

## 1 HOUSE BILL NO. 226

2 INTRODUCED BY K. ZOLNIKOV, E. BUTTREY, D. SKEES, M. BLASDEL, W. GALT, M. NOLAND, C.

3 KNUDSEN, M. STROMSWOLD, R. MARSHALL, C. HINKLE

4  
5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LAWS TO ALLOW  
6 CURBSIDE PICKUP; AUTHORIZING CERTAIN LICENSEES AND LIQUOR STORE AGENTS TO OFFER  
7 CURBSIDE PICKUP TO CUSTOMERS; PROVIDING REQUIREMENTS FOR CURBSIDE PICKUP;  
8 PROVIDING EXCEPTIONS FOR DOCK SALES; PROVIDING HOURS FOR CURBSIDE PICKUP;  
9 PROVIDING DEFINITIONS; AMENDING SECTIONS 16-1-106, 16-2-106, 16-3-213, 16-3-214, 16-3-219, 16-3-  
10 303, 16-3-411, 16-3-418, 16-4-105, 16-4-110, 16-4-115, 16-4-201, 16-4-208, 16-4-209, 16-4-213, 16-4-312,  
11 AND 16-4-420, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

14  
15 **NEW SECTION. Section 1. Curbside pickup.** (1) Licensed entities and agency liquor stores  
16 provided under subsection (3) may offer curbside pickup.

17 (2) Curbside pickup constitutes the sale of alcoholic beverages in original packaging, prepared  
18 servings, or growlers that was ordered online or through the phone for pickup from the licensee or agency liquor  
19 store during normal business hours and within 300 feet of the licensed premises or agency liquor stores,  
20 including a drive-through window. Curbside pickup is intended for consumption somewhere other than the  
21 pickup location. It is not intended for delivery to residences or other businesses, including but not limited to  
22 restaurants or hotels.

23 (3) This only applies to licenses issued under 16-3-213, 16-3-214, 16-3-411, 16-4-105, 16-4-110, 16-  
24 4-115, 16-4-201, 16-4-208, 16-4-209, 16-4-213, 16-4-312, and 16-4-420 and agency liquor stores under 16-2-  
25 101.

26  
27 **Section 2.** Section 16-1-106, MCA, is amended to read:

28 **"16-1-106. Definitions.** As used in this code, the following definitions apply:

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

3 (2) "Agency liquor store" means a store operated under an agency franchise agreement in  
4 accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises  
5 consumption.

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

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

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

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

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

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

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

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

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

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

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

20 (a) a beverage:

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

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

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

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

28 (b) a beverage:

- 1 (i) that contains at least 0.5% of alcohol by volume;
- 2 (ii) that is treated by processing, filtration, or another method of manufacture that is not generally  
3 recognized as a traditional process in the production of beer as described in 27 CFR 25.55;
- 4 (iii) to which is added a flavor or other ingredient containing alcohol, except for a hop extract;
- 5 (iv) to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and  
6 taurine;
- 7 (v) for which the producer is required to file a formula for approval with the United States alcohol and  
8 tobacco tax and trade bureau pursuant to 27 CFR 25.55; and
- 9 (vi) that is not exempt pursuant to 27 CFR 25.55(f).
- 10 (9) "Community" means:
- 11 (a) in an incorporated city or town, the area within the incorporated city or town boundaries;
- 12 (b) in an unincorporated city or area, the area identified by the federal bureau of the census as a  
13 community for census purposes; and
- 14 (c) in a consolidated local government, the area of the consolidated local government not otherwise  
15 incorporated.
- 16 (10) "Concessionaire" means an entity that has a concession agreement with a licensed entity.
- 17 (11) "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of [section  
18 1].
- 19 ~~(11)~~ (12) "Department" means the department of revenue, unless otherwise specified, and includes the  
20 department of justice with respect to receiving and processing, but not granting or denying, an application under  
21 a contract entered into under 16-1-302.
- 22 ~~(12)~~ (13) "Growler" means any ~~refillable, resealable~~ fillable, sealable container complying with federal  
23 law.
- 24 ~~(13)~~ (14) "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the  
25 juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 6.9% of  
26 alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.
- 27 ~~(14)~~ (15) "Immediate family" means a spouse, dependent children, or dependent parents.
- 28 ~~(15)~~ (16) "Import" means to transfer beer or table wine from outside the state of Montana into the state

1 of Montana.

2 ~~(16)~~(17) "Liquor" means an alcoholic beverage except beer and table wine. The term includes a  
3 caffeinated or stimulant-enhanced malt beverage.

4 ~~(17)~~(18) "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or  
5 decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their  
6 parts or their products and with or without other malted cereals and with or without the addition of unmalted or  
7 prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other  
8 wholesome products suitable for human food consumption.

9 (19) (a) "Original package" means the sealed container in which a manufacturer packages its product  
10 for retail sale.

11 (b) The term includes BUT IS NOT LIMITED TO:

12 (i) bottles;

13 (ii) cans; and

14 (iii) kegs.

15 ~~(18)~~(20) "Package" means a container or receptacle used for holding an alcoholic beverage.

16 ~~(19)~~(21) "Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses  
17 as fixed and determined by the department and in addition an excise and license tax as provided in this code.  
18 In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of  
19 the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor  
20 stores, and a 20% markup.

