

1 HOUSE BILL NO. 305
2 INTRODUCED BY E. BUTTREY, K. ZOLNIKOV, L. JONES, M. HOPKINS, C. SPRUNGER
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LICENSE LAWS RELATING
5 TO MANUFACTURERS AND RETAILERS; ALLOWING A LIMITED EXCEPTION FOR LICENSED BREWERS,
6 DISTILLERS, AND WINERIES TO HOLD RETAIL LICENSES; ALLOWING A LIMITED EXCEPTION FOR
7 RETAIL LICENSEES TO HOLD A BREWER, DISTILLER, OR WINERY LICENSE; PROVIDING LIMITATIONS;
8 PROVIDING DEFINITIONS; AMENDING SECTIONS 16-3-213, 16-3-214, 16-3-241, 16-3-242, 16-3-244, 16-3-
9 311, 16-3-411, 16-4-105, 16-4-201, 16-4-311, ~~AND~~ 16-4-401, AND 16-4-420, MCA; AND PROVIDING AN
10 EFFECTIVE DATE."

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

13
14 **Section 1.** Section 16-3-213, MCA, is amended to read:

15 **"16-3-213. Brewers or beer importers not to retail beer -- small brewery exceptions.** (1) Except
16 as provided for small breweries in subsection (2) and except as provided in 16-4-401(10), it is unlawful for any
17 brewer or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It
18 is the intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer.
19 This section does not prohibit breweries from selling and delivering beer manufactured by them, in original
20 packages, at either wholesale or retail.

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

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

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

25 (b) A small brewery may, at one location for each brewery license and at no more than three
26 locations including affiliated manufacturers, provide samples of beer that were brewed and fermented on the
27 premises in a sample room located on the licensed premises. The samples may be provided with or without

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

Section 8. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license -- exceptions -- competitive bidding -- rulemaking. (1) Except as provided in 16-4-109, 16-4-110,

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1 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
2 accordance with the provisions of this code and the rules of the department, may be issued to any person or
3 business entity that is approved by the department, subject to the following exceptions:

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

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

9 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than
10 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for
11 every 500 inhabitants;

12 (iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of
13 the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next
14 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each
15 additional 2,000 inhabitants.

16 (b) The number of inhabitants in each incorporated city or incorporated town, exclusive of the
17 number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of
18 retail beer licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of
19 the city or town. The distance of 5 miles from the corporate limits of an incorporated city or incorporated town
20 must be measured in a straight line from the nearest entrance of the premises proposed for licensing to the
21 nearest corporate boundary of the city or town. A license that is restricted by quota limitations in this section
22 may not be located farther than:

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

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

26 (c) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile
27 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a

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1 straight line equidistant between each city or town.

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

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

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

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

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

21 (e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
22 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military
23 reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a
24 recognized national fraternal organization if the veterans' or fraternal organization has been in continuous
25 existence for a period of 5 years or more prior to January 1, 1949, and is applying for a license at the same
26 location that it has occupied for the last 5 years. A post of a nationally chartered veterans' organization or a
27 lodge of a recognized national fraternal organization that has held a veterans' or fraternal license within the past

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1 10 years is not subject to the 5-year same location requirement.

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

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

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

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

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

24 (4) When the department determines that a quota area is eligible for a new retail beer license
25 under subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430
26 to determine the party afforded the opportunity to apply for the new license.

27 (5) Except as provided in subsection (2)(b), when more than one new beer license becomes

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1 available at the same time in the same quota area, the department shall conduct a separate competitive bidding
2 process at separate times for each available license.

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

10 (b) A person licensed under this subsection (6) may apply to the department and pay a fee for an
11 endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original
12 packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The
13 purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

14 (c) A person licensed under this subsection (6) may possess and use liquor in the kitchen of the
15 licensed premises only for the preparation of food and as long as the alcohol content is cooked out of the food
16 at the time of serving. Nothing in this subsection (6)(c) authorizes a licensee to consume, sell, serve, or give
17 away liquor.

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

20 (8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October
21 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is
22 conducted.

