

Amendment - 1st Reading/2nd House-blue - Requested by: Jason Small - (S) Business, Labor, and Economic Affairs

- 2023

68th Legislature 2023

Drafter: Jameson Walker, 406-444-3722

HB0969.001.002

1 HOUSE BILL NO. 969
2 INTRODUCED BY K. ZOLNIKOV, B. MITCHELL
3
4 A BILL FOR AN ACT ENTITLED: "AN ACT CREATING A THIRD-PARTY DELIVERY LICENSE FOR
5 ALCOHOL; ALLOWING ~~AN OFF-PREMISES A~~ RETAIL LICENSEE TO HAVE A THIRD-PARTY DELIVERY
6 LICENSEE DELIVER BEER OR TABLE WINE; REQUIRING THE SALE OF ALCOHOL TO THE END
7 CONSUMER; PROVIDING LICENSURE REQUIREMENTS; PROVIDING REQUIREMENTS FOR THE THIRD-
8 PARTY DELIVERY LICENSEE; REVISING LAWS RELATING TO RESPONSIBLE SERVER TRAINING;
9 PROVIDING FOR LICENSURE ~~AND~~ FEES; PROVIDING DEFINITIONS; AND AMENDING SECTIONS ~~16-4-~~
10 ~~105,~~ 16-4-115, ~~16-4-201,~~ ~~16-4-420,~~ 16-4-501, AND 16-4-1005, MCA."
11

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

14 NEW SECTION. Section 1. Third-party delivery license -- definitions. (1) The ~~off-premises~~ retail
15 licensee shall sell the beer or table wine to the end consumer. The third-party delivery licensee may not sell
16 beer or table wine to the end consumer. The ~~off-premises~~ retail licensee must have the exclusive authority to
17 determine which beer or table wine is available for delivery and set the prices for these beverages.

18 (2) (a) The department may issue a third-party delivery license to a third-party delivery licensee if
19 the following requirements are met:

20 (i) the owners and officers of the third-party delivery licensee meet the requirements for ~~an off-~~
21 ~~premises a~~ retail licensee under 16-4-401 to hold a license; and

22 (ii) the third-party delivery licensee submits an application and pays the initial license fee as
23 provided in 16-4-501.

24 (b) Third-party delivery licenses may be renewed annually if:

25 (i) the owners and officers of the third-party delivery licensee continue to meet the requirements
26 for ~~an off-premises a~~ retail licensee under 16-4-401 to hold a license; and

27 (ii) the third-party delivery licensee submits a renewal form and the annual renewal fee as



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1 provided in 16-4-501.

2 (3) A third-party delivery licensee may only deliver beer or table wine through drivers who meet the
3 following requirements:

4 (a) are an employee or independent contractor of the third-party delivery licensee;

5 (b) are at least 21 years of age;

6 (c) have a valid driver's license;

7 (d) have not been convicted of a felony or an alcohol-related offense; and

8 (e) have completed a training program under Title 16, chapter 4, part 10, prior to their first delivery.

9 (4) Drivers are subject to the penalties described in Title 16, chapter 4, part 10.

10 (5) Any beer or table wine sold by ~~an off-premises a~~ retail licensee for delivery by a third-party
11 delivery licensee must be removed from the ~~off-premises~~ retail licensee's licensed premises only during the
12 hours in which the ~~off-premises~~ retail licensee is permitted to sell alcoholic beverages. The delivery must be
13 completed before the time that the ~~off-premises~~ retail licensee is required to end sales of alcoholic beverages.

14 (6) Any beer or table wine unable to be delivered for any reason must be immediately returned to
15 the licensed premises of the ~~off-premises~~ retail licensee that sold the beer or table wine. The third-party delivery
16 licensee must document and maintain a record of the delivery attempt.

17 (7) The person to whom the delivery is made must be at least 21 years of age. The driver shall
18 verify the age and identity of the recipient at the time of delivery.

19 (8) Deliveries may not be made to anyone who is actually, apparently, or obviously intoxicated.

20 (9) A licensee under this section that delivers alcoholic beverages shall maintain books and
21 records reflecting the date, time, address, and recipient of the alcohol delivery for each delivery, the name and
22 business address of the person making the delivery, and the name and license number of the ~~off-premises~~
23 retail licensee selling the alcoholic beverage. Records must be maintained either in hard copy or electronic
24 format for 3 years. Licensees shall make these books and records available to the department and its
25 investigators on reasonable notice from the department.

26 (10) ~~An off-premises A~~ retail licensee may utilize the services of a third-party delivery licensee by
27 means of the telephone, the internet, a mobile application, or other electronic means to facilitate the ordering or

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1 delivery of beer or table wine from inventory located at the ~~off-premises~~ retail licensee's licensed premises.

2 (11) ~~An off-premises A~~ retail licensee is not subject to violations of this code that arise out of the
3 delivery of beer or table wine delivered by a third-party delivery licensee if:

4 (a) the purchaser affirmed to the ~~off-premises~~ retail licensee or the third-party delivery licensee that
5 the purchaser and recipient are not under 21 years of age;

6 (b) the beer and table wine are in original packaging and are packaged in a manner that clearly
7 discloses to the driver that the delivery contains beer or table wine, or the third-party delivery licensee's driver
8 packages the order containing the beer and table wine; and

9 (c) the ~~off-premises~~ retail licensee discloses to the third-party delivery licensee that the order to be
10 delivered contains beer or table wine.