21 (22) "Prepared serving" means a container of alcoholic beverages, filled at the time of sale and sealed  
22 with a lid, for consumption at a place other than the licensee's premises.

23 ~~(20)~~(23) "Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that  
24 contains 50% of alcohol by volume.

25 ~~(21)~~(24) "Public place" means a place, building, or conveyance to which the public has or may be  
26 permitted to have access and any place of public resort.

27 ~~(22)~~(25) "Retail price" means the price established by an agent for the sale of liquor to persons who do  
28 not hold liquor licenses. The retail price may not be less than the department's posted price.

1           ~~(23)~~(26) "Rules" means rules adopted by the department or the department of justice pursuant to this  
2 code.

3           ~~(24)~~(27) "Sacramental wine" means wine that contains more than 0.5% but not more than 24% of  
4 alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious  
5 purposes.

6           ~~(25)~~(28) "Special event", as it relates to an application for a beer and wine special permit, means a  
7 short, infrequent, out-of-the-ordinary occurrence, such as a picnic, fair, reception, or sporting contest.

8           ~~(26)~~(29) "State liquor warehouse" means a building owned or under control of the department for the  
9 purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.

10           ~~(27)~~(30) "Storage depot" means a building or structure owned or operated by a brewer at any point in  
11 the state of Montana off and away from the premises of a brewery, which building or structure is equipped with  
12 refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as  
13 permitted by this code.

14           ~~(28)~~(31) "Subwarehouse" means a building or structure owned or operated by a licensed beer  
15 wholesaler or table wine distributor, located at a site in Montana other than the site of the beer wholesaler's or  
16 table wine distributor's warehouse or principal place of business, and used for the receiving, storage, and  
17 distribution of beer or table wine as permitted by this code.

18           ~~(29)~~(32) "Table wine" means wine that contains not more than 16% of alcohol by volume and includes  
19 cider.

20           ~~(30)~~(33) "Table wine distributor" means a person importing into or purchasing in Montana table wine or  
21 sacramental wine for sale or resale to retailers licensed in Montana.

22           ~~(31)~~(34) "Warehouse" means a building or structure located in Montana that is owned or operated by a  
23 licensed beer wholesaler or table wine distributor for the receiving, storage, and distribution of beer or table  
24 wine as permitted by this code.

25           ~~(32)~~(35) "Wine" means an alcoholic beverage made from or containing the normal alcoholic  
26 fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except  
27 as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not  
28 more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and

1 fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other  
2 alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as  
3 wine in accordance with federal regulations are also wine."  
4

5 **Section 3.** Section 16-2-106, MCA, is amended to read:

6 **"16-2-106. Sales by agent.** A liquor store agent may sell to any person any liquor and table wine that  
7 the person is entitled to purchase in conformity with the provisions of this code and the rules implementing this  
8 code. An agent may, under the terms and conditions that the agent establishes, deliver liquor and table wine  
9 purchased from the agent's agency liquor store. An agent may sell liquor through curbside pickup in original  
10 packaging."  
11

12 **Section 4.** Section 16-3-213, MCA, is amended to read:

13 **"16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.** (1) Except  
14 as provided for small breweries in subsection (2), it is unlawful for any brewer or breweries or beer importer to  
15 have or own any permit to sell or retail beer at any place or premises. It is the intention of this section to prohibit  
16 brewers and beer importers from engaging in the retail sale of beer. This section does not prohibit breweries  
17 from selling and delivering beer manufactured by them, in original packages, at either wholesale or retail.

18 (2) (a) For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide  
19 production of not less than 100 barrels or more than 60,000 barrels, including:

20 (i) the production of all affiliated manufacturers; and

21 (ii) beer purchased from any other beer producer to be sold by the brewery.

22 (b) A small brewery may, at one location for each brewery license and at no more than three locations  
23 including affiliated manufacturers, provide samples of beer that were brewed and fermented on the premises in  
24 a sample room located on the licensed premises. The samples may be provided with or without charge  
25 between the hours of 10 a.m. and 8 p.m. No more than 48 ounces of malt beverage may be sold or given to  
26 each individual customer during a business day for consumption on the premises or in prepared servings  
27 through curbside pickup, provided that the 48-ounce limit may not in any way limit a small brewery's sales as  
28 provided in 16-3-214(1)(a)(iii). No more than 2,000 barrels may be provided annually for on-premises

1 consumption including all affiliated manufacturers.

2 (3) For the purposes of this section, "affiliated manufacturer" means a manufacturer of beer:

3 (a) that one or more members of the manufacturing entity have more than a majority share interest in  
4 or that controls directly or indirectly another beer manufacturing entity;

5 (b) for which the business operations conducted between or among entities are interrelated or  
6 interdependent to the extent that the net income of one entity cannot reasonably be determined without  
7 reference to operations of the other entity; or

8 (c) of which the brand names, products, recipes, merchandise, trade name, trademarks, labels, or  
9 logos are identical or nearly identical."  
10

10

11 **Section 5.** Section 16-3-214, MCA, is amended to read:

12 **"16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and  
13 restrictions contained in this code, a brewer who manufactures less than 60,000 barrels of beer a year, upon  
14 payment of the annual license fee imposed by 16-4-501 and upon presenting satisfactory evidence to the  
15 department as required by 16-4-101, must be licensed by the department, in accordance with the provisions of  
16 this code and rules prescribed by the department, to:

17 (a) sell and deliver beer from its storage depot or brewery to:

18 (i) a wholesaler;

19 (ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver  
20 the beer and if:

21 (A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day  
22 to each licensed retailer; and

23 (B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a  
24 year; or

25 (iii) the public, including curbside pickup between 8 a.m. and 2 a.m. in original packaging or growlers;

26 (b) provide its own products for consumption on its licensed premises without charge or, if it is a small  
27 brewery, provide its own products at a sample room as provided in 16-3-213; or

28 (c) do any one or more of the acts of sale and delivery of beer as provided in this code.

