

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 -- DEFINITION. (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 IN THE LIQUOR LICENSE OR THE LICENSEE'S BUSINESS by a coborrower or guarantor
 27 in the liquor license or the licensee's business IF THE DEPARTMENT DETERMINES THE BORROWER, COBORROWER,
 28 GUARANTOR, AND OWNER OR OWNERS OF THE ASSETS PLEDGED AS COLLATERAL MEET THE REQUIREMENTS OF 16-4-401.
 29 As used in this subsection (4), permissible loan and collateral structuring includes but is not limited to permitting
 30 owners and nonowners of a liquor license to:

- 1 ~~(i) be coborrowers of a borrower's loan, subject to the coborrower meeting the requirements of 16-4-401;~~
- 2 ~~(ii) be guarantors of a borrower's loan, subject to the guarantor meeting the requirements of 16-4-401,~~
- 3 ~~with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting~~
- 4 ~~from the guarantor; or~~
- 5 ~~(iii) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan, subject to the~~
- 6 ~~owner of the assets meeting the requirements of 16-4-401.~~
- 7 ~~(b) A person claiming a security interest in a liquor license may notify the department of the claimed~~
- 8 ~~security interest by submitting to the department copies of documents evidencing the security interest, the license~~
- 9 ~~number, and a \$10 fee. The department must deposit the fee as provided in 16-2-108.~~
- 10 ~~—— (c) The department shall notify persons of record that claim a security interest in a liquor license prior~~
- 11 ~~to revocation or nonrenewal of a license under 16-4-406 or lapse of a license under 16-3-310. The department~~
- 12 ~~shall provide the notification by sending to the holder of the security interest, by certified mail, a copy of the~~
- 13 ~~department's notice to the licensee of the licensee's right to a hearing under the Montana Administrative~~
- 14 ~~Procedure Act.~~
- 15 ~~(B) A PERSON CLAIMING A SECURITY INTEREST IN A LIQUOR LICENSE MAY SUBMIT TO THE DEPARTMENT COPIES~~
- 16 ~~OF DOCUMENTS EVIDENCING THE SECURITY INTEREST, THE LICENSE NUMBER, AND A \$30 NOTIFICATION FEE. THE~~
- 17 ~~DEPARTMENT SHALL DEPOSIT THE FEE AS PROVIDED IN 16-2-108. THE DEPARTMENT MAY CREATE AND PROVIDE A FORM~~
- 18 ~~TO BE USED FOR THIS PURPOSE.~~
- 19 ~~(C) THE DEPARTMENT SHALL NOTIFY BY CERTIFIED MAIL THOSE THAT HAVE FILED INFORMATION PROVIDED IN~~
- 20 ~~SUBSECTION (4)(B):~~
- 21 ~~(I) AT LEAST 20 DAYS PRIOR TO ISSUANCE OF AN ORDER OF DEFAULT FOR REVOCATION, NONRENEWAL, OR LAPSE~~
- 22 ~~OF A LICENSE; OR~~
- 23 ~~(II) IMMEDIATELY AFTER THE DEPARTMENT'S OFFICE OF DISPUTE RESOLUTION HAS ISSUED A DECISION TO UPHOLD~~
- 24 ~~THE DEPARTMENT'S REVOCATION OR NONRENEWAL OF A LICENSE UNDER 16-4-406 OR LAPSE OF A LICENSE UNDER~~
- 25 ~~16-3-310.~~
- 26 ~~(5) When a licensee is the borrowing entity and if a coborrower or guarantor is a shareholder, partner,~~
- 27 ~~or member of the borrowing entity and the coborrower or guarantor was previously vetted and approved under~~
- 28 ~~16-4-401, the coborrower or guarantor BORROWER, AN OWNER OF THE LICENSEE may make a payment on an THE~~
- 29 ~~institutional loan secured by a liquor license. If a payment is made under this subsection (5):~~
- 30 ~~(A) THE PARTY MAKING THE PAYMENT MUST BE VETTED AND APPROVED PRIOR TO MAKING THE PAYMENT;~~

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

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

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

7 (b)(C) the funds used for the payment must be the ~~coborrower's or guarantor's~~ PARTY'S own funds; OR
 8 funds borrowed from an institutional lender, ~~or funds borrowed from a noninstitutional source approved under~~
 9 ~~16-4-401.~~

10 (6) If a BORROWER, coborrower, or guarantor is not a shareholder, partner, or member of the borrowing
 11 entity THE LICENSEE OR AN OWNER OF THE LICENSEE, the coborrower or guarantor may make a payment on an THE
 12 institutional loan secured by a liquor license. If a payment is made under this subsection (6), AND THE PAYMENT
 13 DOES NOT CREATE AN UNDISCLOSED OWNERSHIP INTEREST IN THE LIQUOR LICENSE BY THE BORROWER, COBORROWER,
 14 OR GUARANTOR ONLY IF:

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

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

17 (c) the funds used for the payment ~~must be~~ ARE the coborrower's or guarantor's own funds; OR funds
 18 borrowed from an institutional lender, ~~or funds borrowed from a noninstitutional source approved under 16-4-401.~~

19 (7) A regulated lender that obtains a security interest in a liquor license or in other assets of a business
 20 operating a liquor license has no duty to ensure a coborrower's or guarantor's compliance with the requirements
 21 of subsection (5) or (6) in connection with loan or guaranty payments it may receive from the coborrower or
 22 guarantor.

