

## 1 HOUSE BILL NO. 242

2 INTRODUCED BY E. BUTTREY, J. SMALL, M. HOPKINS, J. KASSMIER, A. BUCKLEY, C. FRIEDEL, T.

3 BROCKMAN, C. SPRUNGER

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5 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LAWS TO ALLOW A PERSON TO BE  
6 ISSUED UP TO SEVEN ALL-BEVERAGES LICENSES; AND AMENDING SECTIONS 16-4-205 AND 16-4-  
7 401, MCA."

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9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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11 **Section 1.** Section 16-4-205, MCA, is amended to read:

12 **"16-4-205. Limitation on number of licenses -- business in name of licensee.** (1) Subject to the  
13 provisions of 16-4-401, a person may not be issued more than ~~three~~seven all-beverages licenses, with the  
14 exception of:

15 (a) resort retail all-beverages licenses issued under 16-4-213, which do not count toward this limit;  
16 and

17 (b) a secured party issued an additional all-beverages license as the result of a default. A secured  
18 party shall transfer ownership of any additional all-beverages license within 180 days of issuance. A business  
19 may not be carried on under any license issued under this chapter except in the name of the licensee.

20 (2) The provisions of this section do not apply to licenses held by the Montana heritage  
21 preservation and development commission under the provisions of 16-4-305."

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23 **Section 2.** Section 16-4-401, MCA, is amended to read:

24 **"16-4-401. License as privilege -- criteria for decision on application.** (1) A license under this  
25 code is a privilege that the state may grant to an applicant and is not a right to which any applicant is entitled.

26 (2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8),  
27 in the case of a license that permits on-premises consumption, the department shall find in every case in which  
28 it makes an order for the issuance of a new license or for the approval of the transfer of a license that:

1 (a) if the applicant is an individual:

2 (i) and the application is approved, the applicant will not possess an ownership interest in more  
3 than ~~three~~ the limit established in 16-4-205 for establishments licensed under this chapter for all-beverages  
4 sales. However, resort retail all-beverages licenses issued under 16-4-213 do not count toward this limit.

5 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in  
6 16-1-106;

7 (iii) the applicant or any member of the applicant's immediate family is without financing from or  
8 any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages, except that an  
9 applicant's spouse may possess an ownership interest in one or more manufacturer licenses;

10 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
11 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance  
12 with all applicable laws of the state and local governments; however, nothing in this subsection (2)(a)(iv)  
13 authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax  
14 protestor when renewing the license;

15 (v) the applicant has not been convicted of a felony or, if the applicant has been convicted of a  
16 felony, the applicant's rights have been restored; and

17 (vi) the applicant is not under 19 years of age;

18 (b) if the applicant is a publicly traded corporation:

19 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
20 applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the  
21 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
22 for an individual applicant listed in subsection (2)(a).

23 (ii) each individual who has control over the operation of the license meets the requirements for an  
24 individual applicant listed in subsection (2)(a);

25 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
26 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a  
27 corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of  
28 subsection (8) apply.

1 (iv) the corporation is authorized to do business in Montana;

2 (c) if the applicant is a privately held corporation:

3 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
4 applicant listed in subsection (2)(a). If no single owner owns more than 15% of the outstanding stock, the  
5 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
6 for an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet  
7 the requirements of subsection (2)(a).

8 (ii) each individual who has control over the operation of the license meets the requirements for an  
9 individual applicant listed in subsection (2)(a);

10 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
11 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a  
12 corporation who owns less than 15% of the outstanding stock in that corporation except that the provisions of  
13 subsection (8) apply.

14 (iv) the corporation is authorized to do business in Montana;

15 (d) if the applicant is a general partnership, each partner must meet the requirements of  
16 subsection (2)(a);

17 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and  
18 all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the  
19 requirements of subsection (2)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all  
20 limited partners must meet the requirements of subsection (2)(a).

21 (f) if the applicant is a limited liability company, all managing members and those members whose  
22 ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (2)(a). If  
23 no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of  
24 subsection (2)(a).

25 (3) In the case of a license that permits only off-premises consumption and subject to subsection  
26 (8), the department shall find in every case in which it makes an order for the issuance of a new license or for  
27 the approval of the transfer of a license that:

28 (a) if the applicant is an individual:

- 1 (i) and the application is approved, the applicant will not possess an ownership interest in more  
2 than ~~three~~ the limit established in 16-4-205 for establishments licensed under this chapter for all-beverages  
3 sales;
- 4 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in  
5 16-1-106;
- 6 (iii) the applicant or any member of the applicant's immediate family is without financing from or  
7 any affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;
- 8 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a  
9 felony, the applicant's rights have been restored;
- 10 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
11 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance  
12 with all applicable laws of the state and local governments; however, nothing in this subsection (3)(a)(v)  
13 authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax  
14 protestor when renewing the license; and
- 15 (vi) the applicant is not under 19 years of age;
- 16 (b) if the applicant is a publicly traded corporation:
- 17 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
18 listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall  
19 designate two or more officers or board members, each of whom must meet the requirements for an individual  
20 applicant listed in subsection (3)(a).
- 21 (ii) the corporation is authorized to do business in Montana;
- 22 (c) if the applicant is a privately held corporation:
- 23 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
24 applicant listed in subsection (3)(a). If no single owner owns more than 15% of the outstanding stock, the  
25 applicant shall designate two or more officers or board members, each of whom must meet the requirements  
26 for an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet  
27 the requirements of subsection (3)(a).
- 28 (ii) the corporation is authorized to do business in Montana;

1 (d) if the applicant is a general partnership, each partner must meet the requirements of  
2 subsection (3)(a);

3 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and  
4 all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the  
5 requirements of subsection (3)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all  
6 limited partners must meet the requirements of subsection (3)(a).