1 (2) A brewery may not use a common carrier for delivery of the brewery's product to the public or to  
2 licensed retailers.

3 (3) A brewery may import or purchase, upon terms and conditions the department may require,  
4 necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing  
5 purposes.

6 (4) An additional license fee may not be imposed on a brewery providing its own products on its  
7 licensed premises for consumption on the premises.

8 (5) This section does not prohibit a licensed brewer from shipping and selling beer directly to a  
9 wholesaler in this state under the provisions of 16-3-230."  
10

10

11 **Section 6.** Section 16-3-219, MCA, is amended to read:

12 **"16-3-219. Dock sales restricted -- exceptions.** ~~Beer~~ (1) Except as provided in subsections (2)  
13 through (4), beer or wine may not be delivered to a licensed retailer at any location other than the retailer's  
14 licensed premises, ~~except:~~

15 (2) An all-beverages licensee may personally or through an employee obtain from any wholesaler's  
16 warehouse any quantity of beer as the all-beverages licensee and wholesaler may agree to buy and sell.

17 (3) Retailers other than an all-beverages licensee may personally or through an employee obtain from  
18 the wholesaler's warehouse any quantity of beer as the retailer and wholesaler may agree to buy and sell only  
19 within the territory of the wholesaler in which the retailer is located.

20 (4) When a beer wholesaler's trucks and equipment are incapable of delivering beer to a retail  
21 licensee's premises due to the unique physical location of the retail licensee's premises, examples of which are  
22 premises located on an island or atop a mountain, the beer wholesaler and retail licensee may seek prior  
23 department approval for an alternative delivery arrangement on a form provided by the department. If the  
24 department approves the alternative delivery arrangement request, the department shall provide the beer  
25 wholesaler and the retail licensee a written summary of the conditions of the approved delivery arrangement.  
26 Failure to comply with the approved alternative delivery arrangement may subject the beer wholesaler and/or  
27 retail licensee to administrative action~~that a retailer located within the territory for which a wholesaler has been~~  
28 ~~appointed to distribute a brand may personally or through an employee obtain from the wholesaler's warehouse~~



1 quantities of beer not exceeding three barrels in packaged or draft form. An all-beverages licensee may upon  
 2 presentation of the licensee's license or a photocopy of the license personally obtain from any wholesaler's  
 3 warehouse the quantities of beer as the licensee and the wholesaler may agree to buy and sell."  
 4

5 **Section 7.** Section 16-3-303, MCA, is amended to read:

6 **"16-3-303. Sale of beer by retailer for consumption off premises.** It is lawful for an on-premises  
 7 retailer to sell or furnish beer to the public in its original package, prepared servings, or in growlers, and the  
 8 beer must be taken away from the premises of the retailer for consumption off the premises of the retailer.  
 9 Growlers may not be filled in advance of sale and may be furnished by the consumer."  
 10

11 **Section 8.** Section 16-3-411, MCA, is amended to read:

12 **"16-3-411. Winery.** (1) A winery located in Montana and licensed pursuant to 16-4-107 may:

- 13 (a) import in bulk, bottle, produce, blend, store, transport, or export wine it produces;  
 14 (b) sell wine it produces at wholesale to wine distributors;  
 15 (c) sell wine it produces at retail at the winery directly to the consumer for consumption on or off the  
 16 premises;  
 17 (d) provide, without charge, wine it produces for consumption at the winery;  
 18 (e) purchase from the department or its licensees brandy or other distilled spirits for fortifying wine it  
 19 produces;  
 20 (f) obtain a special event permit under 16-4-301;  
 21 (g) perform those operations and cellar treatments that are permitted for bonded winery premises  
 22 under applicable regulations of the United States department of the treasury;  
 23 (h) sell wine at the winery to a licensed retailer who presents the retailer's license or a photocopy of  
 24 the license; ~~or~~  
 25 (i) obtain a direct shipment endorsement to ship table wine as provided in Title 16, chapter 4, part 11,  
 26 directly to an individual in Montana who is at least 21 years of age; or  
 27 (j) offer wine in its original packaging, prepared servings, or growlers for curbside pickup between 8  
 28 a.m. and 2 a.m.