23 (9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a
24 \$25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

25 (10) The department may adopt rules to implement this section."
26

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

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

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

10 (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than
11 3,000 inhabitants and within 5 miles of the corporate limits of the cities and towns, three retail licenses for the
12 first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;

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

16 (2) The number of inhabitants in each incorporated city or incorporated town, exclusive of the
17 number of inhabitants residing within 5 miles of the corporate limits of the city or town, governs the number of
18 retail licenses that may be issued for use within the city or town and within 5 miles of the corporate limits of the
19 city or town. The distance of 5 miles from the corporate limits of any incorporated city or incorporated town must
20 be measured in a straight line from the nearest entrance of the premises proposed for licensing to the nearest
21 corporate boundary of the city or town. A license that is restricted by quota limitations in this section may not be
22 located farther than:

23 (a) the county boundary within which the incorporated city or incorporated town is located; or
24 (b) the line that separates the incorporated city's or incorporated town's boundary from another
25 incorporated city or incorporated town as specified in this section.

26 (3) (a) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile
27 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a

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1 straight line equidistant between each city or town.

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

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

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

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

18 (4) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted
19 from applications in process as of November 24, 2017, in either of two quota areas that were established as
20 provided in subsection (3) may be transferred between the two quota areas if they were part of the combined
21 quota area prior to November 24, 2017.

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

27 (b) If any new all-beverages licenses are allowed by license transfers as provided in subsection

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1 (4), the department may publish the availability of more than one new license a year until the quota has been
2 reached.

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

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

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

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

13 ~~(b) a continuing care retirement community as provided in 16-4-315; or~~

14 ~~(b)(c) any post of a nationally chartered veterans' organization or any lodge of a recognized national~~
15 ~~fraternal organization if the veterans' or fraternal organization has been in continuous existence for a period of 5~~
16 ~~years or more prior to January 1, 1949, and is applying for a license at the same location that it has occupied~~
17 ~~for the last 5 years. A post of a nationally chartered veteran's organization or a lodge of a recognized national~~
18 ~~fraternal organization that has held a veterans' or fraternal license within the past 10 years is not subject to the~~
19 ~~5-year same-location requirement; or,~~

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

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

25 (10) An all-beverages license issued under subsection (9) that becomes located within 5 miles of an
26 incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location
27 within the city quota area any sooner than 5 years from the date of annexation.

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

3 (12) A person licensed under this section may apply to the department and pay a fee for an
4 endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original
5 packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The
6 purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

7 (13) The department may adopt rules to implement this section."
8

9 **Section 10.** Section 16-4-311, MCA, is amended to read:

10 **"16-4-311. Distillery license.** (1) The department may, upon receipt of an application, issue a
11 distillery license to a person who is authorized under the provisions of the Federal Alcohol Administration Act,
12 27 U.S.C. 201 through 212, to distill, rectify, bottle, and process liquor. A licensee may import, manufacture,
13 distill, rectify, blend, denature, and store spirits of an alcoholic content greater than 0.5% alcohol by volume for
14 sale to the department or as provided in 16-4-312 and may transport the liquor out of this state for sale outside
15 this state. Distillery licensees must be permitted to purchase, from and through the department, alcoholic
16 beverages for blending and manufacturing purposes upon terms and conditions that the department may
17 provide. A licensee may not sell any alcoholic beverage within this state except to the department or as
18 provided in 16-4-312.

19 (2) An agricultural producer or association of agricultural producers or legal agent who
20 manufactures and converts agricultural surpluses, byproducts, or wastes into denatured ethyl and industrial
21 alcohol for purposes other than human consumption is not required to obtain a distillery license from the
22 department.

23 (3) (a) A distillery producing less than 25,000 gallons of product annually may deliver its product
24 directly to a state agency liquor store if the distillery uses the distillery's own equipment, trucks, and employees
25 to deliver the product. The amount of product delivered may not be less than a case. The department shall
26 create an electronic reporting system for distilleries to record deliveries made under this subsection (3). Agency
27 liquor stores must be invoiced by the department for product received from a distillery.

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1 ownership of brewery or winery licenses. The first of these licenses must be a colocated license.

2 (b) A PERSON WITH AN OWNERSHIP INTEREST IN A licensed distillery may hold complete ownership of
3 up to three retail licenses issued pursuant to 16-4-201. The owner of a retail license issued pursuant to 16-4-
4 201 may hold complete ownership of distillery licenses. The first of these licenses must be a colocated license.

