

HOUSE BILL NO. 727

INTRODUCED BY E. BUTTREY

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE AND GAMBLING
5 LAWS; ALLOWING FOR APPROVAL OF CERTAIN ALCOHOLIC BEVERAGE LICENSES WITHOUT A
6 PREMISES; ALLOWING FOR CONCESSION AGREEMENTS; REQUIRING THAT ALCOHOLIC BEVERAGE
7 APPLICANTS THAT ARE APPROVED WITHOUT A PREMISES HAVE A CERTAIN AMOUNT OF TIME TO GET
8 THE PREMISES APPROVED; ALLOWING FOR LICENSURE OF GAMBLING ESTABLISHMENT OPERATORS
9 WITHOUT A PREMISES; ~~PROVIDING FOR LICENSE AND CONCESSION AGREEMENT FEES; PROVIDING~~
10 ~~RULEMAKING AUTHORITY~~; AMENDING SECTIONS 16-1-106, 16-4-207, 16-4-402, 16-4-405, 16-4-420, AND
11 23-5-177, MCA; AND PROVIDING EFFECTIVE DATES."

12

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

14

15 NEW SECTION. Section 1. Approval of a licensee without premises. (1) If an applicant has a license
16 available to obtain under 16-4-104, 16-4-201, 16-4-204, or 16-4-420, but does not have a premises, the
17 department may approve the applicant without approving the premises. The department shall issue the license
18 if all other requirements of this code related to an applicant are met.

19 (2) A license issued under subsection (1) must be immediately put on nonuse until a premises is
20 approved by the department. Upon issuance of the license under this section, the licensee must apply for a
21 premises within 6 months and must have the premises approved within 1 year from issuance of the license. A
22 licensee must pay all licensing fees annually even if the premises has not been approved. The department may
23 establish nonuse license fees for a license issued under this section.

24

25 NEW SECTION. Section 2. Concession agreements -- fees -- rulemaking. ~~(1) Except as provided~~
26 ~~in subsection (8), the THE~~ department may allow entities licensed under 16-4-104 or 16-4-201 to enter into
27 concession agreements with unlicensed entities to serve alcoholic beverages. ~~A licensee may only enter into one~~
28 ~~concession agreement at any given time.~~ _____

29 _____ (2) ~~An unlicensed entity entering into a concession agreement with a licensed entity must be a restaurant~~
30 ~~that prepares and sells its own food and has a dining room, a kitchen, and the number and kinds of employees~~

1 necessary for the preparation, cooking, and serving of meals in order to satisfy the department that the space
2 is intended for use as a full-service restaurant. The concessionaire, individually or through the person's immediate
3 family, may not receive financing from or have any affiliation to an alcoholic beverage manufacturer or importer
4 of alcoholic beverages or to a distributor of alcoholic beverages, including a Montana beer wholesaler, Montana
5 table wine distributor, and a Montana agency liquor store. The owner of a retail license is not prohibited from
6 entering into a concession agreement with another retail licensee at another location, nor is a licensee that
7 possesses an ownership interest in up to three all-beverages licenses prohibited from becoming a
8 concessionaire.

9 ~~_____ (3) A concession agreement must:~~

10 ~~_____ (a) operate at least one alcohol service area with the licensee's own staff;~~

11 ~~_____ (b) (i) be located at a contiguous premise;~~

12 ~~_____ (ii) For purposes of this section the term "contiguous premises" means the interior portion of the premises
13 must be a continuous area that is under the control of the licensee and not broken by any area of which the
14 licensee does not have control, including another business or a common area shared with other building tenants.
15 There must be interior access from the licensed entity to the concessioned area, but that access does not have
16 to be accessible to the public.~~

17 ~~_____ (c) be submitted to the department for review and approval prior to the execution or effective date and
18 must set forth the following:~~

19 ~~_____ (i) requirements for the licensee to offer alcoholic beverages to the concessionaire's customers and the
20 concessionaire to offer food to the licensee's customers;~~

21 ~~_____ (ii) include a copy of the licensee's amended floor plan, including the new service area;~~

22 ~~_____ (iii) indicate that the licensee is responsible for the sales and service of all alcoholic beverages;~~

23 ~~_____ (iv) indicate that the parties may share the employees in the concessioned area only, and, in the event
24 of shared employees, the licensee must retain the right to discipline or otherwise sanction any employee in
25 relation to the service of alcoholic beverages;~~

26 ~~_____ (v) indicate the concessionaire may not order, or otherwise purchase, any alcoholic beverage product;~~

27 ~~_____ (vi) include language that allows the licensee to terminate the agreement without cause;~~

28 ~~_____ (vii) indicate that all the proceeds from the sale of alcoholic beverages are the property of the licensee;~~

29 ~~_____ (viii) indicate that any proceeds of alcoholic beverages sales that are collected by the concessionaire
30 must be returned to the licensee not less than every 2 weeks; and~~

1 ~~—— (ix) provide for the use of sales or other approved method in determining compensation to the~~
 2 ~~concessionaire.~~