- 1           (2) (a) A winery licensed pursuant to 16-4-107 may sell and deliver wine produced by the winery  
2 directly to licensed retailers if the winery:
- 3           (i) uses the winery's own equipment, trucks, and employees to deliver the wine and the wine delivered  
4 pursuant to this subsection (2)(a)(i) does not exceed 4,500 cases a year;
- 5           (ii) contracts with a licensed table wine distributor to ship and deliver the winery's wine to the retailer;  
6 or
- 7           (iii) contracts with a common carrier to ship and deliver the winery's wine to the retailer and:
- 8           (A) the wine shipped and delivered by common carrier is shipped directly from the producer's winery  
9 or bonded warehouse;
- 10           (B) individual shipments delivered by common carrier are limited to three cases a day for each  
11 licensed retailer; and
- 12           (C) the shipments delivered by common carrier do not exceed 4,500 cases a year.
- 13           (b) If a winery uses a common carrier for delivery of the wine to licensed table wine distributors and  
14 retailers, the shipment must be:
- 15           (i) in boxes that are marked with the words: "Wine Shipment From Montana-Licensed Winery to  
16 Montana Licensee";
- 17           (ii) delivered to the premises of a licensed table wine distributor or licensed retailer who is in good  
18 standing; and
- 19           (iii) signed for by the wine distributor or retailer or its employee or agent.
- 20           (c) In addition to any records required to be maintained under 16-4-107, a winery that distributes wine  
21 within the state under this subsection (2) shall maintain records of all sales and shipments. The winery shall,  
22 pursuant to 16-1-411, electronically file a report in the manner and form prescribed by the department, reporting  
23 the amount of wine or hard cider, or both, that it shipped in the state during the preceding period, including the  
24 names and addresses of consignees or retailers, and other information that the department may determine to  
25 be necessary to ensure that distribution of wine or hard cider, or both, within this state conforms to the  
26 requirements of this code."

27

28           **Section 9.** Section 16-3-418, MCA, is amended to read:

1           **"16-3-418. Dual appointments -- equal support -- alternate supplier -- dock sales.** (1) (a) A  
2 supplier may appoint one or more table wine distributors to distribute its table wines in a specified territory. If  
3 the supplier appoints two or more table wine distributors to sell its table wines in the same or overlapping  
4 territories, the supplier shall offer the same prices, delivery, terms, and promotional support to each table wine  
5 distributor.

6           (b) A supplier may not appoint more than one table wine distributor to distribute its hard cider in a  
7 specified territory.

8           (c) For the purposes of this subsection (1), "table wine" has the meaning assigned in 16-1-106, but  
9 does not include hard cider.

10           (2) (a) ~~The holder of an all-beverages license under chapter 4, part 2, may, upon presentation of the~~  
11 ~~license or a photocopy of the license, personally obtain from any distributor's warehouse a quantity of table~~  
12 ~~wine that the licensee may agree to buy and that the distributor may agree to sell.~~

13           ~~(b) The holder of a license that permits on-premises consumption of alcoholic beverages under 16-4-~~  
14 ~~401(2) may, upon presentation of the license or a photocopy of the license, personally or through an employee,~~  
15 ~~obtain from a winery, as provided in 16-3-411(1)(h), a quantity of table wine that the licensee may agree to buy~~  
16 ~~and that the winery may agree to sell. Except as provided in subsections (2)(b) through (2)(d), table wine may~~  
17 ~~not be delivered to a licensed retailer or liquor store agent at any location other than the retailer's licensed~~  
18 ~~premises or agency liquor store.~~

19           (b) An all-beverages licensee may personally or through an employee obtain from any distributor's  
20 warehouse any quantity of table wine as the all-beverages licensee and distributor may agree to buy and sell.

21           (c) Liquor store agents or retailers other than all-beverages licensees may personally or through an  
22 employee obtain from the distributor's warehouse any quantity of table wine as the agent or retailer and  
23 distributor may agree to buy and sell only within the territory of the distributor in which the agent's liquor store or  
24 retailer is located.

25           (d) When a table wine distributor's trucks and equipment are incapable of delivering table wine to a  
26 retail licensee's premises due to the unique physical location of the retail licensee's premises, examples of  
27 which are premises located on an island or atop a mountain, the table wine distributor and retail licensee may  
28 seek prior department approval for an alternative delivery arrangement on a form provided by the department. If

1 the department approves the alternative delivery arrangement request, the department shall provide the table  
 2 wine distributor and the retail licensee a written summary of the conditions of the approved delivery  
 3 arrangement. Failure to comply with the approved alternative delivery arrangement may subject the table wine  
 4 distributor and/or retail licensee to administrative action."

5

6 **Section 10.** Section 16-4-105, MCA, is amended to read:

7 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of**  
 8 **license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110,  
 9 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  
 10 accordance with the provisions of this code and the rules of the department, may be issued to any person or  
 11 business entity that is approved by the department, subject to the following exceptions:

12 (a) The number of retail beer licenses that the department may issue for premises situated within  
 13 incorporated cities and incorporated towns and within 5 miles of the corporate limits of the cities and towns  
 14 must be determined on the basis of population prescribed in 16-4-502 as follows:

15 (i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the  
 16 towns, not more than one retail beer license;

17 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 2,000  
 18 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for every 500  
 19 inhabitants;

20 (iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the  
 21 cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next  
 22 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each  
 23 additional 2,000 inhabitants.

24 (b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number  
 25 of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail beer  
 26 licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or  
 27 town. The distance of 5 miles from the corporate limits of an incorporated city or incorporated town must be  
 28 measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest

1 corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be  
2 located farther than:

3 (i) the county boundary within which the incorporated city or incorporated town is located; or

4 (ii) the line that separates the incorporated city's or incorporated town's boundary from another  
5 incorporated city or incorporated town as specified in this section.

6 (c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile  
7 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a  
8 straight line equidistant between each city or town.

