

HOUSE BILL NO. 894

INTRODUCED BY E. BUTTREY, K. ZOLNIKOV

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LAWS; REVISING LAWS

5 RELATING TO AGENCY LIQUOR STORES; REVISING LAWS RELATED TO ALL BEVERAGES LICENSEES

6 AND RESORT AREA ALL BEVERAGES LICENSEES; PROVIDING FOR BUILDINGS, SWIMMING POOLS,

7 AND SKI HILLS ON THE LICENSED LOCATION; REVISING LAWS RELATING TO PREMISES SUITABILITY

8 FOR A LICENSED RETAILER OPERATING A HOTEL OR SHORT-TERM LODGING FACILITY; REVISING

9 PREMISES SUITABILITY REQUIREMENTS; REVISING LAWS RELATING TO ALTERATION OF A

10 PREMISES; REVISING LAWS RELATING TO NONCONTIGUOUS PREMISES REQUIREMENTS;

11 PROVIDING FOR ALCOHOL DELIVERIES AT A NONCONTIGUOUS STORAGE AREA; REVISING LAWS

12 RELATING TO FRATERNAL ORGANIZATIONS; REVISING LAWS RELATING TO POSSESSION LIQUOR IN

13 A KITCHEN OF A LICENSED PREMISES; REVISING LAWS RELATING TO RESORT AREA VALUATION;

14 REVISING LAWS RELATING TO LAPSE OF RESORT AREA DETERMINATIONS AND RESORT AREA

15 BOUNDARY; PROVIDING A FEE FOR RESORT AREA LICENSES; REVISING LAWS RELATING TO

16 RESORT AREA ACCOMMODATION UNITS; REVISING LAWS RELATING TO CONCESSION

17 AGREEMENTS; REVISING LAWS RELATING TO LICENSE ADMINISTRATION; AMENDING SECTIONS 16-

18 2-109, 16-3-302, 16-3-311, 16-4-105, 16-4-212, 16-4-213, 16-4-406, 16-4-418, AND 16-4-420, MCA; AND

19 PROVIDING AN IMMEDIATE EFFECTIVE DATE."

20

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

22

23 **Section 1.** Section 16-2-109, MCA, is amended to read:

24 **"16-2-109. Number and location of agency liquor stores.** (1) (a) In a community with a population

25 of 12,000 or less, there may be one agency liquor store. In communities with populations greater than 12,000,

26 there may be one agency liquor store for the first 12,000 inhabitants and one additional agency liquor store

27 within increments of population of 40,000 inhabitants above 12,000 inhabitants. In determining population, the

28 department shall use the same methods used for determining increases in the retail license quota system as

1 provided in 16-4-201.

2 (b) In communities that are eligible for more than one agency liquor store, an agency liquor store
3 established after April 25, 1995, may not be located within a 1-mile radius of any other agency liquor store in
4 the community.

5 (2) An agency liquor store established after April 25, 1995, may not be located in a community that is
6 closer than 35 miles to another community in which an agency liquor store is presently located, except in the
7 circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000
8 inhabitants within a 2-year period, whichever is greater, and when this population increase is reasonably
9 expected to continue for at least 5 years.

10 (3) Nothing in subsection (2) prohibits a community with an existing agency liquor store from
11 obtaining additional agency liquor stores when the population allows as provided in subsection (1)."

12

13 **Section 2.** Section 16-3-302, MCA, is amended to read:

14 **"16-3-302. Sale by retailer for consumption on premises.** (1) It is lawful for a licensed retailer to
15 sell and serve beer, either on draught or in containers, to the public to be consumed on the premises of the
16 retailer.