3 ~~—— (4) Total compensation to the concessionaire, including compensation for shared employees, may not~~
 4 ~~exceed 49% of gross alcoholic beverage sales regardless of the method in determining compensation.~~

5 ~~—— (5) The department may establish in rule:~~

6 ~~—— (a) general suitability requirements for concession agreements;~~

7 ~~—— (b) fees for application and approval of concession agreements;~~

8 ~~—— (c) requirements to list the individual owners of the unlicensed entity; and~~

9 ~~—— (d) other requirements necessary to implement this section.~~

10 ~~—— (6) The department, upon receipt of the concession agreement application and any supporting~~
 11 ~~documentation, shall within 30 business days approve or deny the application unless further documentation or~~
 12 ~~an audit review is necessary. Upon approval of the application, the alcoholic beverage license will reflect~~
 13 ~~language that the licensee is also serving alcoholic beverages in the concession area.~~

14 ~~—— (7) A licensee must submit any modification of an existing concession agreement for review and approval~~
 15 ~~or denial by the department. The concessionaire may continue to offer alcoholic beverages in the concession~~
 16 ~~area pending approval or denial by the department.~~

17 ~~—— (8) (a) Concession agreements in effect as of [the effective date of this section] continue in effect until~~
 18 ~~a licensee must meet current suitability requirements as established by the department through rule or submit~~
 19 ~~either a modification of an existing concession agreement or a new concession agreement.~~

20 ~~—— (b) Licenses issued under 16-4-105(1)(e) or 16-4-201(7) that have a concession agreement as of [the~~
 21 ~~effective date of this section] will no longer be eligible to have a concession agreement once the licensee must~~
 22 ~~meet current suitability requirements as established through the department by rule.~~

23 ~~—— (9) The department may take any appropriate action against the licensee as well as the concessionaire~~
 24 ~~for violations of this code.~~

25

26 **Section 3.** Section 16-1-106, MCA, is amended to read:

27 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

28 (1) "Agency franchise agreement" means an agreement between the department and a person appointed
 29 to sell liquor and table wine as a commission merchant rather than as an employee.

30 (2) "Agency liquor store" means a store operated under an agency franchise agreement in accordance

1 with this code for the purpose of selling liquor at either the posted or the retail price for off-premises consumption.

2 (3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

3 (4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that
4 contains more than 0.5% of alcohol by volume.

5 (5) (a) "Beer" means:

6 (i) a malt beverage containing not more than 8.75% of alcohol by volume; or

7 (ii) an alcoholic beverage containing not more than 14% alcohol by volume:

8 (A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both, in
9 potable brewing water, of malted cereal grain; and

10 (B) in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from
11 malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

12 (b) The term does not include a caffeinated or stimulant-enhanced malt beverage.

13 (6) "Beer importer" means a person other than a brewer who imports malt beverages.

14 (7) "Brewer" means a person who produces malt beverages.

15 (8) "Caffeinated or stimulant-enhanced malt beverage" means:

16 (a) a beverage:

17 (i) that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has
18 been removed and replaced with distilled ethyl alcohol;

19 (ii) that contains at least 0.5% of alcohol by volume;

20 (iii) that is treated by processing, filtration, or another method of manufacture that is not generally
21 recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and

22 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
23 taurine; or

24 (b) a beverage:

25 (i) that contains at least 0.5% of alcohol by volume;

26 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally
27 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;

28 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;

29 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and
30 taurine;

1 (v) for which the producer is required to file a formula for approval with the United States alcohol and
2 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and

3 (vi) that is not exempt pursuant to 27 CFR 25.55(f).

4 (9) "Community" means:

5 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;

6 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a
7 community for census purposes; and

8 (c) in a consolidated local government, the area of the consolidated local government not otherwise
9 incorporated.

10 (10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.

11 ~~(10)~~(11) "Department" means the department of revenue, unless otherwise specified, and includes the
12 department of justice with respect to receiving and processing, but not granting or denying, an application under
13 a contract entered into under 16-1-302.

14 ~~(11)~~(12) "Growler" means any refillable, resealable container complying with federal law.

15 ~~(12)~~(13) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the
16 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of
17 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

18 ~~(13)~~(14) "Immediate family" means a spouse, dependent children, or dependent parents.

19 ~~(14)~~(15) "Import" means to transfer beer or table wine from outside the state of Montana into the state
20 of Montana.

21 ~~(15)~~(16) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a
22 caffeinated or stimulant-enhanced malt beverage.

23 ~~(16)~~(17) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or
24 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts
25 or their products and with or without other malted cereals and with or without the addition of unmalted or prepared
26 cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome
27 products suitable for human food consumption.

28 ~~(17)~~(18) "Package" means a container or receptacle used for holding an alcoholic beverage.

29 ~~(18)~~(19) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses
30 as fixed and determined by the department and in addition an excise and license tax as provided in this code.

1 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of the
2 department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor stores,
3 and a 20% markup.

4 ~~(19)~~(20) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that contains
5 50% of alcohol by volume.

6 ~~(20)~~(21) "Public place" means a place, building, or conveyance to which the public has or may be
7 permitted to have access and any place of public resort.