9 (ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates  
10 from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as  
11 of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the  
12 straight line equidistant between each city or town, except for the following:

13 (A) In the Helena and East Helena previously combined quota area, the straight line will be drawn  
14 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area  
15 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a  
16 Helena license or with a physical address of East Helena will become an East Helena license, regardless of  
17 where it falls in the new quota areas.

18 (B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn  
19 along Mill Creek road to the quota area boundaries.

20 (C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west  
21 on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area  
22 boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson  
23 license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017,  
24 within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

25 (d) Retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110  
26 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in  
27 violation of the limitations.

28 (e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer

1 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military  
2 reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a  
3 recognized national fraternal organization if the veterans' or fraternal organization has been in existence for a  
4 period of 5 years or more prior to January 1, 1949.

5 (f) The number of retail beer licenses that the department may issue for use at premises situated  
6 outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate  
7 limits or for use at premises situated within any unincorporated area must be determined by the department in  
8 its discretion, except that a retail beer license may not be issued for any premises so situated unless the  
9 department determines that the issuance of the license is required by public convenience and necessity  
10 pursuant to 16-4-203. Subsection ~~(7)~~ (8) does not apply to licenses issued under this subsection (1)(f). The  
11 owner of the license whose premises are situated outside of an incorporated city or incorporated town may offer  
12 gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter  
13 5, part 3, 5, or 6.

14 (2) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted  
15 from applications in process as of November 24, 2017, in either of two quota areas that were established as  
16 provided in subsection (1)(c) may be transferred between the two quota areas if they were part of the combined  
17 quota area prior to November 24, 2017.

18 (b) If any new retail beer licenses are allowed by separating a combined quota area that existed as of  
19 November 24, 2017, as provided in subsection (1)(c), the department shall publish the availability of no more  
20 than one new beer license a year until the quota has been reached.

21 (c) If any new retail beer licenses are allowed by license transfers as provided in subsection (2)(a),  
22 the department may publish the availability of more than one new license a year until the quota has been  
23 reached.

24 (3) A license issued under subsection (1)(f) that becomes located within 5 miles of an incorporated  
25 city or town because of annexation after April 15, 2005, may not be transferred to another location within the  
26 city quota area any sooner than 5 years from the date of the annexation.

27 (4) When the department determines that a quota area is eligible for a new retail beer license under  
28 subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430 to

1 determine the party afforded the opportunity to apply for the new license.

2 (5) Except as provided in subsection (2)(b), when more than one new beer license becomes available  
3 at the same time in the same quota area, the department shall conduct a separate competitive bidding process  
4 at separate times for each available license.

5 (6) A person holding a license to sell beer for consumption on the premises at retail may apply to the  
6 department for an amendment to the license permitting the holder to sell wine as well as beer. The department  
7 may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for  
8 consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for  
9 beer and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for  
10 consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic  
11 loss of the wine amendment license.

12 (7) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in  
13 original packaging, prepared servings, or growlers.

14 ~~(7)(8)~~ Except as provided in subsection (1)(f), a license issued pursuant to this section after October  
15 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is  
16 conducted.

17 ~~(8)(9)~~ An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a  
18 \$25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

19 ~~(9)(10)~~ The department may adopt rules to implement this section."  
20

21 **Section 11.** Section 16-4-110, MCA, is amended to read:

22 **"16-4-110. Beer license for tribal alcoholic beverages licensee or enlisted personnel,**

23 **noncommissioned officers', or officers' club.** (1) Upon application and qualification, the department shall  
24 issue a license to sell beer for consumption on the premises to:

25 (a) a tribal alcoholic beverages licensee who operates the business within the exterior boundaries of a  
26 Montana Indian reservation under a tribal license issued prior to January 1, 1985;

27 (b) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal  
28 military reservation in Montana on May 13, 1985.

1 (2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-  
2 4-105.

3 (3) Upon application and approval by the department, a license issued under subsection (1)(a) may  
4 be transferred to another qualified applicant, but only to a location within the quota area and the exterior  
5 boundaries of the Montana Indian reservation for which the license was originally issued.

6 (4) A license issued under this section is subject to all statutes and rules governing licenses to sell  
7 beer at retail for on-premises consumption.

8 (5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in  
9 original packaging, prepared servings, or growlers."

10

11 **Section 12.** Section 16-4-115, MCA, is amended to read:

12 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer  
13 or table wine, or both, in the original packages for off-premises consumption may be issued only to a person,  
14 firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer or  
15 table wine, or both. If the premises proposed for licensing are operated in conjunction with another business,  
16 that business must be a grocery store or drugstore licensed as a pharmacy. The number of licenses that the  
17 department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in  
18 the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or  
19 deny an application for any license or suspend or revoke any license for cause.

20 (2) Upon receipt of a completed application for a license under this section, accompanied by the  
21 necessary license fee as provided in 16-4-501, the department shall request that the department of justice  
22 make a background investigation of all matters relating to the application.

23 (3) Based on the results of the investigation or in exercising its sound discretion as provided in  
24 subsection (1), the department shall determine whether:

25 (a) the applicant is qualified to receive a license;

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

27 (c) the requirements of this code and the rules promulgated by the department are met and complied  
28 with.



1 (4) License applications submitted under this section are not subject to the provisions of 16-4-203 and  
2 16-4-207.

