> HOUSE BILL NO. 35
> INTRODUCED BY E. BUTTREY BY REQUEST OF THE ECONOMIC AFFAIRS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LICENSING LAWS; REVISING LAWS RELATING TO COMPETITIVE BIDDING PROCESSES; REVISING PROCEDURES FOR COMPETITIVE BIDDING PROCESSES FOR ALL-BEVERAGES, RETAIL BEER AND WINE, AND RESTAURANT BEER AND WINE LICENSES; REMOVING THE TERMINATION DATE APPLICABLE TO COMPETITIVE BIDDING PROCESSES; REVISING LAWS RELATING TO QUOTA AREA DETERMINATIONS; PROVIDING RULEMAKING AUTHORITY; AMENDING SECTIONS 16-4-105, 16-4-201, 16-4-204, 16-4-207, 16-4-305, 16-4-306, 16-4-402, 16-4-420, AND 23-5-119, MCA; REPEALING SECTIONS 2, 5, 8, 10, 12, 14, AND 17, CHAPTER 5, SPECIAL LAWS OF NOVEMBER 2017; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND A RETROACTIVE APPLICABILITY DATE."

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

NEW SECTION. Section 1. Competitive bidding process -- all-beverages, retail beer and wine, and restaurant beer and wine licenses. (1) (A) When the department determines that a quota area is eligible for a license under 16-4-105, 16-4-201, 16-4-204, or 16-4-420, the department shall use a competitive bidding process to determine the party afforded the opportunity to apply for the license. THE DEPARTMENT SHALL USE A COMPETITIVE BIDDING PROCESS WHEN:
(I) A NEW LICENSE BECOMES AVAILABLE IN A QUOTA AREA WHERE A LICENSE OF THE SAME TYPE IS NOT CURRENTLY AVAILABLE IN THE QUOTA AREA;
(II) THE OPPORTUNITY TO TRANSFER A LICENSE INTO A QUOTA AREA BECOMES AVAILABLE WHERE A LICENSE OF THE SAME TYPE IS NOT CURRENTLY AVAILABLE IN THE QUOTA AREA;
(III) THE LAPSE, REVOCATION, OR ISSUANCE OF A LICENSE WITHIN THE QUOTA AREA WHERE THE LICENSE IS LOCATED HAS CREATED THE LAST REMAINING LICENSE FOR THAT LICENSE TYPE IN THE QUOTA AREA; OR
(IV) THE DEPARTMENT'S DENIAL OF AN APPLICATION FOR LICENSURE OR AN APPLICANT'S WITHDRAWAL OF AN APPLICATION FOR LICENSURE HAS CREATED THE LAST REMAINING LICENSE FOR THAT LICENSE TYPE IN A QUOTA AREA.
(B) The department shall:

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(a)(1) determine the minimum bid based on $75 \%$ of the market value of applicable licenses in the quota area;
(b)(II) publish notice that a quota area is eligible for a new license;
(e)(III) notify the bidder with the highest bid; and
(d)(IV) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has been approved.
(2) (A) To enter the competitive bidding process, a bidder shall submit:
(a)(I) an electronic bid form provided by the department; and
(b)(II) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary of at least the bid amount. THE FINANCIAL INSTITUTION MAY ISSUE THE IRREVOCABLE LETTER OF CREDIT

IN THE NAME OF THE BIDDER, IF THE BIDDER IS A BUSINESS ENTITY, OR IN THE NAME OF AN INDIVIDUAL WHO IS AN OWNER OF THE BUSINESS ENTITY.
(B) THE DEPARTMENT SHALL CONTACT ANY BIDDER WHOSE TIMELY SUBMITTED BID FORM HAS A DEFICIENCY AND SHALL PROVIDE THAT BIDDER WITH AN OPPORTUNITY TO RESUBMIT THE BID FORM WITHIN 5 BUSINESS DAYS TO CORRECT ANY DEFICIENCY.
(3) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must be the tied bid amount. To submit a new bid, a tied bidder shall submit:
(a) an electronic bid form provided by the department; and
(b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary of at least the new bid amount. THE FINANCIAL INSTITUTION MAY ISSUE THE IRREVOCABLE LETTER OF CREDIT IN THE NAME OF THE BIDDER, IF THE BIDDER IS A BUSINESS ENTITY, OR IN THE NAME OF AN INDIVIDUAL WHO IS AN OWNER OF THE BUSINESS ENTITY.
(4) The highest bidder shall:
(a) submit an application provided by the department and applicable fees for the license within 60 days of the department's notification of being the highest bidder;
(b) pay the bid amount prior to approval of the license;
(c) meet all other requirements to own the license; and
(d) commence business within 1 year of the department's notification, unless the department grants an extension because commencement was delayed by circumstances beyond the applicant's control. Any extension request must be made in writing to the department prior to the deadline for commencing business.

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(5) If the highest bidder is not approved to own the license, the department shall offer the license to the next highest bidder. That bidder shall comply with the requirements of subsection (4). If no qualified bidder is approved to own the license, the department shall reopen the competitive bidding process for the license.
(6) (a) If no bids are received during the competitive bidding process, the department shall reopen the bid at a lower bid amount than initially determined in subsection (1).
(b) If, after holding a competitive bidding process, the department determines that there is no significant market value for a particular license, the department may withdraw that license from the competitive bidding process and process applications for the license in the order received.
(c) If a quota area is already eligible for a license as of November 24, 2017, the department shall process applications for the license in the order received.
(7) (a) The successful applicant is subject to forfeiture of the license, the license fees, and the original bid amount if the successful applicant:
(i) transfers the awarded license to another person or business entity within 5 years 4 YLAR 10 YEARS 1 YEAR after receiving the license unless that transfer is due to a death of an owner;
(ii) proposes a location for the license WITHIN THE FIRST YEAR OF OPERATION that had the same license type within the previous 12 months; or
(iii) does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the successful applicant provides evidence that the delay in use is for reasons outside the applicant's control. Evidence of the delay must be made in writing to the department prior to the deadline for commencing business.
(b) If a license is forfeited, the department shall determine whether there is a lien against the license. If there is a lien, the department shall notify the lienholder or secured party of the forfeiture and the lienholder or secured party may foreclose on the license and request transfer of the license pursuant to $16-4-801$. If there is not a lien on the license or if the lienholder or secured party does not foreclose on the license pursuant to 16-4-801, the department shall conduct another competitive bidding process for the license.
(8) A license issued under this section is not aqualifieation for lieensure-of any gaming of gambling activity. A gaming or gambling activity may not oecur on the premises of a lieense issued pursuant to this-seetion ELIGIBLE TO OFFER GAMBLING UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.
(9) Nothing in subsection (7) relating to forfeiture prohibits a lienholder or secured party from foreclosing on a license. A lien may be placed on a license issued under this section and may be foreclosed on. If a license
is foreclosed on, the department shall keep the license fees and the original bid amount and the lienholder or secured party may resell the license, pending department approval of the applicant.