23 (8) FOR THE PURPOSES OF SUBSECTIONS (5) AND (6), THE TERM "BORROWER" MEANS THE PARTY THAT IS
 24 PRIMARILY RESPONSIBLE FOR MAKING PAYMENTS AND THAT RECEIVES THE FUNDS OR ON WHOSE BEHALF THE FUNDS WERE
 25 PAID."

26
 27 **Section 2.** Section 23-5-118, MCA, is amended to read:
 28 **"23-5-118. Transfer of ownership interest -- DEFINITION.** (1) In this section, "licensed gambling
 29 operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

30 (2) Except as provided in subsection (3), an owner of an interest in a licensed gambling operation shall

1 notify the department in writing and receive approval from the department before transferring any ownership
2 interest in the operation.

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

6 (4) A regulated lender, as defined in 31-1-111, may obtain a security interest in the assets of a licensed
7 gambling operation to secure a loan or a guaranty of a loan. A regulated lender may use loan and collateral
8 documentation and loan and collateral structure consistent with that used by the regulated lender in commercial
9 loans generally, and the documentation and structure used by the lender do not create an undisclosed ownership
10 interest IN THE LICENSEE'S BUSINESS by a coborrower or guarantor in the licensee's business IF THE DEPARTMENT
11 DETERMINES THE BORROWER, COBORROWER, GUARANTOR, AND OWNER OR OWNERS OF THE ASSETS PLEDGED AS
12 COLLATERAL MEET THE REQUIREMENTS OF 23-5-176. As used in this subsection (4), permissible loan and collateral
13 structuring includes but is not limited to permitting owners and nonowners of a licensed gambling operation to:

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

15 (b) be guarantors of a borrower's loan, subject to the guarantor meeting the requirements of 23-5-176,
16 with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting
17 from the guarantor; or

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

20 (5) When a licensee is the borrowing entity and if a coborrower or guarantor is a shareholder, partner,
21 or member of the borrowing entity and the coborrower or guarantor was previously vetted and approved under
22 23-5-176, the coborrower or guarantor BORROWER, AN OWNER OF THE LICENSEE may make a payment on the
23 borrowing entity's institutional loan. If a payment is made under this subsection (5):

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

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

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

30 (b) the funds used for the payment must be the coborrower's or guarantor's PARTY'S own funds; OR funds

1 ~~borrowed from an institutional lender, or funds borrowed from a noninstitutional source approved under 23-5-176.~~

2 ~~(6) If a BORROWER, coborrower, or guarantor is not a shareholder, partner, or member of the borrowing~~
3 ~~entity THE LICENSEE OR AN OWNER OF THE LICENSEE, the coborrower or guarantor may make a payment on the~~
4 ~~borrowing entity's institutional loan. If a payment is made under this subsection (6), AND THE PAYMENT DOES NOT~~
5 ~~CREATE AN UNDISCLOSED OWNERSHIP IN THE LICENSEE'S BUSINESS BY THE BORROWER, COBORROWER, OR GUARANTOR~~
6 ~~ONLY IF:~~

- 7 ~~(a) the licensee must notify~~ NOTIFIES the department within 90 days that the payment was made;
 - 8 ~~(b) the payment must be~~ IS made as a loan that is memorialized by a written agreement; and
 - 9 ~~(c) the funds used for the payment must be~~ ARE the coborrower's or guarantor's own funds; OR funds
- 10 ~~borrowed from an institutional lender, or funds borrowed from a noninstitutional source approved under 23-5-176.~~

11 ~~(7) A regulated lender that obtains a security interest in the assets of a licensed gambling operation has~~
12 ~~no duty to ensure a coborrower's or guarantor's compliance with the requirements of subsection (5) or (6) in~~
13 ~~connection with loan or guaranty payments it may receive from the coborrower or guarantor.~~

14 ~~(8) FOR THE PURPOSES OF SUBSECTIONS (5) AND (6), THE TERM "BORROWER" MEANS THE PARTY THAT IS~~
15 ~~PRIMARILY RESPONSIBLE FOR MAKING PAYMENTS AND THAT RECEIVES THE FUNDS OR ON WHOSE BEHALF THE FUNDS WERE~~
16 ~~PAID."~~

17
18 NEW SECTION. Section 3. Effective date. [This act] is effective on passage and approval.

19 - END -