3 (5) If the premises proposed for licensing under this section are a new or remodeled structure, the  
4 department may issue a conditional license prior to completion of the premises upon reasonable evidence that  
5 the premises will be suitable for the carrying on of business.

6 (6) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in  
7 original packaging."

8

9 **Section 13.** Section 16-4-201, MCA, is amended to read:

10 **"16-4-201. All-beverages license quota.** (1) Except as otherwise provided by law, a license to sell  
11 liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code  
12 and the rules of the department, may be issued to any person who is approved by the department as a fit and  
13 proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department  
14 may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the  
15 corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502  
16 as follows:

17 (a) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the  
18 towns, not more than two retail licenses;

19 (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 3,000  
20 inhabitants and within 5 miles of the corporate limits of the cities and towns, three retail licenses for the first  
21 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

22 (c) in incorporated cities of more than 3,000 inhabitants and within 5 miles of the corporate limits of  
23 the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500  
24 inhabitants.

25 (2) The number of inhabitants in each incorporated city or incorporated town, exclusive of the number  
26 of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of retail  
27 licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the city or  
28 town. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must be

1 measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest  
2 corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be  
3 located farther than:

4 (a) the county boundary within which the incorporated city or incorporated town is located; or

5 (b) the line that separates the incorporated city's or incorporated town's boundary from another  
6 incorporated city or incorporated town as specified in this section.

7 (3) (a) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile  
8 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a  
9 straight line equidistant between each city or town.

10 (b) If there are more than two overlapping quota areas, the quota area for each city or town terminates  
11 from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as  
12 of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the  
13 straight line equidistant between each city or town, except for the following:

14 (i) In the Helena and East Helena previously combined quota area, the straight line will be drawn  
15 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area  
16 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a  
17 Helena license or with a physical address of East Helena will become an East Helena license, regardless of  
18 where it falls in the new quota areas.

19 (ii) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn along  
20 Mill Creek road to the quota area boundaries.

21 (iii) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west on  
22 Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area  
23 boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson  
24 license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017,  
25 within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

26 (4) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted from  
27 applications in process as of November 24, 2017, in either of two quota areas that were established as  
28 provided in subsection (3) may be transferred between the two quota areas if they were part of the combined

1 quota area prior to November 24, 2017.

2 (5) (a) If any new retail all-beverages licenses are allowed by separating a combined quota area that  
3 existed as of November 24, 2017, as provided in subsection (3), the department shall publish the availability of  
4 no more than one new retail all-beverages license a year until the quota has been reached. The department  
5 shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity  
6 to apply for the new license.

7 (b) If any new all-beverages licenses are allowed by license transfers as provided in subsection (4),  
8 the department may publish the availability of more than one new license a year until the quota has been  
9 reached.

10 (6) Except as provided in subsection (5)(a), when more than one new all-beverages license becomes  
11 available at the same time in the same quota area, the department shall conduct a separate competitive bidding  
12 process at separate times for each available license.

13 (7) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under  
14 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may  
15 not be issued in violation of the limitations.

16 (8) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and  
17 nonassignable, as to ownership only, retail license to:

18 (a) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal  
19 military reservation on May 13, 1985;

20 (b) any post of a nationally chartered veterans' organization or any lodge of a recognized national  
21 fraternal organization if the veterans' or fraternal organization has been in existence for a period of 5 years or  
22 more prior to January 1, 1949; or

23 (c) a continuing care retirement community as provided in 16-4-315.

24 (9) The number of retail all-beverages licenses that the department may issue for use at premises  
25 situated more than 5 miles outside of any incorporated city or incorporated town may not be more than one  
26 license for each 750 in population of the county after excluding the population of incorporated cities and  
27 incorporated towns in the county.

28 (10) An all-beverages license issued under subsection (9) that becomes located within 5 miles of an

1 incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location  
 2 within the city quota area any sooner than 5 years from the date of annexation.

3 (11) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in  
 4 original packaging, prepared servings, or growlers.

5 ~~(11)~~(12) The department may adopt rules to implement this section."  
 6

7 **Section 14.** Section 16-4-208, MCA, is amended to read:

8 **"16-4-208. Airport all-beverages license.** (1) The department of revenue shall issue one all-  
 9 beverages license, to be known as a public airport all-beverages license, for use at each publicly owned airport  
 10 served by scheduled airlines and enplaning and deplaning a minimum total of 20,000 passengers annually  
 11 when:

12 (a) application is made;

13 (b) upon finding that this license is justified by public convenience and necessity, including the  
 14 convenience and necessity of the public traveling by scheduled airlines; and

15 (c) following a hearing as provided in 16-4-207.

16 (2) Application ~~shall~~ must be made by the agency owning and operating the airport. The agency  
 17 owning and operating the airport may lease the airport all-beverages license to an individual or entity approved  
 18 by the department.

19 (3) A public airport all-beverages license and all retail alcoholic beverage sales ~~thereunder shall~~ under  
 20 it must be subject to all statutes and rules governing all-beverages licenses.

21 (4) The department of revenue shall issue a public airport all-beverages license to a qualified  
 22 applicant regardless of the number of all-beverages licenses already issued within the all-beverages license  
 23 quota area in which the airport is situated.

24 (5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in  
 25 original packaging, prepared servings, or growlers."