8 ~~(21)~~(22) "Retail price" means the price established by an agent for the sale of liquor to persons who do
9 not hold liquor licenses. The retail price may not be less than the department's posted price.

10 ~~(22)~~(23) "Rules" means rules adopted by the department or the department of justice pursuant to this
11 code.

12 ~~(23)~~(24) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of alcohol
13 by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious purposes.

14 ~~(24)~~(25) "Special event", as it relates to an application for a beer and wine special permit, means a short,
15 infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

16 ~~(25)~~(26) "State liquor warehouse" means a building owned or under control of the department for the
17 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

18 ~~(26)~~(27) "Storage depot" means a building or structure owned or operated by a brewer at any point in the
19 state of Montana off and away from the premises of a brewery, which building or structure is equipped with
20 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as
21 permitted by this code.

22 ~~(27)~~(28) "Subwarehouse" means a building or structure owned or operated by a licensed beer wholesaler
23 or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or table wine
24 distributor's warehouse or principal place of business, and used for the receiving, storage, and distribution of beer
25 or table wine as permitted by this code.

26 ~~(28)~~(29) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes
27 cider.

28 ~~(29)~~(30) "Table wine distributor" means a person importing into or purchasing in Montana table wine or
29 sacramental wine for sale or resale to retailers licensed in Montana.

30 ~~(30)~~(31) "Warehouse" means a building or structure located in Montana that is owned or operated by a

1 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table wine
2 as permitted by this code.

3 ~~(31)~~(32) "Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation
4 of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur
5 in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of
6 alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in
7 accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic
8 beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in
9 accordance with federal regulations are also wine."
10

11 **Section 4.** Section 16-4-207, MCA, is amended to read:

12 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application
13 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of
14 a retail license, the department shall review the application for completeness and, based upon review of the
15 application and any other information supplied to the department, determine whether the applicant or the
16 premises to be licensed meets criteria provided by law. The department may make one request for additional
17 information necessary to complete the application. The application is considered complete when the applicant
18 furnishes the application information requested by the department. When the application is complete, the
19 department of justice shall investigate the application as provided in 16-4-402. When the department determines
20 that an application for a license under this code is complete, the department shall publish in a newspaper of
21 general circulation in the city, town, or county from which the application comes a notice that the applicant has
22 made application for a retail on-premises license or a transfer of location and that protests may be made against
23 the approval of the application by residents of the county from which the application comes, residents of adjoining
24 Montana counties, or residents of adjoining counties in another state if the criteria in subsection (4)(d) are met.
25 Protests must be mailed to the department within 10 days after the final notice is published. Notice of application
26 for a new license must be published once a week for 4 consecutive weeks. Notice of application for transfer of
27 ownership or location of a license must be published once a week for 2 consecutive weeks. ~~Notice may be~~
28 ~~substantially in the following form:~~

29 _____NOTICE OF APPLICATION FOR RETAIL

30 _____ALL-BEVERAGES LICENSE

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

8 _____ Dated

9 _____ Signed
 10 _____

11 (a) Notice may be substantially in the following form for an applicant without a premises:

12 NOTICE OF APPLICATION FOR RETAIL

13 ALL-BEVERAGES LICENSE

14 Notice is given that on the day of, 20..., one (name of applicant) filed an application for a retail
 15 all-beverages license with the Montana department of revenue to be used within the (quota area). Residents of
 16 counties may protest against the approval of the application. Each protestor is required to mail a letter that
 17 contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed
 18 by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an
 19 application may not be considered as a protest. Protests may be mailed to, department of revenue, Helena,
 20 Montana, on or before the day of, 20.....

21 Dated

22 Signed
 23

24 (b) Notice may be substantially in the following form for a premises only:

25 NOTICE OF APPLICATION FOR RETAIL

26 ALL-BEVERAGES LICENSE

27 Notice is given that on the day of, 20..., one (name of applicant) filed an application for a retail
 28 all-beverages license with the Montana department of revenue to be used at (describe location of premises where
 29 beverages are to be sold). Residents of counties may protest against the approval of the premises location
 30 only as notice of protest for the applicant has already occurred. Each protestor is required to mail a letter that

1 contains in legible print the protestor's full name, mailing address, and street address. Each letter must be signed
2 by the protestor. A protest petition bearing the names and signatures of persons opposing the approval of an
3 application may not be considered as a protest. Protests may be mailed to, department of revenue, Helena,
4 Montana, on or before the day of, 20.....

5 Dated

6 Signed

7

8 (c) Notice may be substantially in the following form for an applicant and premises applied for at the
9 same time or if the location of the license will be floated out of the quota area it was initially noticed in:

10 NOTICE OF APPLICATION FOR RETAIL

11 ALL-BEVERAGES LICENSE

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

19 Dated

20 Signed

21

22 (2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient
23 to cover the costs of publishing the notice. There may be two charges if the applicant applies for licensure prior
24 to applying for a premises under [section 1].

25 (3) (a) If the department receives no written protests, the department may approve the application without
26 holding a public hearing.

