

HOUSE BILL NO. 762

INTRODUCED BY J. HAMILTON

1
2
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING THE RESTAURANT ALL-BEVERAGES LICENSE PILOT
5 PROGRAM; PROVIDING FOR HOURS OF OPERATION; PROVIDING ELIGIBILITY CRITERIA; ALLOWING
6 EXISTING RESTAURANT BEER AND WINE LICENSEES TO APPLY; ALLOWING UNLICENSED ENTITIES
7 TO APPLY; PROVIDING DEFINITIONS; PROVIDING FOR ONE-TIME LICENSE FEES; PROVIDING
8 RULEMAKING AUTHORITY; PROVIDING FOR A SPECIAL REVENUE ACCOUNT; ALLOWING RESTAURANT
9 ALL-BEVERAGES LICENSES TO HAVE A CATERING ENDORSEMENT; AND AMENDING SECTION 16-4-111,
10 MCA."

11
12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

13
14 **NEW SECTION. Section 1. Restaurant all-beverages license pilot program -- requirements --**
15 **rulemaking.** (1) The purpose of this section is to encourage the growth of local economies of the state by
16 expanding the restaurant industry and to provide for the orderly administration of the code within which restaurant
17 all-beverages licenses may be issued by the department under the restaurant all-beverages license pilot program
18 established in this section.

- 19 (2) A restaurant all-beverages license:
- 20 (a) allows the licensee to operate a restaurant at any hour and to sell alcoholic beverages at retail in the
 - 21 restaurant between the hours of 11 a.m. and 11 p.m.;
 - 22 (b) is not subject to quota limitations and may be issued only to a location in the quota area for an
 - 23 incorporated city or town with more than 15,000 inhabitants;
 - 24 (c) allows the licensee to operate a restaurant so that at least 65% of the restaurant's gross income
 - 25 operation is expected to be the result of the sale of food;
 - 26 (d) allows the licensee to serve alcoholic beverages only to a patron who orders food and requires that
 - 27 alcoholic beverage purchases be stated on the food bill;
 - 28 (e) requires that the restaurant serve alcoholic beverages from a service bar as that term is defined by
 - 29 the department by rule; and
 - 30 (f) prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any

1 gambling machines and requires that if any gaming or gambling activity or machine exists at the location where
2 the restaurant all-beverages license will be used, the activity must be discontinued or the machines must be
3 removed before the restaurant all-beverages license takes effect.

4 (3) (a) The department may issue up to 50 restaurant all-beverages licenses to existing licensees who
5 hold a restaurant beer and wine license under 16-4-420 and have not had another retail license in the previous
6 year as of [the effective date of this act] and who:

7 (i) apply for a restaurant all-beverages license within 6 months after [the effective date of this act];

8 (ii) are qualified under this section; and

9 (iii) pay the \$50,000 initial license fee.

10 (b) Upon issuance of the restaurant all-beverages license, the licensee's existing restaurant beer and
11 wine license may not be sold or transferred and must be returned to the department.

12 (4) The department may issue up to five restaurant all-beverages licenses in each quota area provided
13 in subsection (2)(b) to applicants who did not hold any alcohol license under this code in the previous year as of
14 [the effective date of this act] and who:

15 (a) apply for a restaurant all-beverages license within 6 months after [the effective date of this act];

16 (b) are qualified under this section; and

17 (c) pay the \$75,000 initial license fee.

18 (5) An application for a restaurant all-beverages license submitted under this section is subject to the
19 provisions of 16-4-203, 16-4-207, and 16-4-405. An applicant must comply with the licensing criteria provided in
20 16-4-401 for an on-premises consumption license.

21 (6) If a premises proposed for licensing under this section is a new or remodeled structure, the
22 department may issue a conditional license prior to completion of the premises based on reasonable evidence
23 that the premises will be suitable for the carrying on of business as a bona fide restaurant, as defined in this
24 section.