11 (12) Any violation of this code by a third-party delivery licensee ~~or its drivers are~~ is subject to
12 penalties as provided in 16-4-406. Any violation by the delivery driver is subject to the penalties provided in 16-
13 6-304 and 16-6-305. It is the third-party delivery licensee's responsibility to ensure that its drivers are current
14 with a training program under Title 16, chapter 4, part 10.

15 (13) Nothing in this section may be construed to require a technology services company to obtain a
16 third-party delivery license if the company does not employ or contract with delivery drivers and instead
17 provides software or an application that connects consumers and ~~off-premises~~ retail licensees for the delivery
18 of beer or table wine from the ~~off-premises~~ retail licensee.

19 (14) A third-party delivery license is not required for a common carrier lawfully transporting or
20 shipping alcoholic beverages.

21 (15) As used in this section, the following definitions apply:

22 (a) "Retail licensee" means a licensee who has been issued a license under 16-4-105, 16-4-115,
23 16-4-201, or 16-4-420.

24 ~~(a)(b)~~ "Third-party delivery license" means a license issued by the department to a third-party delivery
25 licensee for the delivery of beer or table wine.

26 ~~(b)(c)~~ "Third-party delivery licensee" means a person who offers a service to deliver, but not to buy or
27 sell, beer or table wine in original packaging from ~~an off-premises a~~ retail licensee ~~issued a license under 16-4-~~

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1 ~~115~~ and enters into a written agreement with the ~~off-premises~~ retail licensee for the purpose of delivering beer
2 or table wine sold by the ~~off-premises~~ retail licensee.
3

4 **Section 2.** Section 16-4-105, MCA, is amended to read:

5 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of**
6 **license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110,
7 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
8 accordance with the provisions of this code and the rules of the department, may be issued to any person or
9 business entity that is approved by the department, subject to the following exceptions:

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

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

15 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than
16 2,000 inhabitants and within 5 miles of the corporate limits of the cities or towns, one retail beer license for
17 every 500 inhabitants;

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

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

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1 may not be located farther than:

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

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

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

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

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

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

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

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

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

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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 (8) does not apply to licenses issued under this subsection (1)(f). The owner
11 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
19 of 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

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1 under subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430
2 to determine the party afforded the opportunity to apply for the new license.

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

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

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

18 (ii) sell alcohol to the end consumer and use a third-party delivery service as provided in [section
19 1].

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

22 (8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October
23 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling is
24 conducted.

25 (9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a
26 \$25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

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

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2 **Section 3.** Section 16-4-115, MCA, is amended to read:

3 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
4 or table wine, or both, in the original packages for off-premises consumption may be issued only to a person,
5 firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer or
6 table wine, or both. If the premises proposed for licensing are operated in conjunction with another business,
7 that business must be a grocery store or drugstore licensed as a pharmacy. The number of licenses that the
8 department may issue is not limited by the provisions of 16-4-105 but must be determined by the department in
9 the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or
10 deny an application for any license or suspend or revoke any license for cause.

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

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

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

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

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

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

22 (5) A license issued under this section may offer curbside pickup between 8 a.m. and 2 a.m. in
23 original packaging.

24 (6) An off-premises retail licensee may use a third-party delivery licensee to deliver beer and table
25 wine in original packaging or may apply to the department and pay a fee for an endorsement to, with the off-
26 premises retail licensee's own employees who are 21 years of age or older, deliver beer and table wine in
27 original packaging, subject to [section 1]."

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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1 opportunity to apply for the new license.

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

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

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

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

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

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

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

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

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

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

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

6 (b) sell alcohol to the end consumer and use a third-party delivery service as provided in [section
7 1].

8 (13) The department may adopt rules to implement this section."
9

10 **Section 5.** Section 16-4-420, MCA, is amended to read:

11 **"16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The

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

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

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

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

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

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

27 (c) the applicant understands and acknowledges in writing on the application that this license

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1 prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling
2 machines and that if any gaming or gambling activity or machine exists at the location where the restaurant
3 beer and wine license will be used, the activity must be discontinued or the machines must be removed before
4 the restaurant beer and wine license takes effect; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) A license issued under this section may be jointly owned, and the license may pass to the
27 surviving joint tenant upon the death of the other tenant. However, the license may not be transferred to any

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1 other person or entity by operation of the laws of inheritance or succession or any other laws allowing the
2 transfer of property upon the death of the owner in this state or in another state.

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

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

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

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

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

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

22 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501,
23 if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is
24 equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-
25 4-105.

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

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1 department shall round to the nearer whole number.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

26 (b) A restaurant beer and wine licensee may:

27 (i) apply to the department and pay a fee for an endorsement to, with the licensee's own

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1 employees 21 years of age or older, deliver beer and wine in original packaging if the delivery includes food
2 that is prepared by the licensee at the licensee's premises. The purchase price of the delivered beer and wine
3 may not exceed the purchase price of the delivered food.

4 (ii) sell alcohol to the end consumer and use a third-party delivery service as provided in [section
5 1]. A licensee using a third-party delivery service is subject to the food requirements in this section.

6 (14) An application for a restaurant beer and wine license must be accompanied by a fee equal to
7 20% of the initial licensing fee. If the department does not decide either to grant or to deny the license within 4
8 months of receipt of a complete application, the department shall pay interest on the application fee at the rate
9 of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period
10 that the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If
11 the department denies an application, the application fee, plus any interest, less a processing fee established
12 by rule, must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of
13 the initial licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

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

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

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

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

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

22 (17) The number of beer and wine licenses issued to restaurants with a stated seating capacity of
23 101 persons or more may not exceed 25% of the total licenses issued.

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

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