27 (b) A response to a notice of opportunity to protest an application may not be considered unless the
28 response is a letter satisfying all the requirements contained in the notice in subsection (1).

29 (c) If the department receives sufficient written protests that satisfy the requirements in subsection (1)
30 against the approval of the application, the department shall hold a public hearing as provided in subsection (4).



1 (4) (a) If the department receives at least one protest but less than the number of protests required for
 2 a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule
 3 a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to
 4 deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for
 5 denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing
 6 must be governed by the provisions of Title 2, chapter 4, part 6.

7 (b) If the department receives the number of protests required for a public convenience and necessity
 8 determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of
 9 location, the department shall schedule a public hearing to be held in the county of the proposed location of the
 10 license to determine whether the protest presents sufficient cause to deny the application based on the
 11 qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for
 12 in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title
 13 2, chapter 4, part 6.

14 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an
 15 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the
 16 proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages
 17 licenses determined for that quota area according to 16-4-201(1), (2), and (8) but in no case less than two. The
 18 minimum number of protests determined in this manner will apply only to applications for either on-premises
 19 consumption beer or all-beverages licenses.

20 (d) A resident of a county in another state that adjoins the county in Montana from which an application
 21 comes may protest an application only if the county or state of residence of the person has certified to the
 22 department that a similarly situated Montana resident would be able to make formal protest of ~~a liquor~~ an
 23 alcoholic beverage license application in that state or county. The department may, by rule, establish how the
 24 certification is to be made."
 25

26 **Section 5.** Section 16-4-402, MCA, is amended to read:

27 **"16-4-402. (Temporary) Application -- investigation.** (1) Prior to the issuance of a license under this
 28 chapter, the applicant shall file with the department an application containing information and statements relative
 29 to the applicant and the premises where the alcoholic beverage is to be sold as required by the department.

30 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the

1 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department of justice shall make a
 2 thorough investigation of all matters relating to the application. Based on the results of the investigation or on
 3 other information, the department shall determine whether:

4 (i) the applicant is qualified to receive a license; and

5 (ii) (A) the applicant's premises are suitable for the carrying on of the business; and

6 ~~(iii)(B) the requirements of this code and the rules promulgated by the department are met and complied~~
 7 ~~with the applicant is qualified to receive a license prior to a determination that the applicant's premises are~~
 8 ~~suitable for carrying on with the business in accordance with [section 1]; or~~

9 (C) if the applicant has already been issued a license, the proposed premises are suitable for the
 10 carrying on of the business.

11 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(11),
 12 a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided
 13 in 16-4-301.

14 (c) For an original license application and an application for transfer of location of a license, the
 15 department of justice's investigation and the department's determination under this subsection (2) must be
 16 completed within 90 days of the receipt of a completed application. If information is requested from the applicant
 17 by either department, the time period in this subsection (2)(c) is tolled until the requested information is received
 18 by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in
 19 the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly
 20 constructed. The basis for the tolling of the deadline must be documented.

21 (3) (a) Upon proof that an applicant made a false statement in any part of the original application, in any
 22 part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for
 23 the license may be denied, and if issued, the license may be revoked.

24 (b) A statement on an application or at a hearing that is based upon a verifiable assertion made by a
 25 governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the basis
 26 of a false statement for a denial or revocation of a license.

27 ~~(4) The department shall issue a conditional approval letter upon the last occurrence of either:~~

28 ~~———(a) completion of the investigation and determination provided for in subsection (2) if the department has~~
 29 ~~not received information that would cause the department to deny the application; or~~

30 ~~———(b) a final agency decision that either denies or dismisses a protest against the approval of an application~~

1 pursuant to 16-4-207.

2 ~~———— (5) The conditional approval letter must state the reasons upon which the future denial of the application~~
 3 ~~may be based. The reasons for denial of the application after the issuance of the conditional approval letter are~~
 4 ~~as follows:~~

5 ~~———— (a) there is false or erroneous information in the application;~~

6 ~~———— (b) the premises are not approved by local building, health, or fire officials;~~

7 ~~———— (c) there are physical changes to the premises that if known prior to the issuance of the conditional~~
 8 ~~approval letter would have constituted grounds for the denial of the application or denial of the issuance of the~~
 9 ~~conditional approval; or~~

10 ~~———— (d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the~~
 11 ~~department's final agency decision provided for in subsection (4). (Terminates December 31, 2023--sec. 17, Ch.~~
 12 ~~5, Sp. L. November 2017.)~~

13 **16-4-402. (Effective January 1, 2024) Application -- investigation.** (1) Prior to the issuance of a
 14 license under this chapter, the applicant shall file with the department an application containing information and
 15 statements relative to the applicant and the premises where the alcoholic beverage is to be sold as required by
 16 the department.

17 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
 18 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department of justice shall make a
 19 thorough investigation of all matters relating to the application. Based on the results of the investigation or on
 20 other information, the department shall determine whether:

21 (i) the applicant is qualified to receive a license; and

22 (ii) (A) the applicant's premises are suitable for the carrying on of the business; ~~and~~

23 ~~(iii)(B) the requirements of this code and the rules promulgated by the department are met and complied~~
 24 ~~with the applicant is qualified to receive a license prior to the determination that the applicant's premises are~~
 25 ~~suitable for carrying on with the business in accordance with [section 1]; or~~

26 (C) if the applicant has already issued a license, the proposed premises are suitable for the carrying on
 27 of the business.