Section 2. Section 16-4-105, MCA, is amended to read:
"16-4-105. (Femporary) Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions -- competitive bidding -- rulemaking. (1) Except as provided in 16-4-109, 16-4-110, 16-4-115, 16-4-420, and chapter 4 , part 3 , of this title, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person or business entity that is approved by the department, subject to the following exceptions:
(a) The number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within adistance-of 5 miles frem of the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:
(i) in incorporated towns of 500 inhabitants or less fewer and within a distance of 5 miles from of the corporate limits of the towns, not more than one retail beer license;
(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over more than 2,000 inhabitants and within a distance of 5 miles from of the corporate limits of the cities or towns, one retail beer license for every 500 inhabitants;
(iii) in incorporated cities of ever more than 2,000 inhabitants and within adistanee of 5 miles from of the corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every each additional 2,000 inhabitants.
(b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within adistanee of 5 miles from of the corporate limits of the city or town, governs the number of retail beer licenses that may be issued for use within the city or town and within a distance of 5 miles from of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of any an incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A LICENSE THAT IS RESTRICTED BY QUOTA LIMITATIONS IN THIS SECTION MAY NOT BE LOCATED FARTHER THAN:
(I) THE COUNTY BOUNDARY WITHIN WHICH THE INCORPORATED CITY OR INCORPORATED TOWN IS LOCATED; OR
(II) THE LINE THAT SEPARATES THE INCORPORATED CITY'S OR INCORPORATED TOWN'S BOUNDARY FROM

## ANOTHER INCORPORATED CITY OR INCORPORATED TOWN AS SPECIFIED IN THIS SECTION.

(c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.
(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:
(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.
(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.
(C) In THE POLSON AND RONAN QUOTA AREAS, THE STRAIGHT LINE WILL BE DRAWN FROM U.S. HIGHWAY 93 WEST ON PABLO WEST ROAD TO THE QUOTA AREA BOUNDARY AND EAST ON CLAIRMONT ROAD EXTENDING OUT TO THE QUOTA AREA BOUNDARY. ANY LICENSE EXISTING AS OF NOVEMBER 24, 2017, WITHIN THE POLSON QUOTA AREA WILL BECOME A POLSON LICENSE, REGARDLESS OF WHERE IT FALLS IN THE NEW QUOTA AREAS. ANY LICENSE EXISTING AS OF NOVEMBER24, 2017, WITHIN THE RONAN QUOTAAREA WILL BECOME A RONAN LICENSE, REGARDLESS OF WHERE IT FALLS IN THE NEW QUOTA AREAS.
(d) Retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in violation of the limitations.
(e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.
(f) The number of retail beer licenses that the department may issue for use at premises situated outside

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of any incorporated city or incorporated town and outside of the area within adistance of 5 miles from of the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (12) (7) does not apply to licenses issued under this subsection (1)(f). The owner of the license whose premises are situated outside of an incorporated city or incorporated town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5 , part 3,5 , or 6 .
(2) (a) For a period of 12 years after November 24, 2017, existing licenses OR LICENSES THAT RESULTED FROM APPLICATIONS IN PROCESS as of November 24, 2017, in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two quota areas if they were part of a THE combined quota area prior to November 24, 2017.
(b) If any new retail beer licenses are allowed by separating a combined quota area that existed as of November 24,2017 , as provided in subsection (1)(c), the department shall publish the availability of no more than one new beer license a year until the quota has been reached.
(C) IF ANY NEW RETAIL BEER LICENSES ARE ALLOWED BY LICENSE TRANSFERS AS PROVIDED IN SUBSECTION (2)(A), THE DEPARTMENT MAY PUBLISH THE AVAILABILITY OF MORE THAN ONE NEW LICENSE A YEAR UNTIL THE QUOTA HAS BEEN REACHED.
(3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated city or town because of annexation after April 15,2005 , may not be transferred to another location within the city quota area for any sooner than 5 years from the date of the annexation.
(4) When the department determines that a quota area is eligible for a new retail beer license under subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in [section 1] to determine the party afforded the opportunity to apply for the new license. The department shalf:

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(a) determine the minimum bid based on \(75 \%\) of the market value of retail beer licenses in the queta
area;
- (b) publish notiee that a queta area is eligible for a new lieense;
(c) notify the bidder with the highest bid; and
(d) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has been approved.
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(5) To enter the competitive bidding process, a bidder shall submit:
(a) an applieation form provided by the department; and
(b) anirrevocable letter of eredit froma a finaneialinstitutionestablishing the departmentas the benefieiary of the bid amount.
(6) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must be-set at the tied bid amount. To submit a new bid, a tied bidder shall-submit:
(a) an applieation form provided by the department; and
(b) an irrevocableletter of eredit from a financialinstitution establishing the department as the benefieiary of the new bid amount.
(7) The highest bidder shalt:
(a) submit an applieation provided by the department and applieable fees for the lieense within 60 days of the department's notifieation of being the highest bidder;
(b) pay the bid amount prior to the license being approved;
(c) meet allother requirements to own a retail beer lieense; and
(d) commence business within 1 year of the department's notifieation unless the department grants an extension beeause commencement was delayed by circumstances beyond the applieant's controt.
(8) If the highest bidder is not approved to own the license, the department shallloffer the license to the next highest bidder. That bider shatllemply with the requirements of subseetion (7).
(9) If no bids are received during the competitive bideling process or if a quota area is already eligible for another new license, the-department shall process applieations for the license in the order received.
(10) (a) The successfulapplieant is subject to forfeiture of the license and the-original license fee if the suecessfulapplieant:

- (i) transfers the awarded lieense to another person or business entity after receiving the lieense unless that transfer is due to a death of an owner;
(ii) does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the-suecessfulapplieant provides evidenee that the delay in use is for reasons-outside the-applieant's-eontrot; of
(iii) proposes a location for the license that had the same license type within the previous 12 months.
(b) If a license is forfeited, the department shalloffer the lieense to the next eligible highest bidder in the auction.
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(5) EXCEPT AS PROVIDED IN SUBSECTION (2)(B), WHEN MORE THAN ONE NEW BEER LICENSE BECOMES AVAILABLE AT THE SAME TIME IN THE SAME QUOTA AREA, THE DEPARTMENT SHALL CONDUCT A SEPARATE COMPETITIVE BIDDING PROCESS AT SEPARATE TIMES FOR EACH AVAILABLE LICENSE.
$(11)(5)(6)$ A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine amendment license.
$(12)(6)(7)$ Except as provided in subsection (1)(f), a license issued pursuant to this section after October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is conducted.
$(13)(7)$ A sureessful An applieant shall pay to the department a $\$ 25,000$ original lieense fee and in subsequent years pay the annual fee for the lieense as provided in 16-4-501.
(8) AN APPLICANT FOR A LICENSE ISSUED THROUGH A COMPETITIVE BIDDING PROCESS IN [SECTION 1] SHALL PAY A $\$ 25,000$ NEW LICENSE FEE AND IN SUBSEQUENT YEARS PAY THE ANNUAL FEE FOR THE LICENSE AS PROVIDED IN 16-4501.
$(14)(8)(9)$ The department may adopt rules to implement this section. (Ferminates December 34, 2023--sec. 17, Ch. 5, Sp. L. November 2017.)

16-4-105. (Effective January 1, 2024) Limit on retail beer licenses -- wine license amendments limitation on use-of lieense - exeeptions - lottery - rulemaking. (1) Exeept as provided in 16-4-109, 46-4-110, 16-4-115, 16-4-420, and ehapter 4, part 3, of this title, a lieense to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code- and the rules of the department, may be issued to any person or business entity that is approved by the department, subject to the following exceptions:
(a) The number of retail beer lieenses that the department may issue for premises-situated within ineorporated cities and ineorporated towns-and within a distance of 5 miles from the corporate limits-of the eities and towns must be determined on the basis of population preseribed in 16-4-502 as follows:
(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits-of the towns, not more than one retaill beer license;

