of
17 the notice of the default of the licensee.

18 (c) The department, upon a showing of good cause, may in its discretion extend the time for sale of the
19 license for an additional period of up to 180 days.

20 (4) (a) A regulated lender, as defined in 31-1-111, may obtain a security interest in a liquor license in
21 order or in other assets of a business operating a liquor license to secure a loan or a guaranty of a loan. This
22 section does not prohibit or limit the ability of a A regulated lender to may use loan and security collateral
23 documentation and loan and collateral structure consistent with that used by the regulated lender in commercial
24 loans generally, and the documentation and structure used by the lender does do not constitute control of the
25 operation of the business or the licensee operating the business that is subject to the security interest create an
26 undisclosed ownership interest by a coborrower or guarantor in the liquor license or the licensee's business. As
27 used in this subsection (4), permissible loan and collateral structuring includes but is not limited to permitting
28 owners and nonowners of a liquor license to:

29 (i) be coborrowers of a borrower's loan, subject to the coborrower meeting the requirements of 16-4-401;

30 (ii) be guarantors of a borrower's loan, subject to the guarantor meeting the requirements of 16-4-401,

1 with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting
 2 from the guarantor; or

3 (iii) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan, subject to the
 4 owner of the assets meeting the requirements of 16-4-401.

5 (b) A person claiming a security interest in a liquor license may notify the department of the claimed
 6 security interest by submitting to the department copies of documents evidencing the security interest, the license
 7 number, and a \$10 fee. The department must deposit the fee as provided in 16-2-108.

8 ~~_____ (c) The department shall notify persons of record that claim a security interest in a liquor license prior~~
 9 ~~to revocation or nonrenewal of a license under 16-4-406 or lapse of a license under 16-3-310. The department~~
 10 ~~shall provide the notification by sending to the holder of the security interest, by certified mail, a copy of the~~
 11 ~~department's notice to the licensee of the licensee's right to a hearing under the Montana Administrative~~
 12 ~~Procedure Act.~~

13 (B) A PERSON CLAIMING A SECURITY INTEREST IN A LIQUOR LICENSE MAY SUBMIT TO THE DEPARTMENT COPIES
 14 OF DOCUMENTS EVIDENCING THE SECURITY INTEREST, THE LICENSE NUMBER, AND A \$30 NOTIFICATION FEE. THE
 15 DEPARTMENT SHALL DEPOSIT THE FEE AS PROVIDED IN 16-2-108. THE DEPARTMENT MAY CREATE AND PROVIDE A FORM
 16 TO BE USED FOR THIS PURPOSE.

17 (C) THE DEPARTMENT SHALL NOTIFY BY CERTIFIED MAIL THOSE THAT HAVE FILED INFORMATION PROVIDED IN
 18 SUBSECTION (4)(B):

19 (I) AT LEAST 20 DAYS PRIOR TO ISSUANCE OF AN ORDER OF DEFAULT FOR REVOCATION, NONRENEWAL, OR LAPSE
 20 OF A LICENSE; OR

21 (II) IMMEDIATELY AFTER THE DEPARTMENT'S OFFICE OF DISPUTE RESOLUTION HAS ISSUED A DECISION TO UPHOLD
 22 THE DEPARTMENT'S REVOCATION OR NONRENEWAL OF A LICENSE UNDER 16-4-406 OR LAPSE OF A LICENSE UNDER
 23 16-3-310.

24 (5) When a licensee is the borrowing entity and if a coborrower or guarantor is a shareholder, partner,
 25 or member of the borrowing entity and the coborrower or guarantor was previously vetted and approved under
 26 16-4-401, the coborrower or guarantor may make a payment on an institutional loan secured by a liquor license.
 27 If a payment is made under this subsection (5):

28 (a) the licensee must notify the department within 90 days that the payment was made and designate
 29 whether the payment will be treated as a loan or an equity investment as follows:

30 (i) for a payment treated as a loan, the licensee must memorialize the loan by a written agreement, which