28 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(4),
 29 a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a special permit provided
 30 in 16-4-301.

1 (c) For an original license application and an application for transfer of location of a license, the
 2 department of justice's investigation and the department's determination under this subsection (2) must be
 3 completed within 90 days of the receipt of a completed application. If information is requested from the applicant
 4 by either department, the time period in this subsection (2)(c) is tolled until the requested information is received
 5 by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in
 6 the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly
 7 constructed. The basis for the tolling of the deadline must be documented.

8 (3) (a) Upon proof that an applicant made a false statement in any part of the original application, in any
 9 part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for
 10 the license may be denied, and if issued, the license may be revoked.

11 (b) A statement on an application or at a hearing that is based upon a verifiable assertion made by a
 12 governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the basis
 13 of a false statement for a denial or revocation of a license.

14 ~~(4) The department shall issue a conditional approval letter upon the last occurrence of either:~~
 15 ~~———(a) completion of the investigation and determination provided for in subsection (2) if the department has~~
 16 ~~not received information that would cause the department to deny the application; or~~
 17 ~~———(b) a final agency decision that either denies or dismisses a protest against the approval of an application~~
 18 ~~pursuant to 16-4-207.~~

19 ~~———(5) The conditional approval letter must state the reasons upon which the future denial of the application~~
 20 ~~may be based. The reasons for denial of the application after the issuance of the conditional approval letter are~~
 21 ~~as follows:~~

22 ~~———(a) there is false or erroneous information in the application;~~
 23 ~~———(b) the premises are not approved by local building, health, or fire officials;~~
 24 ~~———(c) there are physical changes to the premises that if known prior to the issuance of the conditional~~
 25 ~~approval letter would have constituted grounds for the denial of the application or denial of the issuance of the~~
 26 ~~conditional approval; or~~
 27 ~~———(d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the~~
 28 ~~department's final agency decision provided for in subsection (4)."~~

29

30 **Section 6.** Section 16-4-405, MCA, is amended to read:

1 **"16-4-405. Denial of license.** (1) The department may deny the issuance of a retail alcoholic beverages
2 license if it determines that the premises proposed for licensing are off regular police beats and cannot be
3 properly policed by local authorities.

4 (2) A retail license may not be issued by the department for a premises situated within a zone of a city,
5 town, or county where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which has
6 been filed with the department.

7 (3) A license under this code may not be issued if the department finds from the evidence at the hearing
8 held pursuant to 16-4-207(3) that:

9 (a) the welfare of the people residing or of retail licensees located in the vicinity of the premises for which
10 the license is desired will be adversely and seriously affected;

11 (b) if required, there is not a public convenience and necessity justification pursuant to 16-4-203;

12 (c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria
13 established by this code; or

14 ~~(d) a possible reason for denial listed in a conditional approval letter, as provided in 16-4-402, has been~~
15 ~~verified; or~~

16 ~~(e)~~(d) the purposes of this code will not be carried out by the issuance of the license."
17

18 **Section 7.** Section 16-4-406, MCA, is amended to read:

19 **"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating**
20 **circumstances.** (1) The department shall upon a written, verified complaint of a person request that the
21 department of justice investigate the action and operation of a brewer, winery, wholesaler, domestic distillery,
22 table wine distributor, beer or wine importer, retailer, concessionaire, or any other person or business licensed
23 or registered under this code.

24 (2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the
25 department, after reviewing admissions of either the licensee or concessionaire or receiving the results of the
26 department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that
27 a licensee or concessionaire has violated a provision of this code or a rule of the department, it may, in its
28 discretion and in addition to the other penalties prescribed:

29 (a) reprimand a licensee or concessionaire;

30 (b) proceed to revoke the license of the licensee or the concession agreement of the concessionaire;

- 1 (c) suspend the license or the concession agreement for a period of not more than 3 months;
- 2 (d) refuse to grant a renewal of the license or concession agreement after its expiration; or
- 3 (e) impose a civil penalty not to exceed \$1,500.
- 4 (3) The department shall consider mitigating circumstances and may adjust penalties within penalty
- 5 ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:
- 6 (a) there have been no violations by the licensee or concessionaire within the past 3 years;
- 7 (b) there have been good faith efforts by the licensee or concessionaire to prevent a violation;
- 8 (c) written policies exist that govern the conduct of the licensee's employees or the concessionaire's
- 9 employees;
- 10 (d) there has been cooperation in the investigation of the violation that shows that the licensee or
- 11 concessionaire or an employee or agent of the licensee or concessionaire accepts responsibility;
- 12 (e) the investigation was not based on complaints received or on observed misconduct, but was based
- 13 solely on the investigating authority creating the opportunity for a violation; or
- 14 (f) the licensee or concessionaire has provided responsible alcohol server training to all of its employees.
- 15 (4) The department shall consider aggravating circumstances and may adjust penalties within penalty
- 16 ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:
- 17 (a) prior warnings about compliance problems;
- 18 (b) prior violations within the past 3 years;
- 19 (c) lack of written policies governing employee conduct;
- 20 (d) multiple violations during the course of the investigation;
- 21 (e) efforts to conceal a violation;
- 22 (f) the intentional nature of the violation; or
- 23 (g) involvement of more than one patron or employee in a violation."
- 24