17 (2) It is lawful for a licensee who has an all-beverages license that the licensee uses at a golf course
18 to sell alcoholic beverages and for a licensee who has a golf course beer and wine license issued under 16-4-
19 109 to sell beer and wine:

20 (a) in the building or other structural premises constituting the clubhouse or primary indoor
21 recreational quarters of the golf course; and

22 (b) at any place within the boundaries of the golf course, from a portable satellite vehicle or other
23 movable satellite device that is moved from place to place, whether inside or outside of a building or other
24 structure.

25 (3) It is lawful to consume alcoholic beverages sold as provided in subsection (2) at any place within
26 the boundaries of the golf course, whether inside or outside of a building or other structure.

27 (4) (a) It is lawful for an all-beverages licensee or a resort area all-beverages licensee to sell
28 alcoholic beverages in the building or other structural premises constituting the primary indoor lodging quarters

1 of the hotel or other short-term lodging facility;

2 (b) If the licensee's premises includes a swimming pool, the premises may have a permanent
3 licensed alcohol service structure in the swimming pool area separate from the main licensed premises.

4 (c) If the licensee's premises includes a ski hill, the premises may have up to 2 permanent alcohol
5 service structures separate from the main licensed premises, within the exterior boundaries of the same
6 premises that are owned, leased, or otherwise under the control of, and operated by the same property owner,
7 licensee, and if applicable, concessionaire.

8 (d) All buildings must meet the premises suitability requirements of 16-3-311."

9

10 **Section 3.** Section 16-3-311, MCA, is amended to read:

11 **"16-3-311. Suitable premises for licensed retail establishments.** (1) (a) A licensed retailer may
12 use a part of a building as premises licensed for on-premises consumption of alcoholic beverages, except as
13 otherwise allowed in 16-3-302(4). The licensed retailer must demonstrate that it has adequate control over all
14 alcoholic beverages to prevent self-service, service to underage persons, and service to persons who are
15 actually or apparently intoxicated. Except as provided in subsection (8), the premises must be separated from
16 the rest of the building by permanent walls but may have inside access to the rest of the building at all times
17 even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in
18 which the alcoholic beverages are served. A licensee may lease the kitchen or another specified area to allow
19 another business entity to operate within its premises without permanent floor-to-ceiling walls and without a
20 concession agreement if the other business does not serve or deliver alcohol. If the premises are located in a
21 portion of a building, the licensed retailer must be able to demonstrate that there are adequate safeguards in
22 place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or
23 other security features such as rolling gates, locking cabinets, tap locks, or key card access.

24 (b) A resort retail all-beverages licensee ~~or~~, a retail all-beverages licensee, or an on-premises
25 consumption beer and wine licensee within the boundaries of a resort area may also utilize up to three an
26 alternate alcoholic beverage storage facility-facilities as allowed in 16-4-213(8).

27 (2) A licensee may alter the approved floorplan of the premises. The alteration must be consistent
28 with the requirements of subsection (1)(a). A licensee shall provide a copy of the revised floorplan with the

1 proposed alteration for the licensed premises to the department within 7 days of beginning the alteration.
2 Department approval may not be unreasonably withheld. If the completed alteration differs from the approved
3 alteration due to modifications required for approval by other state or local government entities, such as
4 compliance with fire or building codes, the department must be notified, but preapproval is not required for
5 these modifications. An alteration for the purposes of this section is any structural change in a premises that
6 does not increase the square footage of the existing approved premises. An alteration that increases the
7 square footage of the existing approved premises must be approved by the department prior to beginning the
8 alteration. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an
9 alteration under this section. If the alteration does not require the licensee to obtain a building permit, then
10 inspections by local government agencies may not be required for department approval.

11 (3) The interior portion of the licensed premises must be a continuous area that is under the control of
12 the licensee and not interrupted by any area in which the licensee does not have adequate control, and
13 includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in
14 order to allow patrons to access other tenant businesses or private dwellings in the same building, including but
15 not limited to entryways, hallways, stairwells, and elevators.

16 (4) The premises may include one or more exterior patios or decks as long as sufficient physical
17 safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional
18 perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and
19 impedes foot traffic.