26

27 **Section 15.** Section 16-4-209, MCA, is amended to read:

28 **"16-4-209. All-beverages license for tribal alcoholic beverages licensee or enlisted personnel,**

- 1 **noncommissioned officers', or officers' club.** (1) Upon application and qualification, the department shall  
2 issue an all-beverages license to:
- 3 (a) a tribal alcoholic beverages licensee who operates the business within the exterior boundaries of a  
4 Montana Indian reservation under a tribal license issued prior to January 1, 1985;
- 5 (b) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal  
6 military reservation in Montana on May 13, 1985.
- 7 (2) A license issued under the provisions of subsection (1) is not subject to the quota limitations of 16-  
8 4-201.
- 9 (3) Upon application and approval by the department, a license issued under subsection (1)(a) may  
10 be transferred to another qualified applicant, but the license may be transferred only to a location within the  
11 quota area and the exterior boundaries of the Montana Indian reservation for which the license was originally  
12 issued.
- 13 (4) A license issued under this section is subject to all statutes and rules governing all-beverages  
14 licenses.
- 15 (5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in  
16 original packaging, prepared servings, or growlers."

17  
18 **Section 16.** Section 16-4-213, MCA, is amended to read:

- 19 **"16-4-213. Resort retail all-beverages licenses.** (1) After a resort area has been approved,  
20 applications may be filed with the department for the issuance of resort retail all-beverages licenses within the  
21 resort area.
- 22 (2) (a) Except as provided in subsections (2)(b) and (2)(c), the department may issue one resort retail  
23 all-beverages license for the first 100 accommodation units and an additional license for each additional 50  
24 accommodation units within an approved resort area as long as the recreational facilities under 16-4-212 have  
25 also been completed.
- 26 (b) For a resort area with a perimeter containing at least 1,000 contiguous acres that has a current  
27 actual valuation of completed recreational facilities, including land and improvements, of not less than \$30  
28 million, the department may issue up to 10 resort retail all-beverages licenses regardless of the number of

1 accommodation units.

2 (c) A resort area designation application to the department that received approval prior to January 1,  
3 1999, is entitled to the issuance of one resort retail all-beverages license for a \$20,000 license fee. Any  
4 additional resort retail all-beverages licenses issued to a resort area under this subsection (2)(c) must meet the  
5 accommodation unit requirement in subsection (2)(a) of this section and pay the license fee and renewal fees  
6 as provided in 16-4-501.

7 (d) For purposes of this code, "accommodation unit" means a unit that is available for short-term  
8 guest rental and includes:

9 (i) a single-family home;

10 (ii) a single unit of an apartment, condominium, or multiplex;

11 (iii) a single room of a hotel or motel; or

12 (iv) similar living space for occupants making up a single household. A space under this subsection  
13 (2)(d)(iv) must be distinctly separated from other living spaces within the building and have its own sleeping,  
14 bath, and toilet facilities.

15 (3) Regardless of how many resort area all-beverages licenses are issued in a resort area, no more  
16 than 20 gambling machine permits may be issued for the resort area.

17 (4) A resort retail all-beverages license within the resort area:

18 (a) is subject to all other requirements of an all-beverages license in this code;

19 (b) is not subject to the quota limitations set forth in 16-4-201; and

20 (c) is transferable to another location within the boundaries of the resort area or to another owner to  
21 be used at a location within the boundaries of the resort area.

22 (5) For licenses issued under this section, the delivery of alcohol is allowed to the accommodation  
23 units on the designated resort area property as long as the purchaser is present, the purchaser's age is verified,  
24 and the purchaser is not intoxicated.

25 (6) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in  
26 original packaging, prepared servings, or growlers.

27 ~~(6)~~(7) Employees of the resort licensee who sell, serve, or deliver alcohol must be trained as provided  
28 in 16-4-1005."

1

2 **Section 17.** Section 16-4-312, MCA, is amended to read:

3 **"16-4-312. Domestic distillery.** (1) A distillery located in Montana and licensed pursuant to 16-4-311  
4 may:

5 (a) import necessary products in bulk;

6 (b) bottle, produce, blend, store, transport, or export liquor that it produces;

7 (c) perform those operations that are permitted for bonded distillery premises under applicable  
8 regulations of the United States department of the treasury.

9 (2) (a) A distillery that is located in Montana and licensed pursuant to 16-4-311 shall sell liquor to the  
10 department under this code, and the department shall include the distillery's liquor as a listed product.

11 (b) The distillery may use a common carrier for delivery of the liquor to the department.

12 (c) A distillery that produces liquor within the state under this subsection (2) shall maintain records of  
13 all sales and shipments. The distillery shall furnish monthly and other reports concerning quantities and prices  
14 of liquor that it ships to the department and other information that the department may determine to be  
15 necessary to ensure that distribution of liquor within this state conforms to the requirements of this code.