25 **Section 8.** Section 16-4-420, MCA, is amended to read:

26 **"16-4-420. (Temporary) Restaurant beer and wine license -- competitive bidding -- rulemaking.**

27 (1) The department shall issue a restaurant beer and wine license to an applicant whenever the department

28 determines that the applicant, in addition to satisfying the requirements of this section, meets the following

29 qualifications and conditions:

30 (a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises

1 consumption license;

2 (b) the applicant operates a restaurant at the location where the restaurant beer and wine license will
3 be used or satisfies the department that:

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

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

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

12 (c) the applicant understands and acknowledges in writing on the application that this license prohibits
13 the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines
14 and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine
15 license will be used, the activity must be discontinued or the machines must be removed before the restaurant
16 beer and wine license takes effect; and

17 (d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current
18 seating capacity if the restaurant is operating.

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

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

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

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

1 (a) the applicant is qualified to receive a license; and
 2 ~~(b)(i)~~ the applicant's premises are suitable for the carrying on of the business;
 3 ~~(c)(ii) the requirements of this code and the rules promulgated by the department are complied with the~~
 4 applicant is qualified to receive a license prior to a determination that the applicant's premises are suitable for
 5 carrying on with the business in accordance with [section 1]; and or

6 ~~(d)(iii) if the applicant has already been issued a license, the proposed premises are suitable for the~~
 7 carrying on of the business and the seating capacity stated on the application is correct.

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

10 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the
 11 department may issue a ~~conditional~~ license prior to completion of the premises based on reasonable evidence,
 12 including a statement from the applicant's architect or contractor confirming that the seating capacity stated on
 13 the application is correct, that the premises will be suitable for the carrying on of business as a bona fide
 14 restaurant, as defined in subsection (6). If a license is issued without a premises, the license will immediately be
 15 placed on nonuse until the premises are approved subject to [section 1].

16 (6) (a) For purposes of this section, "restaurant" means a public eating place:

17 (i) where individually priced meals are prepared and served for on-premises consumption;

18 (ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale
 19 of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file
 20 with the department a statement, in a form approved by the department, attesting that at least 65% of the gross
 21 income of the restaurant during the prior year resulted from the sale of food.

22 (iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the
 23 preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use
 24 as a full-service restaurant; and

25 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the
 26 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
 27 restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals
 28 of that license.

29 (b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a
 30 majority of its food and drink in throw-away containers not reused in the same restaurant.

1 (7) (a) A restaurant beer and wine license may be transferred, on approval by the department, from the
2 original applicant to a new owner of the restaurant only after 1 year of use by the original owner.

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

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

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

10 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of
11 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer
12 and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may
13 be issued in that quota area pursuant to 16-4-105;

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

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

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

26 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if the
27 number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal
28 to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

29 (b) In determining the number of restaurant beer and wine licenses that may be issued under this
30 subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the

1 department shall round to the nearer whole number.

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

5 (9) If any new restaurant beer and wine licenses are allowed by separating a combined quota area,
6 pursuant to 16-4-105 as of November 24, 2017, the department shall publish the availability of no more than one
7 new restaurant beer and wine license a year until the quota has been reached.

8 (10) When a restaurant beer and wine license becomes available by the initial issuance of licenses under
9 this section or as the result of an increase in the population in a quota area, the nonrenewal of a restaurant beer
10 and wine license, or the lapse or revocation of a license by the department, then the department shall advertise
11 the availability of the license in the quota area for which it is available.

12 (11) When the department determines that a quota area is eligible for a new restaurant beer and wine
13 license under subsection (9) or (10), the department shall use a competitive bidding process to determine the
14 party afforded the opportunity to apply for a new license. The department shall:

15 (a) determine the minimum bid based on 75% of the market value of all restaurant beer and wine
16 licenses in the quota area;

17 (b) publish notice that a quota area is eligible for a new license;

18 (c) notify the bidder with the highest bid; and

19 (d) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has
20 been approved.

21 (12) To enter the competitive bidding process, a bidder shall submit:

22 (a) an application form provided by the department; and

23 (b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary
24 of the bid amount.

25 (13) The highest bidder shall:

26 (a) submit an application provided by the department and applicable fees for the license within 60 days
27 of the department's notification of being the highest bidder;

28 (b) pay the bid amount prior to the license being approved;

29 (c) meet all other requirements to own a restaurant beer and wine license; and

30 (d) commence business within 1 year of the department's notification unless the department grants an

1 extension because commencement was delayed by circumstances beyond the applicant's control.

2 (14) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must
3 be set at the tied bid amount. To submit a new bid, a tied bidder shall submit:

4 (a) an application form provided by the department; and

5 (b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary
6 of the new bid amount.