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(ii) in ineorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000 inhabitants-and within a distance of 5 miles from the corporate limits of the eities or towns, one retailbeer lieense for every 500 inhabitants;
(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate limits of the cities, four retailbeer licenses for the first 2,000 inhabitants, two additional retail beer lieenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one-additional retaill beef lieense for every additional 2,000 inhabitants.
(b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within a distance of 5 miles from the corporate limits of the city or town, governs the number of retail beer lieenses that may be issued for use within the eityof town and within a distanee of 5 miles from the corporate limits of the eityor town. The distance of 5 miles from the corporate limits-of any incorporated eity or ineorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.
(c) When the 5 -mile boundaryofone ineorporatedeityorineorporatedtownoverlaps the 5 -mileboundary of another ineorporatedeity or ineorporated town, the queta area for each eityortownterminates inastraight line equidistant between each city of town.
(d) Retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110 that are in exeess of the limitations in this-seetion are renewable, but new lieenses may not be issued in vielation of the limitations.
(e) The limitations do not prevent the issuance of a nontransferable and nonassignable retailbeerlicense to an enlisted persons', noneommissioned officers', or officers' elub loeated on a state-or federal military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a reeognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.
(f) The number of retailbeer licenses that the department may issue for use at premises situated outside Of any incorporated eity of incorporated town and outside of the area within a distance of 5 miles from the eorporate limits of for use-at premises-situated within any unineorporated area must be determined by the department in its diseretion, except that a retail beer lieense may not be issued for any premises so situated unless the department determines that the issuance of the lieense is required by public convenience and neeessitypursuantto 16-4-203. Subsection(5)does notapplytolieensesissuedunderthissubseetion(1)(f). The

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owner of the license whose premises are-situated outside of an incorporated city or incorporated town may offer gambling, regardless of when the lieense was issued, if the owner and premises qualify under Title 23, ehapter 5, part 3,5 , or 6 .
(2) (a)For a period of 7 years after January 1, 2024, existing licenses as of November 24, 2017, in either of two quota areas that were established as provided in subsection (1)(c) may be transferred between the two queta areas if they were part of a combined quota area priof to November 24, 2017.
(b) If any new retail beer lieenses-are-allowed byseparating a combined queta area that existed as-of November 24, 2017, as providedinsubsection(1)(c), the department shall publish the availabilityofnomore than one new beer lieense a year until the quota has been reached.
(3) A lieense issued under subseetion(1)(f) that becomes toeated within 5 miles of an ineorporated eity of town beeause of annexation after April 15,2005 , may not be transferfed to another loeation within the eity quota area for 5 years from the date of the annexation.
(4) A person holding a lieense to sell beer for consumption on the premises at retail may apply to the department for anamendment to the lieense permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the-applieant, that the-sale of wine-for consumption on the premises would be supplementary to arestaurant orprepared-foodbusiness. Exceptforbeer and wine lieenses issued pursuant to 16-4-420, a person holding a beef and wine license may sell wine for eonsumptiononor off the premises. Nonretention of the beerlicense, for whatever reason, meansautomaticloss of the wine-amendment lieense.
(5) Except as provided in subsection (1)(f), a lieense issued pursuant to this section after Oetober 1, 1997, must have a conspicuous notice that the lieense may not be used for premises where gambling is eondueted.
(6) (a) When the department determines that a queta area is-eligible for an additional retailbeer lieense as provided in this section, the department shalladvertise the availability of the license in the queta area for which the-license is available. If there-are more-applieants than number of lieenses available, the lieense must be awarded to an applieant by a lottery.

- (b) The department shall numerieally rank alllapplieants in the lottery. Only the suecessfulapplieants will be required to submit a completed application and a one-time processing fee-set by the department by rule. An applieant's ranking may not be sold or transferred to another person or business entity. An applieant's ranking applies only to the intended lieense advertised by the department or to the number of lieenses determined to be


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available for the lottery when there are more applieants than lieenses available. The department shalldetermine an applieant's qualifieations for a retail beer lieense awarded by lottery prior to the awardof a lieense by lottery.
(e) A sureessful lottery applieant-shall pay to the department a $\$ 25,000$ original lieense fee-and in subsequent years pay the annual fee for the license as provided in 16-4-501.
(d) (i) The successfullottery applicant is subject to forfeiture of the license and the originallicense fee if the-suceessfullottery applieant:

- (A) propeses a loeation for the lieense that had the same lieense type within the previous-12 months; - (B) transfers a license awarded by lottery within 5 years of receiving the license; of (C) does not use the lieense within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the lottery winner provides evidence the delay in use is for reasons-outside the applieant's controt.
(ii) In the ease of forfeiture, the department shall offer the license to the next eligible ranked applieant in the lottery.
(7) The department may adopt rules to implement this-seetion."

Section 3. Section 16-4-201, MCA, is amended to read:
"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within adistance of 5 miles from of the corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:
(a) in incorporated towns of 500 inhabitants or less fewer and within a distance of 5 miles from of the corporate limits of the towns, not more than two retail licenses;
(b) in incorporated cities or incorporated towns of more than 500 inhabitants and not over more than 3,000 inhabitants and within adistanee of 5 miles from of the corporate limits of the cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;
(c) in incorporated cities of over more than 3,000 inhabitants and within a distance of 5 miles from of the corporate limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each
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additional 1,500 inhabitants.
(2) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number of inhabitants residing within adistanee-of 5 miles from of the corporate limits of the city or town, governs the number of retail licenses that may be issued for use within the city or town and within a distance of 5 miles from of the corporate limits of the city or town. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town. A LICENSE THAT IS RESTRICTED BY QUOTA LIMITATIONS IN THIS SECTION MAY NOT BE LOCATED FARTHER THAN:
(A) THE COUNTY BOUNDARY WITHIN WHICH THE INCORPORATED CITY OR INCORPORATED TOWN IS LOCATED; OR
(B) THE LINE THAT SEPARATES THE INCORPORATED CITY'S OR INCORPORATED TOWN'S BOUNDARY FROM ANOTHER INCORPORATED CITY OR INCORPORATED TOWN AS SPECIFIED IN THIS SECTION.
(3) (a) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town.
(b) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:
(i) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of where it falls in the new quota areas.
(ii) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.
(III) IN THE POLSON AND RONAN QUOTA AREAS, THE STRAIGHT LINE WILL BE DRAWN FROM U.S. HIGHWAY 93 WEST ON PABLO WEST ROAD TO THE QUOTA AREA BOUNDARY AND EAST ON CLAIRMONT ROAD EXTENDING OUT TO THE QUOTA AREA BOUNDARY. ANY LICENSE EXISTING AS OF NOVEMBER 24, 2017, WITHIN THE POLSON QUOTA AREA WILL BECOME A POLSON LICENSE, REGARDLESS OF WHERE IT FALLS IN THE NEW QUOTA AREAS. ANY LICENSE EXISTING AS OF NOVEMBER24, 2017, WITHIN THE RONAN QUOTA AREA WILL BECOME A RONAN LICENSE, REGARDLESS OF WHEREITFALLS

## IN THE NEW QUOTA AREAS.

(4) For a period of 12 years after November 24, 2017, existing licenses OR LICENSES THAT RESULTEDFROM APPLICATIONS INPROCESS as of November 24, 2017, in either of two quota areas that were established as provided in subsection (3) may be transferred between the two quota areas if they were part of a THE combined quota area prior to November 24, 2017.
(5) (A) If any new retail all-beverages licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in subsection (3), the department shall publish the availability of no more than one new retail all-beverages license a year until the quota has been reached. The department shall use a competitive bidding process as provided in [section 1] to determine the party afforded the opportunity to apply for the new license.
(B) IF ANY NEW ALL-BEVERAGES LICENSES ARE ALLOWED BY LICENSE TRANSFERS AS PROVIDED IN SUBSECTION (4), THE DEPARTMENT MAY PUBLISH THE AVAILABILITY OF MORE THAN ONE NEW LICENSE A YEAR UNTIL THE QUOTA HAS BEEN REACHED.
(6) EXCEPT AS PROVIDED IN SUBSECTION (5)(A), WHEN MORE THAN ONE NEW ALL-BEVERAGES LICENSE BECOMES AVAILABLE AT THE SAME TIME IN THE SAME QUOTA AREA, THE DEPARTMENT SHALL CONDUCT A SEPARATE COMPETITIVE BIDDING PROCESS AT SEPARATE TIMES FOR EACH AVAILABLE LICENSE.
$(6)(7)$ Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may not be issued in violation of the limitations.
$(7)(8)$ The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and nonassignable, as to ownership only, retail license to an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal military reservation on May 13, 1985, or to any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or more prior to January 1, 1949.
$(8)(9)$ The number of retail all-beverages licenses that the department may issue for use at premises situated outside of more than 5 miles outside of any incorporated city or incorporated town andoutside of the area within a distance of 5 miles from the corporate limits of acity or town may not be more than one license for each 750 in population of the county after excluding the population of incorporated cities and incorporated towns in the county.
$(9)(10)$ An all-beverages license issued under subsection (8) (9) that becomes located within 5 miles of

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an incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location within the city quota area any sooner than 5 years from the date of annexation.
(10)(11) The department may adopt rules to implement this section."