1 must be provided to the department; or
 2 (ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as a result,
 3 the licensee must follow department requirements for disclosing changes in ownership percentages; and
 4 (b) the funds used for the payment must be the coborrower's or guarantor's own funds, funds borrowed
 5 from an institutional lender, or funds borrowed from a noninstitutional source approved under 16-4-401.
 6 (6) If a coborrower or guarantor is not a shareholder, partner, or member of the borrowing entity, the
 7 coborrower or guarantor may make a payment on an institutional loan secured by a liquor license. If a payment
 8 is made under this subsection (6):
 9 (a) the licensee must notify the department within 90 days that the payment was made;
 10 (b) the payment must be made as a loan that is memorialized by a written agreement; and
 11 (c) the funds used for the payment must be the coborrower's or guarantor's own funds, funds borrowed
 12 from an institutional lender, or funds borrowed from a noninstitutional source approved under 16-4-401.
 13 (7) A regulated lender that obtains a security interest in a liquor license or in other assets of a business
 14 operating a liquor license has no duty to ensure a coborrower's or guarantor's compliance with the requirements
 15 of subsection (5) or (6) in connection with loan or guaranty payments it may receive from the coborrower or
 16 guarantor."

17
 18 **Section 2.** Section 23-5-118, MCA, is amended to read:

19 **"23-5-118. Transfer of ownership interest.** (1) In this section, "licensed gambling operation" means
 20 a business for which a license was obtained under parts 1 through 8 of this chapter.

21 (2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall
 22 notify the department in writing and receive approval from the department before transferring any ownership
 23 interest in the operation.

24 (3) This section does not apply to the transfer of a security interest in a licensed gambling operation
 25 under the requirements of subsection (4) or to the transfer of less than 5% of the interest in a publicly traded
 26 corporation.

27 (4) A regulated lender, as defined in 31-1-111, may obtain a security interest in the assets of a licensed
 28 gambling operation to secure a loan or a guaranty of a loan. A regulated lender may use loan and collateral
 29 documentation and loan and collateral structure consistent with that used by the regulated lender in commercial
 30 loans generally, and the documentation and structure used by the lender do not create an undisclosed ownership

1 interest by a coborrower or guarantor in the licensee's business. As used in this subsection (4), permissible loan
2 and collateral structuring includes but is not limited to permitting owners and nonowners of a licensed gambling
3 operation to:

4 (a) be coborrowers of a borrower's loan, subject to the coborrower meeting the requirements of 23-5-176;

5 (b) be guarantors of a borrower's loan, subject to the guarantor meeting the requirements of 23-5-176,

6 with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting
7 from the guarantor; or

8 (c) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan, subject to the
9 owner of the assets meeting the requirements of 23-5-176.

10 (5) When a licensee is the borrowing entity and if a coborrower or guarantor is a shareholder, partner,
11 or member of the borrowing entity and the coborrower or guarantor was previously vetted and approved under
12 23-5-176, the coborrower or guarantor may make a payment on the borrowing entity's institutional loan. If a
13 payment is made under this subsection (5):

14 (a) the licensee must notify the department within 90 days that the payment was made and designate
15 whether the payment will be treated as a loan or an equity investment as follows:

16 (i) for a payment treated as a loan, the licensee must memorialize the loan by a written agreement, which
17 must be provided to the department; or

18 (ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as a result,
19 the licensee must follow department requirements for disclosing changes in ownership percentages; and

20 (b) the funds used for the payment must be the coborrower's or guarantor's own funds, funds borrowed
21 from an institutional lender, or funds borrowed from a noninstitutional source approved under 23-5-176.

22 (6) If a coborrower or guarantor is not a shareholder, partner, or member of the borrowing entity, the
23 coborrower or guarantor may make a payment on the borrowing entity's institutional loan. If a payment is made
24 under this subsection (6):

25 (a) the licensee must notify the department within 90 days that the payment was made;

26 (b) the payment must be made as a loan that is memorialized by a written agreement; and

27 (c) the funds used for the payment must be the coborrower's or guarantor's own funds, funds borrowed
28 from an institutional lender, or funds borrowed from a noninstitutional source approved under 23-5-176.

29 (7) A regulated lender that obtains a security interest in the assets of a licensed gambling operation has
30 no duty to ensure a coborrower's or guarantor's compliance with the requirements of subsection (5) or (6) in

1 connection with loan or guaranty payments it may receive from the coborrower or guarantor."

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3 NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

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