7 (15) If the highest bidder is not approved to own the license, the department shall offer the license to the
8 next highest bidder. That bidder shall comply with the requirements of subsection (13).

9 (16) If no bids are received during the competitive bidding process or if a quota area is already eligible
10 for another new license, the department shall process applications for the license in the order received.

11 (17) (a) The successful applicant is subject to forfeiture of the license and the original license fee if the
12 successful applicant:

13 (i) transfers an awarded license to another person after receiving the license unless that transfer is due
14 to the death of an owner;

15 (ii) does not use the license within 1 year of receiving the license or stops using the license within 5 years.
16 The department may extend the time for use if the successful applicant provides evidence that the delay in use
17 is for reasons outside the applicant's control; or

18 (iii) proposes a location for the license that had the same license type within the previous 12 months.

19 (b) If a license is forfeited, the department shall offer the license to the next eligible highest bidder in the
20 auction.

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

23 (19) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20%
24 of the initial licensing fee. If the department does not make a decision either granting or denying the license within
25 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate
26 of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that
27 the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the
28 department denies an application, the application fee, plus any interest, less a processing fee established by rule,
29 must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial
30 licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

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

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

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

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

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

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

11 (23) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming
12 or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a
13 restaurant beer and wine license.

14 (24) The department may adopt rules to implement this section. (Terminates December 31, 2023--sec.
15 17, Ch. 5, Sp. L. November 2017.)

16 **16-4-420. (Effective January 1, 2024) Restaurant beer and wine license -- rulemaking.** (1) The
17 department shall issue a restaurant beer and wine license to an applicant whenever the department determines
18 that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications and
19 conditions:

20 (a) the applicant complies with the licensing criteria provided in 16-4-401 for an on-premises
21 consumption license;

22 (b) the applicant operates a restaurant at the location where the restaurant beer and wine license will
23 be used or satisfies the department that:

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

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

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

1 by rule;

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

7 (d) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the current
8 seating capacity if the restaurant is operating.

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

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

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

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

21 (a) the applicant is qualified to receive a license; and

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

23 ~~(c)(ii) the requirements of this code and the rules promulgated by the department are complied with; the~~
24 applicant is qualified to receive a license prior to a determination that the applicant's premises are suitable for
25 carrying on with the business in accordance with [section 1]; and or

26 ~~(d)(iii) if the applicant has already been issued a license, the proposed premises are suitable for the~~
27 carrying on of the business and the seating capacity stated on the application is correct.

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

30 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the

1 department may issue a conditional license prior to completion of the premises based on reasonable evidence,
2 including a statement from the applicant's architect or contractor confirming that the seating capacity stated on
3 the application is correct, that the premises will be suitable for the carrying on of business as a bona fide
4 restaurant, as defined in subsection (6). If a license is issued without premises approval, the license will
5 immediately be placed on nonuse until the premises are approved subject to [section 1].

6 (6) (a) For purposes of this section, "restaurant" means a public eating place:

7 (i) where individually priced meals are prepared and served for on-premises consumption;

8 (ii) where at least 65% of the restaurant's annual gross income from the operation must be from the sale
9 of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall file
10 with the department a statement, in a form approved by the department, attesting that at least 65% of the gross
11 income of the restaurant during the prior year resulted from the sale of food.

12 (iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the
13 preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use
14 as a full-service restaurant; and

15 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the
16 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
17 restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals
18 of that license.

19 (b) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a
20 majority of its food and drink in throw-away containers not reused in the same restaurant.

21 (7) (a) A restaurant beer and wine license may be transferred, on approval by the department, from the
22 original applicant to a new owner of the restaurant only after 1 year of use by the original owner.

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

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

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

30 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of

1 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer
2 and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may
3 be issued in that quota area pursuant to 16-4-105;

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

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

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

16 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if the
17 number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal
18 to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-4-105.

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

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

25 (d) If there are more applicants than licenses available in a quota area, then the license must be awarded
26 by lottery as provided in subsection (10).

27 (9) If any new restaurant beer and wine licenses are allowed by separating a combined quota area,
28 pursuant to 16-4-105 as of November 24, 2017, the department shall publish the availability of no more than one
29 new restaurant beer and wine license a year until the quota has been reached.

30 (10) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses

1 under this section or as the result of an increase in the population in a quota area, the nonrenewal of a restaurant
2 beer and wine license, or the lapse or revocation of a license by the department, then the department shall
3 advertise the availability of the license in the quota area for which it is available. If there are more applicants than
4 number of licenses available, the license must be awarded to an applicant by a lottery.

5 (b) A preference must be given to an applicant who does not yet have in any quota area a restaurant
6 beer and wine license or a retail beer license and who operates a restaurant that is in the quota area described
7 in subsection (8) in which the license has become available and that meets the qualifications of subsection (6)
8 for at least 12 months prior to the filing of an application. An applicant with a preference must be awarded a
9 license before any applicant without a preference.