Section 4. Section 16-4-204, MCA, is amended to read:
"16-4-204. (Femporary) Transfer -- catering endorsement -- competitive bidding -- rulemaking. (1) (a) Except as provided in subsection (و) (3), a license may be transferred to a new owner and to a location outside the quota area where the license is currently located only when the following criteria are met:
(i) the total number of all-beverages licenses in the current quota area exceeded the quota for that area by at least $25 \%$ in the most recent census prescribed in 16-4-502;
(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:
(A) by more than $33 \%$; or
(B) in an incorporated city of more than 10,000 inhabitants and within 5 miles frem its corporate limits, by more than $43 \%$; or
(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by a transfer.
(b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a competitive bidding process is not eligible to offer gambling under Title 23, chapter 5, part 3, 5 , or 6 .
(2) When the department determines that a license may be transferred from one quota area to another under 16-4-201(1)Or (4) subsection (1), the department shall use a competitive bidding process as provided in [section 1] to determine the party afforded the opportunity to purchase and transfer a license. Theparm shalt:

- (a) determine the minimum bid basedon $75 \%$ of the market value of all-beverages licenses in the queta
area;
- (b) publish notiee that a quota area is eligible for a lieense transfer;
(c) notify the bidder with the highest bid; and
(d) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has
been approved.
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(3) To enter the competitive bidding process, a bidder shall submit:
(a) an applieation form provided by the department; and
(b) anirfevoeable ettefofereditfrom a finaneialinstitution establishing the departmentas the benefieiary of the bid amount.
(4) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must be-set at the tied bid amount. To submit a new bid, a tied bidder shall-submit:
(a) an applieation form provided by the department; and
(b) an irrevocableletter of eredit from a financialinstitution establishing the department as the benefieiary of the new bid amount.
(5) The highest bidder shalt:
(a) submit an applieation provided by the department and applieable fees for the lieense within 60 days of the department's notifieation of being the highest bidder;
(b) pay the bid amount prior to the license being approved;
(c) meet all other requirements to own an all-beverages lieense; and
(d) commenee business within 1 year of the department's notifieation unless the department grants an extension beeause commencement was delayed by circumstances beyond the applieant's controt.
(6) If the highest bidder is not approved to own the license, the department shallloffer the license to the next highest bidder. That bider shall comply with the requirements of subseetion (5).
(7) If no bids are received during the competitive bidding process or if a queta area is already eligible for another license transfer under subsection (1), the department shall process applications to transfer a lieense in the order received.
(8) (a) The-suecessfulapplieant is-subject to forfeiture of the lieense and the original lieense fee if the suceessfulapplieant:
(i) transfers an awarded license to another person after receiving the license unless that transfer is due to the death of an owner;

- (ii) does not use the lieense within 1 year of receiving the lieense or stopsusing the lieense within 5 years. The department may extend the time for use if the-suceessfullapplieant provides evidenee that the delay in use is for reasons outside the applieant's control; of
(iii) proposes a location for the license that had the same license type within the previous 12 months.
- (b) If alieense is forfeited, the department shalloffer the lieense to the next eligible highest bidder in the


## auetion.

$(9)(3)$ A license within an incorporated quota area may be transferred to a new owner and to a new unincorporated location within the same county on application to and with consent of the department when the total number of all-beverages licenses in the current quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b), exceeds the quota for that area by at least $25 \%$ in the most recent census and will not fall below that level because of the transfer.
$(10)(4)$ A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.
$(11)(5)$ (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event upon on premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.
(b) A written application for a catering endorsement and an annual fee of $\$ 250$ must be submitted to the department for its approval.
(c) An all-beverages licensee who holds an endorsement granted under this subsection (11)(5) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.
(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of $\$ 35$ must accompany the notice.
(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.
(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.
(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.
(h) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity
under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.
$(12)(6)$ The department may adopt rules to implement this section. (Terminates December 31, 2023--see. 17, Ch. 5, Sp. L. November 2017.)

16-4-204. (Effective January 1, 2024) Transfer--eatering endorsement--rulemaking. (1)(a)Exeept as provided in subsection (2), a license may be transferred to a new owner and to a location outside the quota area where the lieense is curfently loeated only when the following eriteria are met:

- (i) the total number of all-beverages lieenses in the eurrent quotareaexeeeded the quotafor that area by at least $25 \%$ in the most recent census prescribed in 16-4-502;
- (ii) the total number of all-beverages lieenses in the quota area to which the lieense would be transferred, exelusive of those issued under 10-4-209(1)(a) and (1)(b), did not exeeed that area's quota in the most reeent eensus preseribed in 16-4-502:
(A) by more than 33\%; or
(B) in an ineorporated city of more than 10,000 inhabitants and within a distance of 5 miles from its eorporate limits, by more than 43\%; of
(iii) the department finds, after a public hearing, that the public convenience and necessity woutd be served by a transfer; and
(iv) an applieant for the new ownership to be awarded on a lottery basis by the department has met the fellowing eriteria:
(A) the-applieant had not made-another applieation under this-subsection (1)(a) for alottery-awarded Heense within the previous 12 months;
(B) the applieant has provided with the applieation an irrevocable letter of eredit from a finaneialinstitution that guarantees the applieant's-ability to pay $\$ 100,000$; and
(C) the applicant or, if the applieant is not an individual, a person with an ownership interest in the applieant does not have-an ownership interest in an-all-beverages lieense.
(b) A license transferred pursuant to subsection(1)(a) that was issued pursuant to a lottery is not eligible tooffer gambling under Titte 23, ehapter 5, part 3, 5, or 6 . - (c) A sureessfullettery applieant-shatl-commenee business within-1 year of the lettery unless the department grants an extension beeause a delay was caused by cireumstances beyond the control of the applieant.
(2) A lieense within an incorporated quota area may be transfefred to a new owner and to a new
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unincorporated location within the same county on application to and with consent of the department when the total number of all-beverages lieenses in the curfent queta area, exelusive of these issued under 10-4-209(1)(a) and (1)(b), exeeeds the queta for that area by at least $25 \%$ in the most reeent census and will not fall below that level because of the transfer.
(3) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for whieh it was originally issued.
(4) (a) Anyall-beverages-lieensee is, upon the approvalandin the diseretion of the department, entitted to a catering endorsement to the licensee's all-beverages license to allow the catering and sate-of alcoholie beverages to persons attending a special event upon premises not otherwise licensed for the sale of alcoholie beverages for on-premises consumption. The aleoholic beverages must be consumed on the premises where the event is held.
(b) A written applieation for a catering endorsement and an annual fee of $\$ 250$ must be submitted to the department for its approval.
(e) Anall-beverages lieensee whoholdsanendorsement grantedunder this-subseetion(4) maynoteater an event in whieh the lieensee is the-sponsor. The catered event must be within 100 miles of the lieensee's regular place of business.
(d) The licensee shall notify the loeal law enforeement ageney that has jurisdietion over the premises Where the eatered event is to be held. A fee of $\$ 35$ must aceompany the notiee.