5 (c) A person who holds a license WITH AN OWNERSHIP INTEREST IN A RETAIL LICENSE issued pursuant
6 to 16-4-104 16-4-105 may not also hold HAVE AN OWNERSHIP INTEREST IN a distillery license.

7 (d) To hold both a manufacturing license and a retail license pursuant to this subsection (10), a
8 licensee:

9 (i) must maintain both the manufacturing license and the retail license on the same premises for
10 the first of these licenses, known as a colocated premises;

11 (ii) must have 100% of the same ownership between the manufacturing license and the retail
12 license; and

13 (iii) must provide and serve through the colocated retail license alcohol produced by other
14 manufacturers that are not affiliated or financially interested, either directly or indirectly, in the conduct or
15 operation of the business in which the license was issued pursuant to 16-4-104 16-4-105 and 16-4-201, or the
16 licensed brewery, winery, or distillery.

17 (e) Colocated licensees may transfer beer manufactured, liquor distilled, or wine produced by the
18 licensee between the colocated manufacturing licenses LICENSE and THE retail licenses LICENSE without it being
19 considered distributed or delivered as provided in this code.

20 (f) For the purposes of this code, the following definitions apply:

21 (i) "Colocated license" means a manufacturing license and a retail license owned completely by a
22 person-LICENSEE and that are operated at one premises.

23 (ii) "Colocated premises" means a premises where a manufacturing license and a retail license are
24 both located."

25

26 **Section 12.** Section 16-4-420, MCA, is amended to read:

27 **"16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking. (1) The**

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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
7 will 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
17 prohibits 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
22 current 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
24 alcoholic 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
26 for a license under this section for a period of 1 year from the date that license is transferred to a new
27 purchaser.

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

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

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

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

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

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

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

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

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

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

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

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1 the gross income of the restaurant during the prior year resulted from the sale of food.

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

5 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between
6 the hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to
7 a restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent
8 renewals of that license.

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

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

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

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

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

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

26 (ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the
27 quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in

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1 that quota area is equal to or less than 160% of the number of beer licenses that may be issued in that quota
2 area pursuant to 16-4-105;

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

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

11 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501,
12 if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is
13 equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-
14 4-105.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

11 (13) (a) Except as provided in subsection (13)(b), beer and wine may be sold for off-premises
12 consumption, including curbside pickup, during the hours of 11 a.m. and 11 p.m. in original packaging,
13 prepared servings, or growlers. If offering off-premises sales, food must also be ordered, the beer or wine must
14 be stated on the food bill, and the sales must count toward the 65% limit as provided in this section.

15 (b) A restaurant beer and wine licensee may apply to the department and pay a fee for an
16 endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original
17 packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The
18 purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

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

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

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- 1 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or
2 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.
3 (15) The annual fee for a restaurant beer and wine license is \$400.
4 (16) If a restaurant licensed under this part increases the stated seating capacity of the licensed
5 restaurant or if the department determines that a licensee has increased the stated seating capacity of the
6 licensed restaurant, then the licensee shall pay to the department the difference between the fees paid at the
7 time of filing the original application and issuance of a license and the applicable fees for the additional seating.
8 (17) The number of beer and wine licenses issued to restaurants with a stated seating capacity of
9 101 persons or more may not exceed 25% of the total licenses issued.
10 (18) Possession of a restaurant beer and wine license is not a qualification for licensure of any
11 gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a
12 restaurant beer and wine license.
13 (19) A person licensed under this section may possess and use liquor in the kitchen of the licensed
14 premises only for the preparation of food and as long as the alcohol content is cooked out of the food at the
15 time of serving. Nothing in this subsection authorizes a licensee to consume, sell, serve, or give away liquor.
16 ~~(19)~~(20) The department may adopt rules to implement this section."

17
18 NEW SECTION. Section 13. Saving clause. [This act] does not affect rights and duties that
19 matured, penalties that were incurred, or proceedings that were begun before [the effective date of this act].

20
21 NEW SECTION. Section 14. Effective date. [This act] is effective July 1, 2023.

22 - END -