

1 SENATE BILL NO. 59
2 INTRODUCED BY S. FITZPATRICK
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS;
6 REVISING LAWS RELATING TO PUBLIC CONVENIENCE AND NECESSITY; PROVIDING THAT PUBLIC
7 CONVENIENCE AND NECESSITY CONSIDERATIONS ARE LIMITED TO CONSIDERATION OF THE
8 ALCOHOLIC BEVERAGE; REVISING LAWS RELATED TO DEPARTMENT REQUESTS FOR ADDITIONAL
9 LICENSING INFORMATION; REVISING LAWS RELATED TO TABLE WINE; REVISING LAWS RELATING
10 TO SPECIAL PERMITS; AND AMENDING SECTIONS 16-3-103, 16-4-203, 16-4-207, AND 16-4-301, MCA."
11

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

14 **Section 1.** Section 16-3-103, MCA, is amended to read:

15 **"16-3-103. Unlawful sales solicitation or advertising -- exceptions.** (1) A person within the state
16 may not:

17 (a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent
18 or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless
19 permitted to do so under rules that are promulgated by the department to govern the activities;

20 (b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the
21 case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this
22 code;

23 (c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of
24 advertisement or any other announcement, publication, or price list of or concerning liquor or where or from
25 whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department
26 and then only in accordance with the rules.

27 (2) This section does not apply to:

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- 1 (a) the department, any act of the department, any agency liquor store;
- 2 (b) the receipt or transmission of a telegram or letter by any telegraph agent or operator or post-
- 3 office employee in the ordinary course of employment as the agent, operator, or employee;
- 4 (c) the sale and serving of beer and table wine in the grandstand and bleacher area of a county
- 5 fairground or public sports arena under a special permit issued pursuant to 16-4-301 or a catering endorsement
- 6 issued pursuant to 16-4-111 or 16-4-204; or
- 7 (d) the sale of alcohol at a sporting event conducted at a Montana university as provided in 16-4-
- 8 112."
- 9

10 **Section 2.** Section 16-4-203, MCA, is amended to read:

11 **"16-4-203. Determination of public convenience and necessity.** (1) An original license issued

12 pursuant to 16-4-104, 16-4-201, 16-4-208, or 16-4-213 or the transfer of ownership or location of ~~an on-~~

13 ~~premises retail license~~ a license issued pursuant to 16-4-104, 16-4-201, 16-4-208, or 16-4-213 may be

14 approved if the department does not receive the minimum number of protests required for a public convenience

15 and necessity determination pursuant to 16-4-207, in which case the application must be regarded as a prima

16 facie showing of public convenience and necessity and no further determination of public convenience and

17 necessity is allowed.

18 (2) (a) If the department receives at least the minimum number of protests required for a public

19 convenience and necessity determination, as provided in 16-4-207, an application must be approved when

20 evidence indicates that the issuance of an original license or transfer of location will materially promote the

21 public's ability to engage in the licensed activity.

22 (b) The issuance of an original license or a transfer of location will materially promote the public's

23 ability to engage in the licensed activity if:

24 (i) the applicant's history and experience demonstrate the capacity to operate the proposed

25 license in a lawful manner;

26 (ii) the approval of the application for the premises at the proposed location is consistent with the

27 public's demand or probable demand for the licensed activity that presently exists or is reasonably expected to

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1 exist within the next 5 years in the quota area where the proposed premises is located and in quota areas
2 adjacent to the quota area where the proposed premises is located;

3 (iii) the approval of the application for the premises at the proposed location contributes to the
4 public's ability to participate in the licensed activity throughout the quota area where the proposed premises is
5 located and quota areas adjacent to the quota area where the proposed premises is located;

6 (iv) the approval of the application for the premises at the proposed location is consistent with
7 adopted or pending planning, annexation, and zoning ordinances of local governments that confer or will confer
8 jurisdiction over business and developments such as the proposed license in the quota area where the
9 proposed premises is located and in quota areas adjacent to the quota area where the proposed premises is
10 located.

11 (3) Protests are limited to the operation of the alcoholic beverage license only. Protests related to
12 gambling or other matters will not be considered by the department.

13 ~~(3)~~(4) When determining whether or not an application is justified by public convenience and
14 necessity, the department may:

15 (a) receive evidence at the public hearing specified in 16-4-207 only from the applicant, any
16 protestors whose protests the department has accepted pursuant to 16-4-207, and any other person
17 summoned or called by either a protestor or applicant;

18 (b) find that the application is justified by public convenience and necessity if the applicant has
19 provided substantial credible evidence as provided for in this subsection ~~(3)~~(4) that shows that the
20 department's approval of the application will materially promote the public's ability to engage in the licensed
21 activity. The substantial credible evidence required must include a consideration of each of the components of
22 materially promoting the public's ability to engage in the licensed activity as provided in subsection (2)(b).