- (e) The-sate of aleoholie beverages pursuant to a eatering endorsement is-subject to the provisions-of 16-6-103.
(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written-approval.
-(g) A eatering endorsement issued for the purpose of selling and serving beer at a special event eonducted on the premises of a county fairground or publie sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.
(h) A lieensee may not share revenue from the-sale-of aleoholic beverages with the-sponsor of the eatered event unless the sponsor is the state of Montana, a politieal subdivision of the state, or a qualified entity under section 501 (c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.
(5) The department may-adopt rules to implement this-seetion:"
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## SECTION 5. SECTION 16-4-207, MCA, IS AMENDED TO READ:

"16-4-207. Notice of application -- investigation -- publication -- protest. (1) When an application has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of a retail license, the department shall review the application for completeness and, based upon review of the application and any other information supplied to the department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The department may make one request for additional information necessary to complete the application. The application is considered complete when the applicant furnishes the application information requested by the department. When the application is complete, the department of justice shall investigate the application as provided in 16-4-402. When the department determines that an application for a license under this code is complete, the department shall publish in a newspaper of general circulation in the city, town, or county from which the application comes a notice that the applicant has made application for a retail on-premises license or a transfer of location and that protests may be made against the approval of the application by residents of the county from which the application comes, residents of adjoining Montana counties, or residents of adjoining counties in another state if the criteria in subsection (4)(d) are met. Protests must be mailed to the department within 10 days after the final notice is published. Notice of application for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may be substantially in the following form:

## NOTICE OF APPLICATION FOR RETAIL

## ALL-BEVERAGES LICENSE

Notice is given that on the $\qquad$ day of ....., 20..., one (name of applicant) filed an application for a retail all-beverages license with the Montana department of revenue to be used at (describe location of premises where beverages are to be sold). Residents of ...... counties may protest against the approval of the application. Each protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed to ....., department of revenue, Helena, Montana, on or before the $\qquad$ day of $\qquad$

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(2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient to cover the costs of publishing the notice.
(3) (a) If the department receives no written protests, the department may approve the application without holding a public hearing.
(b) A response to a notice of opportunity to protest an application may not be considered unless the response is a letter satisfying all the requirements contained in the notice in subsection (1).
(c) If the department receives sufficient written protests that satisfy the requirements in subsection (1) against the approval of the application, the department shall hold a public hearing as provided in subsection (4).
(4) (a) If the department receives at least one protest but less than the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.
(b) If the department receives the number of protests required for a public convenience and necessity determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of location, the department shall schedule a public hearing to be held in the county of the proposed location of the license to determine whether the protest presents sufficient cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title 2, chapter 4, part 6.
(c) The minimum number of protests necessary to initiate a public hearing to determine whether an application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the proposed premises located within a quota area described in 16-4-201 must be $25 \%$ of the quota for all-beverages licenses determined for that quota area according to $16-4-201(1),(2)$, and $(8)(9)$ but in no case less than two. The minimum number of protests determined in this manner will apply only to applications for either on-premises consumption beer or all-beverages licenses.
(d) A resident of a county in another state that adjoins the county in Montana from which an application comes may protest an application only if the county or state of residence of the person has certified to the

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department that a similarly situated Montana resident would be able to make formal protest of a liquor license application in that state or county. The department may, by rule, establish how the certification is to be made."

Section 6. Section 16-4-305, MCA, is amended to read:
"16-4-305. (Femporary) Montana heritage retail alcoholic beverage licenses -- use -- quota. (1) (a) The Montana heritage preservation and development commission may use Montana heritage retail alcoholic beverage licenses within the quota area in which the licenses were originally issued, for the purpose of providing retail alcoholic beverage sales on property acquired by the state under Title 22, chapter 3, part 10. The licenses are to be considered when determining the appropriate quotas for issuance of other retail liquor licenses.
(b) The department may issue a wine amendment pursuant to $16-4-105(11)(5)(6)$ if the use of a Montana heritage retail alcoholic beverage license for the sale of beer meets all the requirements of that section.
(2) The Montana heritage preservation and development commission may lease a Montana heritage retail alcoholic beverage license to an individual or entity approved by the department.
(3) Montana heritage retail alcoholic beverage licenses are subject to all laws and rules governing the use and operation of retail liquor licenses.
(4) For the purposes of this section, "Montana heritage retail alcoholic beverage licenses" are all-beverages liquor licenses and retail on-premises beer licenses that have been transferred to the Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999. (Ferminates Deeember 31, 2023-sec. 17, Ch. 5, Sp. L. November 2017.)
-16-4-305. (Effective January 1, 2024) Montana heritage retail aleoholie beverage lieenses - use -- quota. (1) (a) The Montana heritage preservation and development commission may use Montana heritage retail aleoholie beverage lieenses within the quota area in which the lieenses were originally issued, for the purpese of providing retailaleoholie beverage-sales-on property aequired by the-state under Titte 22, chapter 3, part 10. The lieenses are to be considered when determining the appropriate quotas for issuance of other retait Hiquor lieenses.
(b) The department may issue- a wine-amendment pursuant to-16-4-105(4) if the use-of a Montana heritage retail aleoholic beverage lieense for the sale-of beef meets all the requirements of that seetion.
(2) The Montana heritage preservation and development commission may lease a Montana heritage retail aleoholic beverage lieense to an individual or entity approved by the department.
-(3) Montana heritage retailateoholic beverage licenses-are-subject to alllaws-and rutes-governing the
use and operation of retail liquor licenses.
(4) For the purpeses of this-section, "Montana-heritage-retail-aleoholic beverage-lieenses" are all-beverages liquor lieenses and retail on-premises beer lieenses that have been transferred to the Montana heritage preservation and development commission under the provisions of section 2, Chapter 251, Laws of 1999."

Section 7. Section 16-4-306, MCA, is amended to read:
"16-4-306. (Femporary) Transfer of existing license to political subdivision of state -- rulemaking. (1) A political subdivision of the state of Montana may apply to the department for the transfer of an existing retail beer or beer and wine license and, upon approval by the department, the political subdivision may own and operate the license or lease the license to a person, firm, corporation, or other entity approved by the department.
(2) A license that is transferred to a political subdivision of the state:
(a) may be transferred only to another political subdivision of the state and not to any other person, firm, corporation, or entity;
(b) does not authorize and may not be used in conjunction with gambling activities except for horseracing as authorized in Title 23, chapter 4;
(c) may be authorized only for a fairgrounds complex owned by the political subdivision;
(d) is authorized for use in all facilities contained in the fairgrounds complex;
(e) is not, with respect to the facilities, subject to the provisions of 16-4-204(11)(5);
(f) must be taken into account in determining the license quota restrictions of 16-4-105; and
$(\mathrm{g})$ is subject to all license fees, laws, and rules applicable to retail beer or beer and wine licenses.
(3) The department may adopt rules to implement the provisions of this section. (Ferminates December 31, 2023-sec. 17, Ch. 5, Sp. L. November 2017.)

16-4-306. (Effective January 1, 2024) Transfer of existing license to politieal subdivision of state -- rulemaking. (1) A politieal subdivision of the state of Montana may apply to the department for the transfer of an existing retail beef or beef and wine lieense-and, upon approval by the depafment, the politieal subdivision may-own and operate the lieense-or lease the lieense to a person, firm, corporation, of other entity approved by the department.
(2) A license that is transferred to a politieal subdivision of the-state:

- (a) may be transferredonly to another politiealsubdivisionof the stateand not to any-other person, firm,


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eorporation, or entity;
(b) does notauthorize and maynotbeusedinconjunetion withgambling activities exeeptforhorseracing as-authorized in Titte 23, ehapter 4;
(c) may be authorized only for a fairgrounds complex owned by the politieal subdivision;
(d) is authorized for use in all faeilities contained in the fairgrounds complex;
(e) is not, with respect to the facilities, subject to the provisions of 16-4-204(4);
(f) must be taken into aceount in determining the lieense quota restrietions-of 16-4-105; and
(g) is subject to all license fees, laws, and rules applieable to retail beer or beer and wine licenses.
(3) The department may adopt rules to implement the provisions of this seetion."