25 (7) A completed application for a license under this section must be submitted to the department. The
26 department shall investigate the items relating to the application as described in this section. Based on the results
27 of the investigation and the exercise of its sound discretion, the department shall determine whether the applicant:

28 (a) is qualified to receive a license;

29 (b) has premises that are suitable for the carrying on of the business;

30 (c) has paid the initial license fee as provided in subsection (3) or (4); and

- 1 (d) has complied with the requirements of this code and the rules promulgated by the department.
- 2 (8) (a) A license issued under this section is not subject to an annual license renewal fee.
- 3 (b) Initial license fees collected by the department pursuant to this section must be deposited into the
4 state special revenue fund as provided in [section 2].
- 5 (9) (a) A restaurant all-beverages license is nontransferable.
- 6 (b) A restaurant all-beverages license issued under this section may be jointly owned, and the license
7 may pass to the surviving joint tenant upon the death of the other tenant. However, the license may not be
8 transferred to any other person or entity by operation of the laws of inheritance or succession or any other laws
9 allowing the transfer of property upon the death of the owner in this state or in another state.
- 10 (10) Under a restaurant all-beverages license, alcoholic beverages may not be sold for off-premises
11 consumption.
- 12 (11) The department may adopt rules to implement this section.
- 13 (12) For the purposes of this section, the following definitions apply:
- 14 (a) "Alcoholic beverages" means liquor, beer, and table wine.
- 15 (b) (i) "Restaurant" means a public eating place:
- 16 (A) where individually priced meals are prepared and served for on-premises consumption;
- 17 (B) where at least 65% of the restaurant's annual gross income from the operation must be from the sale
18 of food and not from the sale of alcoholic beverages. Each year after a license is issued, the licensee shall file
19 with the department a statement, in a form approved by the department, attesting that at least 65% of the gross
20 income of the restaurant during the prior year resulted from the sale of food.
- 21 (C) that has a dining room, a kitchen, and the number and kinds of employees necessary for the
22 preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use
23 as a full-service restaurant; and
- 24 (D) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the
25 hours of 5 p.m. and 11 p.m.
- 26 (ii) The term does not mean a fast-food restaurant that, excluding any carry-out business, serves a
27 majority of its food and drink in throw-away containers not reused in the same restaurant.
- 28
- 29 **NEW SECTION. Section 2. Special revenue account -- funding -- purpose.** There is an account in
30 the state special revenue fund to the credit of the department of revenue. The initial license fees for restaurant

1 all-beverages licenses provided pursuant to [section 1] must be deposited in the account. The money in the
2 account must be used for future pilot programs or for potential funding for the state liquor warehouse.

3

4 **Section 3.** Section 16-4-111, MCA, is amended to read:

5 **"16-4-111. Catering endorsement for beer and wine licensees.** (1) (a) A person who is engaged
6 primarily in the business of providing meals with table service and who is licensed to sell beer at retail or beer
7 and wine at retail for on-premises consumption may, upon the approval of the department, be granted a catering
8 endorsement to the license to allow the catering and sale of beer or beer and wine to persons attending a special
9 event upon premises not otherwise licensed for the sale of beer or beer and wine for on-premises consumption.
10 The beer or wine must be consumed on the premises where the event is held.

11 (b) A person who is licensed pursuant to 16-4-420 and [section 1] to sell ~~beer at retail or beer and wine~~
12 alcoholic beverages at retail for on-premises consumption may, upon the approval of the department, be granted
13 a catering endorsement to the license to allow the catering and sale of beer and wine to persons attending a
14 special event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal
15 in cost to 65% of the total gross revenue from the catering contract, for on-premises consumption. The beer or
16 wine must be consumed on the premises where the event is held.

17 (2) A written application for a catering endorsement and an annual fee of \$200 must be submitted to the
18 department for its approval.

19 (3) A licensee who holds a catering endorsement may not cater an event in which the licensee is the
20 sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

21 (4) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises that
22 the catered event is to be held. A fee of \$35 must accompany the notice.

23 (5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions
24 of 16-6-103.

25 (6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the provisions
26 of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises sale of beer or beer
27 and wine on premises where the event is to be held.

28 (7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at a
29 special event conducted on the premises of a county fairground or public sports arena authorizes the licensee
30 to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as well as from a

1 booth, stand, or other fixed place on the premises.

2 (8) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the
3 catered event unless the sponsor is the state of Montana, a political subdivision of the state, or a qualified entity
4 under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended."

5
6 **NEW SECTION. Section 4. Codification instruction.** [Sections 1 and 2] are intended to be codified
7 as an integral part of Title 16, and the provisions of Title 16 apply to [sections 1 and 2].

8 - END -