23 ~~(4)~~(5) For the purposes of this section, the following definitions apply:

24 (a) "Confer or will confer jurisdiction" means the power or authority that a local government or an
25 appointed subsidiary of a local government has or may obtain within 1 year from the date of the hearing to
26 consider and adopt planning, annexation, or zoning ordinances.

27 (b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in

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1 a business licensed to sell alcoholic beverages at retail for on-premises consumption.

2 (c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local
3 government or an appointed subsidiary of a local government that were publicly considered within the year
4 preceding the date of the hearing or are presently being considered."
5

6 **Section 3.** Section 16-4-207, MCA, is amended to read:

7 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) (a) When an
8 application has been filed with the department for a license to sell alcoholic beverages at retail issued pursuant
9 to 16-4-104, 16-4-201, 16-4-208, or 16-4-213 or to transfer the ownership or location of a retail-license issued
10 pursuant to 16-4-104, 16-4-201, 16-4-208, or 16-4-213, the department shall review the application for
11 completeness and, based ~~upon~~ on review of the application and any other information supplied to the
12 department, determine whether the applicant or the premises to be licensed meets criteria provided by law. The
13 department may make ~~one request~~ requests for additional information necessary to complete the application.
14 The application is considered complete when the applicant furnishes the application information requested by
15 the department. When the application is complete, the department of justice shall investigate the application as
16 provided in 16-4-402. When the department determines that an application for a license under this code is
17 complete, the department shall publish in a newspaper of general circulation in the city, town, or county from
18 which the application comes a notice that the applicant has made application for a retail on-premises license or
19 a transfer of location and that protests may be made against the approval of the application by residents of the
20 county from which the application comes, residents of adjoining Montana counties, or residents of adjoining
21 counties in another state if the criteria in subsection (4)(d) are met. Protests must be mailed to the department
22 within 10 days after the final notice is published. Notice of application for a new license must be published once
23 a week for 4 consecutive weeks. Notice of application for transfer of ownership or location of a license must be
24 published once a week for 2 consecutive weeks.

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

26 NOTICE OF APPLICATION FOR RETAIL

27 ALL-BEVERAGES LICENSE

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

8 Dated.....

9 Signed

10

11 (ii) Notice may be substantially in the following form for a premises only:

12 NOTICE OF APPLICATION FOR RETAIL

13 ALL-BEVERAGES LICENSE

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

22 Dated.....

23 Signed

24

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

27 NOTICE OF APPLICATION FOR RETAIL

1 ALL-BEVERAGES LICENSE

2 Notice is given that on the..... day of....., 20..., one (name of applicant) filed an application for a
3 retail all-beverages license with the Montana department of revenue to be used at (describe location of
4 premises where beverages are to be sold). Residents of..... counties may protest against the approval of the
5 application. Each protestor is required to mail a letter that contains in legible print the protestor's full name,
6 mailing address, and street address. Each letter must be signed by the protestor. A protest petition bearing the
7 names and signatures of persons opposing the approval of an application may not be considered as a protest.
8 Protests may be mailed to....., department of revenue, Helena, Montana, on or before the..... day of.....,
9 20.....

10 Dated.....

11 Signed

12

13 (2) Each applicant shall, at the time of filing an application, pay to the department an amount
14 sufficient to cover the costs of publishing the notice. There may be two charges if the applicant applies for
15 licensure prior to applying for a premises under 16-4-417.

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

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

20 (c) If the department receives sufficient written protests that satisfy the requirements in subsection
21 (1) against the approval of the application, the department shall hold a public hearing as provided in subsection
22 (4).

23 (4) (a) If the department receives at least one protest but less than the number of protests required
24 for a public convenience and necessity determination as specified in subsection (4)(c), the department shall
25 schedule a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient
26 cause to deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the
27 grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity.

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1 The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

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

9 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an
10 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the
11 proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-
12 beverages licenses determined for that quota area according to 16-4-201(1), (2), and (9) but in no case less
13 than two. The minimum number of protests determined in this manner will apply only to applications for either
14 on-premises consumption beer or all-beverages licenses.

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

21 **Section 4.** Section 16-4-301, MCA, is amended to read:

22 **"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine -- application**
23 **and issuance.** (1) (a) The following organizations or institutions that conduct a special event may receive up to
24 three-TWELVE special permits a year to sell beer and table wine to the patrons of the special event:

25 (i) An an organization or institution that has a tax-exempt designation under the provisions of
26 section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended,;

27 (ii) an organization or institution that is organized and operated to raise funds for a needy person;

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1 or

2 (iii) an organization or institution that is an accredited Montana postsecondary school and that
3 conducts a special event may receive a special permit to sell beer and table wine to the patrons of that special
4 event. An organization may receive up to three special permits a year.