Section 8. Section 16-4-402, MCA, is amended to read:
"16-4-402. (Femporary) Application -- investigation. (1) Prior to the issuance of a license under this chapter, the applicant shall file with the department an application containing information and statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.
(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department of justice shall make a thorough investigation of all matters relating to the application. Based on the results of the investigation or on other information, the department shall determine whether:
(i) the applicant is qualified to receive a license;
(ii) the applicant's premises are suitable for the carrying on of the business; and
(iii) the requirements of this code and the rules promulgated by the department are met and complied with.
(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(11)(5), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.
(c) For an original license application and an application for transfer of location of a license, the department of justice's investigation and the department's determination under this subsection (2) must be completed within 90 days of the receipt of a completed application. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in

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the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed. The basis for the tolling of the deadline must be documented.
(3) (a) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.
(b) A statement on an application or at a hearing that is based upon a verifiable assertion made by a governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the basis of a false statement for a denial or revocation of a license.
(4) The department shall issue a conditional approval letter upon the last occurrence of either:
(a) completion of the investigation and determination provided for in subsection (2) if the department has not received information that would cause the department to deny the application; or
(b) a final agency decision that either denies or dismisses a protest against the approval of an application pursuant to 16-4-207.
(5) The conditional approval letter must state the reasons upon which the future denial of the application may be based. The reasons for denial of the application after the issuance of the conditional approval letter are as follows:
(a) there is false or erroneous information in the application;
(b) the premises are not approved by local building, health, or fire officials;
(c) there are physical changes to the premises that if known prior to the issuance of the conditional approval letter would have constituted grounds for the denial of the application or denial of the issuance of the conditional approval; or
(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the department's final agency decision provided for in subsection (4). (Ferminates Deeember 31, 2023--see. 17,Ch. 5, Sp. L. November 2017.)
-16-4-402. (Effective January 1, 2024) Applieation - investigation. (1) Prior to the issuance of a Hieense under this ehapter, the applieant shall file with the department an applieation containing information and statements relative to the applieant and the premises where the aleoholic beverage is to be-sold as required by the department.

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thorough investigation of all matters relating to the applieation. Based on the results of the investigation or on other information, the department shall determine whether:

## - (i) the applieant is qualified to receive-a lieense;

(ii) the applieant's premises are suitable for the earrying on of the business; and
(iii) the requirements of this code and the rules promugated by the department are met and complied with.

- (b) This-subsection (2) does not apply to a eatering endorsement provided in 16-4-111 of 16-4-204(4), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.
(c) For an original lieense-applieation and an applieation for transfer of loeation of a lieense, the department of justiee's-investigation and the-department's-determination under this-subseetion (2) must be eompleted within 90 days of the receipt of a completed applieation. If information is requested from the applieant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The time period is-also tolled if the applieant requests-and is granted a delay in the lieense determination or if the lieense is for premises that are to be-altered, as providedin 16-3-311, or hewly constructed. The basis for the tolling of the deadline must be documented.
(3) (a) Upon proof that an applieant made a false-statement in any part of the original applieation, in any part of an annual renewalapplieation, or in any hearing conducted pursuant to an applieation, the applieation for the lieense may be-denied, and if issued, the lieense may be revoked.
(b) A statement on an applieation of at a hearing that is based upon a verifiable assertion made by a governmentalofficer, employee, or agent that anapplieant relied upon ingood faith may not be used as the basis of a false-statement for a denialor revocation of a license.
(4) The department shallissue a conditional approval letter upon the lastoeeurrence-of either:
(a) completion of the investigation and determination provided for in subsection (2) if the department has not receive information that would cause the department to deny the applieation; of
- (b) a finalageney decision that either denies-ordismisses a protestagainst the approvalofanapplieation pursuant to-16-4-207.
(5) The conditional approvalletter must state the reasons upon which the future denial of the applieation may be based. The reasons for denial of the applieation after the issuance of the conditional approvalletter are as follows:


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# (a) there is false or erroneous information in the applieation; <br> (b) the premises-are not approved by loeal building, health, or fire-offieials; <br> (c) there-are physieal ehanges to the premises that if known priof to the issuance-of the conditionat approval letter would have constituted grounds for the denial of the applieation or denial of the issuance of the eonditional approval; or <br> - (d) a final decision by a couth exereising jurisdiction over the matter either reverses of remands the department's finatageney deeision provided for in subseetion (4)." 

Section 9. Section 16-4-420, MCA, is amended to read:
"16-4-420. (Femporary) Restaurant beer and wine license -- competitive bidding -- rulemaking.
(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) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises consumption license;
(b) 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;
(c) 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

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(d) 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) (i) An on-premises retail licensee who sells the licensee's 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.
(ii) A person, including an individual, with an ownership interest in an existing on-premises retail license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retail 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 $(11)(13)(14)$, 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) (a) For purposes of this section, "restaurant" means a public eating place:
(i) where individually priced meals are prepared and served for on-premises consumption;
(ii) where 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

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income of the restaurant during the prior year resulted from the sale of food.
(iii) that has 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; and
(iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals of that license.
(b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority of its food and drink in throw-away containers not reused in the same restaurant.
(7) (a) A restaurant beer and wine license not issued through a competitive bidding process as provided in [section 1] may be transferred, on approval by the department, from the original applicant to a new owner of the restaurant only after 1 year of use by the original owner, unless that transfer is due to the death of an 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) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of 5,000 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 5,001 to 20,000 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 $160 \%$ 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 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

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area 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;
(iv) 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 $80 \%$ of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105; and
(v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than $200 \%$ 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)(v), 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 subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.
(d) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a straight line equidistant between each city or town. A LICENSE THAT IS RESTRICTED BY QUOTA LIMITATIONS IN THIS SECTION MAY NOT BE LOCATED FARTHER THAN:
(A) THE COUNTY BOUNDARY WITHIN WHICH THE INCORPORATED CITY OR INCORPORATED TOWN IS LOCATED; OR
(B) THE LINE THAT SEPARATES THE INCORPORATED CITY'S OR INCORPORATED TOWN'S BOUNDARY FROM ANOTHER INCORPORATED CITY OR INCORPORATED TOWN AS SPECIFIED IN THIS SECTION.
(ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the straight line equidistant between each city or town, except for the following:
(A) In the Helena and East Helena previously combined quota area, the straight line will be drawn connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a Helena license or with a physical address of East Helena will become an East Helena license, regardless of