20 (5) Premises suitability does not include a minimum number of seats.

21 (6) A licensed retailer may apply to the department to have ~~a~~ up to three noncontiguous storage ~~area~~
22 areas that is ~~are~~ under the control of the licensed retailer approved for onsite alcoholic beverage storage, either
23 onsite separate from its service area or offsite within 10 miles of the premises as long as the licensed retailer
24 demonstrates that there are adequate safeguards in place to prevent public access to alcoholic beverages after
25 hours, either by the presence of a lockable door or other security features such as rolling gates, locking
26 cabinets, tap locks, or key card access. The application fee is \$100. An on-premises consumption retailer's keg
27 storage and beer lines running into the licensed premises may be in the same building location provided that
28 the licensee is able to maintain control and adequate safeguards are in place to prevent public access. This

1 includes a location within an off-premises license provided the storage area is segregated between the
2 licensees and each licensee maintains control over its alcohol inventory.

3 (7) A licensed retailer operating within a hotel or similar short-term lodging facility may apply to the
4 department to allow for the delivery of alcoholic beverages to guests of accommodation units, and the
5 prestocking of alcoholic beverages in accommodation units is allowed for the accommodation units within the
6 property as long as the purchaser's age is verified and there are adequate safeguards in place to prevent
7 underage service. The application fee is \$100. Licensees may receive alcohol deliveries at a noncontiguous
8 storage area.

9 (8) An on-premises consumption retailer may be located adjacent to a brewery or winery if the
10 licensees are able to maintain control of their respective premises through adequate physical separation.

11 (9) (a) For the purposes of this section, "adequate physical separation" means:

12 (i) the premises of the retailer and the premises of the brewery or winery are secured after business
13 hours from each other and from any other business, including but not limited to prohibiting a customer from
14 accessing a brewery sample room and purchasing alcohol after the brewery tasting room hours of operation as
15 specified in 16-3-213(2)(b); and

16 (ii) the separation may include doors, gates, or windows that may be left open during business hours.

17 (b) The term does not require permanent floor-to-ceiling walls."
18

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

20 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of**
21 **license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110,
22 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
23 accordance with the provisions of this code and the rules of the department, may be issued to any person or
24 business entity that is approved by the department, subject to the following exceptions:

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

28 (i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the

1 towns, not more than one retail beer license;

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

5 (iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the
6 cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next
7 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each
8 additional 2,000 inhabitants.

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

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

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

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

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

26 (A) In the Helena and East Helena previously combined quota area, the straight line will be drawn
27 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area
28 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a

1 Helena license or with a physical address of East Helena will become an East Helena license, regardless of
2 where it falls in the new quota areas.

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

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

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

13 (e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
14 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military
15 reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a
16 recognized national fraternal organization if the veterans' or fraternal organization has been in continuous
17 existence for a period of 5 years or more prior to January 1, 1949, and it is applying for a license at the same
18 location that it has occupied for the last 5 years. A fraternal order or post of a nationally chartered veterans'
19 organization that has held a fraternal or veterans' license within the past 10 years is not subject to the 5-year
20 same location requirement.

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

1 5, part 3, 5, or 6.

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

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

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

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

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

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

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

28 (b) A person licensed under this subsection (6) may apply to the department and pay a fee for an

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

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

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

9 (8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October 1,
10 1997, must have a conspicuous notice that the license may not be used for premises where gambling is
11 conducted.

12 (9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a
13 \$25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

14 (10) The department may adopt rules to implement this section."
15

16 **Section 5.** Section 16-4-212, MCA, is amended to read:

17 **"16-4-212. Resort area determination.** (1) To obtain a resort area designation, the resort area
18 developer or landowner must submit an application with a plat setting forth the resort area boundaries and
19 designating the ownership of the lands within the resort area. The plat must show the location and general
20 design of the buildings and other improvements existing or to be built in the resort area. A master plan for the
21 development of the resort area may be filed by the resort area developer in satisfaction of this section.