7 (f) if the applicant is a limited liability company, all managing members and those members whose  
8 ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (3)(a). If  
9 no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of  
10 subsection (3)(a).

11 (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or  
12 wholesaling of an alcoholic beverage, the department shall find in every case in which it makes an order for the  
13 issuance of a new license or for the approval of the transfer of a license that:

14 (a) if the applicant is an individual:

15 (i) the applicant has no ownership interest in any establishment licensed under this chapter for  
16 retail alcoholic beverages sales;

17 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in  
18 16-1-106;

19 (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a  
20 felony, the applicant's rights have been restored;

21 (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a  
22 business person and citizen demonstrate that the applicant is likely to operate the establishment in compliance  
23 with all applicable laws of the state and local governments; however, nothing in this subsection (4)(a)(iv)  
24 authorizes the department to consider an applicant's tax status or whether the applicant was or is an income tax  
25 protestor when renewing the license;

26 (v) the applicant is not under 19 years of age; and

27 (vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or  
28 controlled by a manufacturer of an alcoholic beverage;

1 (b) if the applicant is a publicly traded corporation:

2 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
3 listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the applicant shall  
4 designate two or more officers or board members, each of whom must meet the requirements for an individual  
5 applicant listed in subsection (4)(a).

6 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or  
7 controlled by a manufacturer of an alcoholic beverage; and

8 (iii) the corporation is authorized to do business in Montana;

9 (c) if the applicant is a privately held corporation:

10 (i) each owner of 15% or more of the outstanding stock meets the requirements for an individual  
11 applicant listed in subsection (4)(a). If no single owner owns more than 15% of the outstanding stock, the  
12 applicant must designate two or more officers or board members, each of whom must meet the requirements  
13 for an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet  
14 the requirements of subsection (4)(a).

15 (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or  
16 controlled by a manufacturer of an alcoholic beverage; and

17 (iii) the corporation is authorized to do business in Montana;

18 (d) if the applicant is a general partnership, each partner must meet the requirements of  
19 subsection (4)(a);

20 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and  
21 all limited partners whose ownership interest in the partnership equals or exceeds 15% must meet the  
22 requirements of subsection (4)(a). If no single limited partner's interest equals or exceeds 15%, then 51% of all  
23 limited partners must meet the requirements of subsection (4)(a).

24 (f) if the applicant is a limited liability company, all managing members and those members whose  
25 ownership interest in the company equals or exceeds 15% must meet the requirements of subsection (4)(a). If  
26 no single member's interest equals or exceeds 15%, then 51% of all members must meet the requirements of  
27 subsection (4)(a).

28 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b)

1 apply separately to each class of stock.

2 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant  
3 to 16-4-302.

4 (7) An applicant's source of funding must be from a suitable source. A lender or other source of  
5 money or credit may be found unsuitable if the source:

6 (a) is a person whose prior financial or other activities or criminal record:

7 (i) poses a threat to the public interest of the state;

8 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or

9 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed  
10 business; or

11 (b) has been convicted of a felony offense within 5 years of the date of application or is on  
12 probation or parole or under deferred prosecution for committing a felony offense.

13 (8) (a) An individual applying for an all-beverages license or having any ownership interest in an  
14 entity applying for an all-beverages license may not, if the application were to be approved, own an interest in  
15 more than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

16 (b) If two or more individuals through business or family relationship share in the profits or liabilities  
17 of all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not  
18 exceed half the total number of allowable all-beverages licenses in the specific quota area in which the all-  
19 beverages licenses will be held.

20 (9) (a) Except as specifically provided in this code relating to financial interests in licenses, nothing  
21 in this section applies or otherwise prohibits an applicant or licensee from obtaining personal financing from a  
22 licensed financial institution, taking advantage of consumer credit, or using a personal credit card to make  
23 purchases on behalf of a licensed entity if the applicant or licensee is reimbursed by the licensed entity within  
24 90 days. An applicant or individual may obtain multiple transactions up to an aggregate maximum of \$100,000  
25 with each individual transaction not to exceed \$25,000 to be used on behalf of the licensed entity.

26 (b) A licensee's use of short-term financing of 90 days or less from institutional lenders and  
27 noninstitutional lenders does not constitute an undisclosed ownership interest in the license.

28 (c) It is the intent of this subsection (9) to facilitate the efficient administration of an entity licensed

1 under this code."

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