16 (3) A microdistillery may:

17 (a) provide, with or without charge, not more than 2 ounces of liquor that it produces at the  
18 microdistillery to consumers for ~~consumption on the premises prepared servings though curbside pickup~~  
19 between 10 a.m. and 8 p.m. or consumption on the premises between 10 a.m. and 8 p.m.; or A microdistillery  
20 ~~may not sell or give more than 2 ounces of liquor to an individual for on-premises consumption during a~~  
21 ~~business day.~~

22 (b) sell liquor in original packaging that it produces at retail at the distillery between the hours of 8  
23 a.m. and 2 a.m. directly to the consumer, including curbside pickup, for off-premises consumption if:

24 (i) not more than 1.75 liters a day is sold to an individual; and

25 (ii) the minimum retail price as determined by the department is charged."  
26

27 **Section 18.** Section 16-4-420, MCA, is amended to read:

28 **"16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The

1 department shall issue a restaurant beer and wine license to an applicant whenever the department determines  
2 that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications  
3 and conditions:

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

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

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

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

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

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

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

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

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

27 (ii) A person, including an individual, with an ownership interest in an existing on-premises retail  
28 license that is being transferred to a new purchaser may not attain an ownership interest in a license applied for



1 under this section for a period of 1 year from the date that the existing on-premises retail license is transferred  
2 to a new purchaser.

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

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

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

9 (ii) the applicant is qualified to receive a license prior to a determination that the applicant's premises  
10 are suitable for carrying on with the business in accordance with 16-4-417; or

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

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

15 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the  
16 department may issue a license prior to completion of the premises based on reasonable evidence, including a  
17 statement from the applicant's architect or contractor confirming that the seating capacity stated on the  
18 application is correct, that the premises will be suitable for the carrying on of business as a bona fide  
19 restaurant, as defined in subsection (6). If a license is issued without a premises, the license will immediately  
20 be placed on nonuse status until the premises are approved subject to 16-4-417.

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

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

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

27 (iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the  
28 preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use

1 as a full-service restaurant; and

2 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the  
3 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  
4 restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent  
5 renewals of that license.

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

8 (7) (a) A restaurant beer and wine license not issued through a competitive bidding process as  
9 provided in 16-4-430 may be transferred, on approval by the department, from the original applicant to a new  
10 owner of the restaurant only after 1 year of use by the original owner, unless that transfer is due to the death of  
11 an owner.

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

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

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

19 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of  
20 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant  
21 beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses  
22 that may be issued in that quota area pursuant to 16-4-105;

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

27 (iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota  
28 area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that

1 quota area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area  
2 pursuant to 16-4-105;

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

7 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if  
8 the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is  
9 equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-  
10 4-105.

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

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

17 (d) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile  
18 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a  
19 straight line equidistant between each city or town. A license that is restricted by quota limitations in this section  
20 may not be located farther than:

21 (A) the county boundary within which the incorporated city or incorporated town is located; or

22 (B) the line that separates the incorporated city's or incorporated town's boundary from another  
23 incorporated city or incorporated town as specified in this section.

24 (ii) If there are more than two overlapping quota areas, the quota area for each city or town terminates  
25 from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses existing as  
26 of November 24, 2017, will be designated as belonging to whichever quota area they are in as a result of the  
27 straight line equidistant between each city or town, except for the following:

28 (A) In the Helena and East Helena previously combined quota area, the straight line will be drawn

1 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area  
2 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a  
3 Helena license or with a physical address of East Helena will become an East Helena license, regardless of  
4 where it falls in the new quota areas.

5 (B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn  
6 along Mill Creek road to the quota area boundaries.

7 (C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west  
8 on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area  
9 boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson  
10 license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017,  
11 within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

12 (9) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted  
13 from applications in process as of November 24, 2017, in either of two quota areas that were established as  
14 provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if  
15 they were part of the combined quota area prior to November 24, 2017.

16 (b) If any new restaurant beer and wine licenses are allowed by separating a combined quota area  
17 that existed as of November 24, 2017, as provided in 16-4-105 and subsection (9)(a) of this section, the  
18 department shall publish the availability of no more than one new restaurant beer and wine license a year until  
19 the quota has been reached.

20 (c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in  
21 subsection (9)(a), the department may publish the availability of more than one new license a year until the  
22 quota has been reached.

23 (10) Except as provided in subsection (9)(b), when more than one new restaurant beer and wine  
24 license becomes available at the same time in the same quota area, the department shall conduct a separate  
25 competitive bidding process at separate times for each available license.

26 (11) When a restaurant beer and wine license becomes available by the initial issuance of licenses  
27 under this section or as the result of an increase in the population in a quota area, the nonrenewal of a  
28 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the

1 department shall advertise the availability of the license in the quota area for which it is available.

2 (12) When the department determines that a quota area is eligible for a new restaurant beer and wine  
3 license under subsection (9) or (11), the department shall use a competitive bidding process as provided in 16-  
4 4-430 to determine the party afforded the opportunity to apply for a new license.

5 (13) ~~Under a restaurant beer and wine license, beer~~ Beer and wine may not be sold for off-premises  
6 consumption, including curbside pickup, during the hours of 11 a.m. and 11 p.m. in original packaging,  
7 prepared servings, or growlers. If offering off-premises sales, food must also be ordered, the beer or wine must  
8 be stated on the food bill, and the sales must count toward the 65% limit as provided in this section.

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

- 17 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or fewer;  
18 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or  
19 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

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

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

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

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

1 restaurant beer and wine license.

2 (19) The department may adopt rules to implement this section."

3

4 NEW SECTION. Section 19. Codification instruction. [Section 1] is intended to be codified as an  
5 integral part of Title 16, chapter 3, part 3, and the provisions of Title 16, chapter 3, part 3, apply to [section 1].

6

7 NEW SECTION. Section 20. Effective date. [This act] is effective on passage and approval.

8

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