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where it falls in the new quota areas.
(B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along Mill Creek road to the quota area boundaries.
(C) In THE POLSON AND RONAN QUOTA AREAS, THE STRAIGHT LINE WILL BE DRAWN FROM U.S. HIGHWAY 93 WEST ON PABLO WEST ROAD TO THE QUOTA AREA BOUNDARY AND EAST ON CLAIRMONT ROAD EXTENDING OUT TO THE QUota area boundary. Any license existing as of November 24, 2017, WITHIN THE POLSON QUOTA AREA WILL BECOME A POLSON LICENSE, REGARDLESS OF WHERE IT FALLS IN THE NEW QUOTA AREAS. ANY LICENSE EXISTING AS OF NOVEMBER 24,2017 , WITHIN THE RONAN QUOTAAREA WILL BECOME A RONAN LICENSE, REGARDLESS OF WHEREIT FALLS IN THE NEW QUOTA AREAS.
(9) If any new restaufant beef and wine-lieenses-are-allowed by separating a combined queta area, pursuant to 16-4-105 as of November 24, 2017, the departmentshall publish the availabilityofno more than one new restaurant beef and wine lieense a year until the queta has been reached. (a) For a period of 12 years after November 24, 2017, existing licenses ORLICENSES THAT RESULTED FROM APPLICATIONS IN PROCESS as of November 24, 2017, in either of two quota areas that were established as provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if they were part of a THE combined quota area prior to November 24, 2017.
(b) If any new restaurant beer and wine licenses are allowed by separating a combined quota area that existed as of November 24, 2017, as provided in 16-4-105 and subsection (9)(a) of this section, the department shall publish the availability of no more than one new restaurant beer and wine license a year until the quota has been reached.
(C) IF ANY NEW RESTAURANT BEER AND WINE LICENSES ARE ALLOWED BY LICENSE TRANSFERS AS PROVIDED IN SUBSECTION (9)(A), THE DEPARTMENT MAY PUBLISH THE AVAILABILITY OF MORE THAN ONE NEW LICENSE A YEAR UNTIL THE QUOTA HAS BEEN REACHED.
(10) EXCEPT AS PROVIDED IN SUBSECTION (9)(B), WHEN MORE THAN ONE NEW RESTAURANT BEER AND WINE LICENSE BECOMES AVAILABLE AT THE SAME TIME IN THE SAME QUOTA AREA, THE DEPARTMENT SHALL CONDUCT A SEPARATE COMPETITIVE BIDDING PROCESS AT SEPARATE TIMES FOR EACH AVAILABLE LICENSE.
$(10)(11)$ 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 a 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.

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$(11)(12)$ When the department determines that a quota area is eligible for a new restaurant beer and wine license under subsection (9) or (10)(11), the department shall use a competitive bidding process as provided in [section 1] to determine the party afforded the opportunity to apply for a new license. The departmentshalt:
(a) determine the minimum bid based on $75 \%$ of the market value of all restaurant beer and wine Hieenses in the quota area;
(b) publish notiee that a quota area is eligible for a new lieense;
(c) notify the bidder with the highest bid; and
(d) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has been approved.

- (12) To enter the competitive-bidding process, a bidder shall-submit:
- (a) an applieation form provided by the department; and
(b) an irrevocableletter of eredit from a financialinstitution establishing the department as the benefieiary of the bid amount.
(13) The highest bidder shalt:
(a) submit an applieation provided by the department and applieable fees for the lieense within 60 days of the-department's notifieation of being the highest bidder;
(b) pay the bid amount prior to the license being approved;
(c) meet all- other requirements to own a restaurant beef and wine lieense; and
(d) commence business within 1 year of the department's notifieation unless the department grants an extension beeause commeneement was delayed by circumstances beyond the applieant's control.
(14) In the ease of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must be set at the tied bid amount. To submit a new bid, a tied bidder shall-submit:
- (a) an applieation form provided by the department; and
(b) an irrevocableletter of credit from a financialinstitution establishing the department as the benefieiary of the new bid amount.
(15) If the highest bidder is not approved to own the lieense, the department shatloffer the lieense to the next highest bidder. That bidder shall eomply with the requirements-of subsection (13).
(16) If no bids are received during the competitive bidding process or if a quota area is already eligible for another new license, the department shall process applieations for the lieense in the order received.
(17) (a) The-suceessfulapplicant is-subject to forfeiture of the lieense and the-original lieense fee if the
$\left\{\begin{array}{l}\text { Legislative } \\ \text { Services } \\ \text { Division }\end{array} \quad-31-\quad\right.$ Authorized Print Version - HB 35
successful applieant:
- (i) transfers an awarded lieense to another person after reeeiving the lieense unless that transfer is due to the death of an owner;
(ii) does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the successful applieant provides evidence that the delay in use is for reasons-outside the applieant's-control; of
(iii) proposes a location for the lieense that had the same lieense type within the previous 12 months.
(b) If a license is forfeited, the department shall offer the lieense to the next eligible highest bidder in the auetion.
$(18)(12)(13)$ Under a restaurant beer and wine license, beer and wine may not be sold for off-premises consumption.
$(19)(13)(14)$ 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 decide either granting or denying to grant or to deny 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 fess fewer;
(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.
$(20)(14)(15)$ The annual fee for a restaurant beer and wine license is $\$ 400$.
$(21)(15)(16)$ 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.
$(22)(16)(17)$ 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.
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$(23)(17)(18)$ 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.
$(24)(18)(19)$ The department may adopt rules to implement this section. (Terminates December 31, 2023--sec. 17, Ch. 5, Sp. L. November 2017.)
-16-4-420. (Effective-January 1, 2024) Restaurant beer and wine-lieense-rulemaking. (1) The department shallissue a restaurant beer and wine lieense to an applieant whenever the department determines that the applieant, in addition to satisfying the requirements of this seetion, meets the following qualifieations and eonditions:
(a) the applicant complies with the lieensing eriteria provided in 16-4-401 for an on-premises eonsumption lieense;
(b) the applieant operates a restaurant at the loeation where the restaurant beer and wine license will be used or satisfies the department that:
(i) the applieant intends to open a restaurant that will meet the requirements of subseetion (6) and intends to operate the restaurant so that at least $65 \%$ of the restaurant's gross ineome 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 conjunetion with that restaurant, that the restaurant willserve beer and wine only to a patron who orders food, and that beer and wine purehases will be stated on the food bill; and
(iii) the restaurant will serve beer and wine from a servicebar, as service baris defined by the department by rute;
(e) the applieant understands and acknowledges in writing on the applieation that this lieense prohibits the applieant frombeing lieensed to conduct any gaming or gambling aetivityor operate any gambling maehines and that if any gaming or gambling aetivity or machine exists at the loeation where the restaurant beer and wine Hicense will be used, the activity must be discontinued or the machines must be removed before the restaurant beef and wine lieense takes effect; and
(d) the applieant states the planned seating eapaeity-of the restaurant, if it is to be built, of the eurfent 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 aleoholie beverage may not be considered for a restaurant beer and wine lieense at the same location.

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(b) (i) An on-premises retaillicensee who sells the lieensee's existing retaillicense may not apply for a Hieense under this section for a period of 1 year from the date that lieense is transferred to a new purehaser. - (ii) A person, ineluding an individual, with anownership interest in anexisting on-premises retaillieense that is being transferred to a new purchaser may not attain an ownership interest in a license applied for under this section for a period of 1 year from the date that the existing on-premises retaillicense is transferred to a new purehaser.