5 (b) A civic league or organization that has a tax-exempt designation under section 501(c)(4) of the
6 Internal Revenue Code, 26 U.S.C. 501(c)(4), as amended, or an organization authorized by an accredited
7 Montana postsecondary school to engage in fundraising activities for intercollegiate athletics that has a tax-
8 exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C.
9 501(c)(3), as amended, may receive up to 12 special permits a year to sell beer and table wine. For purposes
10 of fundraising activities for intercollegiate athletics, only one organization for each Montana postsecondary
11 school may be authorized to apply for and receive special permits under this section. All net earnings from the
12 sale of beer and table wine must be contributed to the state of Montana or a political subdivision of the state or
13 must be devoted to purposes required of entities under section 501(c)(3) of the Internal Revenue Code, 26
14 U.S.C. 501(c)(3), as amended.

15 (c) An association or corporation engaged in professional sporting contests or junior hockey
16 contests may receive one special permit to sell beer and table wine covering the entire for contests played
17 during the covering the entire season of play if:

18 (i) the association or corporation is sanctioned by a sports organization that regulates the specific
19 sport;

20 (ii) the contests played during the season of play of the sport is are is specified in advance;

21 (iii) an admission fee to the contests is charged; and and

22 (iv) the contest events are held in facilities that provide seating for at least 1,000 patrons; and

23 (v) for professional sporting contests, the players receive more than nominal compensation.

24 (d) A chamber of commerce or business league that has a tax-exempt designation under section
25 501(c)(6) of the Internal Revenue Code, 26 U.S.C. 501(c)(6), as amended, may receive up to 12 special
26 permits a year to sell beer and table wine. A chamber of commerce may not use one of its special permits for
27 an event conducted by a business league, and a business league may not use one of its permits for an event

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1 conducted by a chamber of commerce. The chamber of commerce or business league receiving a special
2 permit shall obtain liquor liability insurance for any event it conducts.

3 (e) A winery located in the state and licensed pursuant to 16-4-107 may receive up to ~~three~~
4 ~~TWELVE~~ special permits during a calendar year to provide wine that was produced at the winery's licensed
5 premises.

6 (e)(f) The beer and wine sold under this subsection (1) must be consumed at the time when and
7 within the enclosure where the special event, activity, or sporting contest is held.

8 (f)(g) An application for a special permit must be presented ~~3-5~~ business days in advance, but the
9 department may, for good cause, waive the ~~3-day~~ 5-day requirement. The application must describe the
10 location of the enclosure where the special event, activity, or sporting contest is to be held, the nature of the
11 special event, activity, or sporting contest, and the period during which it is contemplated that the special event,
12 activity, or sporting contest will be held. An application for a permit for professional sporting contests or junior
13 hockey contests under subsection (1)(c) must provide the ~~inclusive~~ inclusive dates of ~~each contest played~~
14 during the season of play ~~for the sporting contest~~ for the sporting contest. The application must be
15 accompanied by the amount of the permit fee and a written statement of approval of the premises where the
16 special event, activity, or sporting contest is to be held issued by the local law enforcement agency that has
17 jurisdiction over the premises.

18 (g)(h) A special permit issued under this subsection (1) for the purpose of selling and serving beer
19 and table wine at a special event, activity, or sporting contest conducted on the premises of a county fairground
20 or public sports arena authorizes the permitholder to sell and serve beer and table wine in the grandstand and
21 bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

22 (h)(i) For the purposes of this subsection (1), a post of a nationally chartered veterans' organization
23 or a lodge of a recognized national fraternal organization otherwise licensed under this code is an organization
24 that may receive special permits for three special events a year, ~~as described in subsection (1)(a),~~ to sell beer
25 and table wine. All net proceeds must go to the post or lodge acquiring the special permit.

26 (2) (a) A post of a nationally chartered veterans' organization or a lodge of a recognized national
27 fraternal organization not otherwise licensed under this code may receive, without notice or hearing as provided

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1 in 16-4-207, a special permit to sell beer and table wine or a special permit to sell all alcoholic beverages at the
2 post or lodge to members and their guests only, to be consumed within the hall or building of the post or lodge.

3 (b) The application of a nationally chartered veterans' organization or lodge of a recognized
4 national fraternal organization must describe the location of the hall or building where the special permit will be
5 used and the date it will be used.

6 (c) The special permit may be issued for a 24-hour period only, ending at 2 a.m., and the
7 department may not issue more than 12 special permits to any post or lodge during a calendar year."

8 - END -