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

16 (d) If a successful lottery applicant does not use a license within 1 year of notification by the department
17 of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the
18 application fee and offer the license to the next eligible ranked applicant in the lottery.

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

21 (12) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20%
22 of the initial licensing fee. If the department does not make a decision either granting or denying the license within
23 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate
24 of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that
25 the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the
26 department denies an application, the application fee, plus any interest, less a processing fee established by rule,
27 must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial
28 licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

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

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

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

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

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

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

9 (16) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming
10 or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a
11 restaurant beer and wine license.

12 (17) The department may adopt rules to implement this section."
13

14 **Section 9.** Section 23-5-117, MCA, is amended to read:

15 **"23-5-117. Premises approval.** (1) ~~Except as provided in subsection (4), the~~ The department may
16 approve a premises for issuance or operation of an operator's license if the premises meets the requirements
17 contained in subsections (2) and (3).

18 (2) The premises may include any concessioned area provided for in [section 2] and must:

19 (a) be a structure or facility that is clearly defined by permanently installed walls that extend from floor
20 to ceiling;

21 (b) have a unique address assigned by the local government in which the premises is located; ~~and~~

22 (c) have a public external entrance, leading to a street or other common area, that is not shared with
23 another premises for which an operator's license has been issued; and

24 (d) be designed and arranged to allow for observation and control of all gambling activities by the
25 gambling operator.

26 (3) If the premises shares a common internal wall with another premises for which an operator's license
27 has been issued, the common wall must be permanently installed, opaque, and extend from floor to ceiling and
28 may not contain an internal entrance through which public access is allowed.

29 ~~(4) A second operator's license may be issued or renewed until June 30, 2001, for a person operating~~
30 ~~a gambling activity on a premises that did not meet the requirements of subsections (2) and (3) if:~~

- 1 ~~_____ (a) the second operator's license was issued to the person on or before January 1, 1991; or~~
 2 ~~_____ (b) (i) the application for the second operator's license was received by the department on or before~~
 3 ~~January 1, 1991;~~
 4 ~~_____ (ii) a second on-premises alcoholic beverages license was obtained for the premises on or before~~
 5 ~~January 1, 1991; and~~
 6 ~~_____ (iii) substantial physical modifications to the premises were made on or before January 1, 1991."~~

7

8 **Section 10.** Section 23-5-177, MCA, is amended to read:

9 **"23-5-177. Operator of gambling establishment -- license -- fee.** (1) Except as provided in 23-5-310
 10 and 23-5-410, it is a misdemeanor for a person who is not licensed by the department as an operator to make
 11 available to the public for play a gambling device or gambling enterprise for which a permit must be obtained from
 12 the department.

13 (2) To obtain an operator's license, a person shall submit to the department:

14 (a) a completed operator's license application on a form prescribed and furnished by the department;
 15 (b) the person's fingerprints and, if the applicant is a corporation, the fingerprints of each person holding
 16 10% or more of the outstanding stock of the corporation and of each officer and director of the corporation, to be
 17 used for a fingerprint and background check that must be used by the department in determining eligibility for a
 18 license;

19 (c) any other relevant information requested by the department; and

20 (d) a license application processing fee, as required in subsection (8).

21 (3) Before issuing an operator's license, the department shall approve, in accordance with 23-5-117, the
 22 premises in which the gambling activity is to be conducted. However, for applicants issued an alcoholic beverage
 23 license under [section 1], the department may approve the gambling operator license prior to approval of the
 24 premises. Gambling activities may not occur until the premises has been approved in accordance with 23-5-117.

25 (4) Except as provided in 23-5-117, regardless of the number of on-premises alcoholic beverage licenses
 26 issued for a premises, the department may issue only one operator's license for the premises.

27 (5) An operator's license must include the following information:

28 (a) a description of the premises upon which the gambling will take place;

29 (b) the operator's name;

30 (c) a description of each gambling device or card game table for which a permit has been issued to the

1 operator by the department for play upon the premises, including the type of game and permit number for each
2 game; and

3 (d) any other relevant information determined necessary by the department.

4 (6) The operator's license must be issued annually along with all other permits for gambling devices or
5 games issued to the operator.

6 (7) The operator's license must be updated each time a video gambling machine, bingo, keno, or card
7 game table permit is newly issued or the machine or game is removed from the premises.

8 (8) The department shall charge an applicant who has submitted an operator's license application on
9 or after July 1, 1991, a one-time license application processing fee to cover the actual cost incurred by the
10 department in determining whether the applicant qualifies for licensure under 23-5-176. After making its
11 determination, the department shall refund any overpayment or charge and collect amounts sufficient to
12 reimburse the department for any underpayment of actual costs.

13 (9) The operator's license must be prominently displayed upon the premises for which it is issued."
14

15 **NEW SECTION. Section 11. Codification instruction.** [Sections 1 and 2] are intended to be codified
16 as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 1 and 2].
17

18 **NEW SECTION. Section 12. Effective dates.** (1) Except as provided in subsection (2), [this act] is
19 effective October 1, 2019.

20 (2) [Sections 2, 3, 7, and 9] and this section are effective on passage and approval.
21

- END -