> (3) A completed applieation for a lieense under this-seetion and the appropriate applieation fee, as provided in subsection (11), must be-submitted to the department. The department shall investigate the items relating to the applieation as described in subsections (3)(a) through (3)(d). Based on the results of the investigation and the exereise of its-sound diseretion, the department shatldetermine whether:
(a) the applicant is qualified to receive-a lieense;
(b) the applieant's premises are suitable for the earrying on of the business;
(c) the requirements of this code and the rules promulgated by the department are complied with; and
(d) the-seating eapaeity-stated on the applieation is-correct.
(4) An applieation for a beer and wine lieense-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 lieensing under this section is a new or remodeled strueture, then the department may issue aconditionallicense prior to eompletion of the premises basedon reasonable-evidenee, ineluding a statement from the applieant's arehitect or contractor confirming that the seating eapaeity-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) (a) For purposes of this-section, "restaurant" means a public eating place:
-(i) where individually prieed meats are prepared and served for on-premises consumption;
(ii) where 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 applieant shall fite 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-sate-of food.
(iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the preparation, cooking, and serving of meats in order to satisfy the department that the space is intended for use as a full-serviee restaurant; and

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- (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the hours of $5 \mathrm{p} . \mathrm{m}$. and $11 \mathrm{p} . \mathrm{m}$. The provisions of subsection (6)(b) and this-subsection (b)(a)(iv) do not apply to a restaurant for which a restaurant beer and wine lieense is in effect as of Aprill, 2009 , of to subsequent renewats of that lieense.
(b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a majority-of its food and drink in throw-away-containers not reused in the-same restaurant.
- (7) (a) A restaurant beer and wine lieense may be transferfed, on approval by the department, from the original applieant to a new owner of the restaurant only after 1 year of use by the original owner.
(b) A license issued under this section may be jointly owned, and the lieense may pass to the surviving joint tenant upon the death of the other tenant. However, the lieense may not be transferfed to any-other person Of entity by-operation of the laws of inheritance-of suceession of 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 lieense to a new owner.
(8) (a) The department shall issue a restaurant beer and wine lieense to a qualified applieant:
(i) except as provided in subsection (8)(c), for a restaurant loeated in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine lieenses issued in that queta area is equal to or less than $80 \%$ of the number of beer lieenses that may be issued in that quota area pufsuant to 10-4-105;
(ii) for a restaurant loeated in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine lieenses issued in that queta areaisequal to orless than $160 \%$ of the number of beer lieenses that may be issued in that queta area pursuant to-16-4-105;
(iii) for a restaurant loeated 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 orless than $100 \%$ of the number of beer lieenses that may be issued in that queta area pursuant to-16-4-105;
(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the queta areapopulation is determined in 16-4-105, if the number of restaurant beer and wine lieenses issued in that quota area is equal to or less than $80 \%$ of the number of beer lieenses that may be issued in that queta area pursuant


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to 16-4-105; and

- (V) for a restaurant foeated in a queta area that is also a resort community, as defined in 7-6-1501, if the number of restaurant beer and wine lieenses issued in the quota area that is-also a resort community is equat to or less than 200\% of the number of beer lieenses 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 pereentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the department-shall round to the nearer whole number.
(c) If the department has issued the number of restaurant beer and wine lieenses authorized for a quota area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota area.
(d) Ifthereare more applieants than lieensesavailable in aquotarea, then the lieense must be awarded bylottery as provided in subsection (10).
(9) If any new restaurant beer and wine lieenses are allowed by separating a combined quota area, pursuant to 16-4-105-as-of November 24, 2017, the department shall publish the availabilityofno more thanone new restaurant beer and wine lieense a year until the queta has been reached.
(10) (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 inerease in the population in a quota area, the nonrenewalof a restaurant beef and wine-lieense, of the lapse-or revecation of a lieense by the department, then the department shatt advertise the availability of the lieense in the quotarea for which it is available. If there are more applieants than number of licenses available, the license must be awarded to an applieant by a lottery.
(b) A preference must be given to an applieant who does not yet have in any quota area a restaurant beer and wine lieense or a retail beer lieense and who operates a restaurant that is in the queta area deseribed insubsection (8) in whieh the lieense has become-available and that meets the qualifieations-of subseetion (6) for at least 12 months prior to the filing of an applieation. An applieant with a preference must be awarded a Hicense before-any applieant without a preference-
(e) The department shall numerieallyrank allapplieants in thelettery. Only the suecessfulapplieants will be required to submit a completed application and a one-time required fee. An applieant's ranking may not be sold or transferred to another person or entity. The preference and an applieant's ranking apply only to the intended license advertised by the department or to the number of lieenses determined under subsection (8) when there-are more applieants than lieenses available. The applieant's qualifieations for any-other restaurant
beer and wine license awarded by lottery must be determined at the time of the lottery.
(d) If asuecessfuH lottery applieant does not use a lieense within 1 year of notifieation by the department eflieense eligibility, the applieant shall forfeit the lieense. The department shall refund any fees paid exeept the application fee and offer the lieense to the next eligible ranked applieant in the lottery.
(11) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises eonsumption.
(12) An applieation for a restaurant beer and wine lieense must be accompanied by a fee equal to $20 \%$ of the initiallicensing fee. If the department does not make a decision either granting or denying the license within 4 months of receipt of a complete applieation, the department shall pay interest on the applieation fee at the rate of $1 \%$ a month untila lieense is issued or the applieation is denied. Interest maynotacerue duringany period that the proeessing of an applieation is delayed by reason of a protest fited pursuant to 16-4-203-0r-16-4-207. If the department denies an application, the applieation fee, plus any interest, less a processing fee established by rule, must be refunded to the applieant. Upon the issuance of a license, the licensee-shall pay the balanee of the initial Hieensing fee. The amount of the initial licensing fee is determined according to the following-sehedule:
- (a) $\$ 5,000$ for restaufants with a stated seating eapaeity of 60 persons or less;
(b) $\$ 10,000$ for restaurants with a stated seating capacity of 61 to 100 persons; of
(c) $\$ 20,000$ for restaurants with a stated-seating capacity of 101 persons or more-
(13) The annual fee for a restaurant beer and wine lieense is $\$ 400$.
(14) If a restaurant lieensed under this part inereases the-stated-seating eapaeity-of the lieensed restaurant or if the department determines that a licensee has increased the-stated seating capacity of the Hicensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the time Of filing the original applieation and issuanee of a lieense and the applieable fees for the additionalseating. (15) The number of beer and wine lieenses issued to restaurants with a stated seating eapacity of 101 persons of more may not exceed $25 \%$ of the total lieenses issued.
(16) Possession of a restaurant beer and wine license is not a qualifieation for lieensure of any gaming Of gambling aetivity. A gaming of gambling aetivity may not oceur on the premises of a restaurant with a restaurant beef and wine lieense.
(17) The department may adopt rules to implement this seetion."

Section 10. Section 23-5-119, MCA, is amended to read:
"23-5-119. Appropriate alcoholic beverage license for certain gambling activities. (1) Except as provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant must own in the applicant's name:
(a) a retail all-beverages license issued under 16-4-201, but the owner of a license transferred after July 1, 2007, pursuant to $16-4-204$ is not eligible to offer gambling;
(b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-105, authorizing the sale of beer and wine for consumption on the licensed premises;
(c) a beer and wine license issued in an area outside of an incorporated city or town as provided in 16-4-105(1)(f). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5 , part 3,5 , or 6 .
(d) a retail beer and wine license issued under 16-4-109;
(e) a retail all-beverages license issued under 16-4-202; or
(f) a retail all-beverages license issued under 16-4-208.
(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23 , chapter 5 , part 3,5 , or 6 .
(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6 .
(4) A license transferee or a qualified purchaser operating pending final approval under 16-4-404(6) who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23 , chapter 5 , part 3,5 , or 6 .
(5) A license issued under a competitive bidding process as provided in [section 1] may not offer gambling IS NOT ELIGIBLE TO OFFER GAMBLING UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR $6 . "$

NEW SECTION. Section 11. Repealer. Sections $2,5,8,10,12,14$, and 17, Chapter 5, Special Laws of November 2017 are repealed.

## Legislative

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NEW SECTION. Section 12. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

NEW SECTION. Section 13. Effective date. [This act] is effective on passage and approval.

NEW SECTION. SECTION 14. RETROACTIVE APPLICABILITY.[THIS ACT]APPLIES RETROACTIVELY, WITHIN THE
MEANING OF 1-2-109, TO EXISTING LICENSES OR LICENSES THAT RESULTED FROM APPLICATIONS IN PROCESS FOR
ALCOHOL LICENSES AS OF NOVEMBER 24, 2017. - END -


[^0]:    (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the neeessary lieense fee-or letter of eredit as provided in 16-4-501(7)(f), the-depaftment of justiee-shall make-a