22 (2) (a) In addition to the other requirements of this code, at the time of application, a resort area
23 must:

24 (i) not be located within the boundaries of a quota area as described in 16-4-201;

25 (ii) have a current actual valuation of resort or recreational facilities, including land and improvements,
26 of not less than \$1 million, at least half of which valuation must be for a structure or structures within the resort
27 area;

28 (iii) be under the sole ownership or control of one person or entity;

1 (iv) contain a minimum of 50 acres of land; and

2 (v) provide details of the recreational facilities that are or will be on the grounds of the resort that
3 warrant the resort designation being granted. These recreational facilities must be completed prior to licenses
4 being issued in 16-4-213.

5 (b) A resort area's current actuarial valuation under subsection (2)(a)(ii) may be determined by
6 using an independent appraisal or the department's tax appraisals of the property.

7 ~~(b)(c)~~ For the purposes of this ~~section~~ subsection (2), "control" means land or improvements that are
8 owned or that are held under contract, lease, option, or permit.

9 (3) Within 15 business days after the application is filed, the department shall schedule a public
10 hearing to be held in the proposed area to determine whether the facility proposed by the resort area developer
11 or landowner is a resort area. At least 30 days prior to the date of the hearing, the department shall publish
12 notice of the hearing in a newspaper published in the county or counties in which the resort area is located,
13 once a week for 4 consecutive weeks. The notice must include a description of the proposed resort area. The
14 resort area developer or landowner shall, at the time of filing an application, pay to the department an amount
15 sufficient to cover the costs of publication.

16 (4) A person may present, in person or in writing, a statement to the department at the hearing in
17 opposition to or in support of the application.

18 (5) Within 30 days after the hearing, the department shall approve or deny the application. If the
19 application is denied, the applicant may request a review of the decision of the department pursuant to the
20 Montana Administrative Procedure Act.

21 (6) Once a resort area has been approved by the department, the boundaries of a resort area may
22 not be changed without a new application.

23 (7) (a) Except as provided in subsection (7)(b), an approved resort area designation lapses if no
24 resort retail all-beverages licenses are issued pursuant to 16-4-213 within 5 years of the department's approval
25 of the resort area.

26 (b) A resort area designation that received department approval prior to January 1, 2024, lapses if
27 no resort retail all-beverages licenses are issued pursuant to 16-4-213 by January 1, 2028.

28 (c) A developer or landowner of a lapsed resort area may reapply to the department to obtain a

1 new resort area determination."

2

3 **Section 6.** Section 16-4-213, MCA, is amended to read:

4 **"16-4-213. Resort retail all-beverages licenses.** (1) After a resort area has been approved,
5 applications may be filed with the department for the issuance of resort retail all-beverages licenses within the
6 resort area.

7 (2) (a) Except as provided in subsections (2)(b) and (2)(c), the department may issue one resort retail
8 all-beverages license for the first 100 accommodation units and an additional license for each additional 50
9 accommodation units within an approved resort area as long as the recreational facilities under 16-4-212 have
10 also been completed.

11 (b) For a resort area with a perimeter containing at least 1,000 contiguous acres that has a current
12 actual valuation of completed recreational facilities, including land and improvements, of not less than \$30
13 million, the department may issue up to 10 resort retail all-beverages licenses regardless of the number of
14 accommodation units.

15 (c) (i) A resort area designation application to the department that received approval prior to
16 January 1, 1999, is entitled to the issuance of one resort retail all-beverages license for a \$20,000 license fee,

17 (ii) If the resort area is located within the boundaries of a quota area as provided in 16-4-201(1) or
18 (2) as of the date of submission for a resort retail all-beverages license, then notwithstanding the number of
19 accommodation units, the resort area is entitled to six additional resort retail all-beverages licenses for a one-
20 time fee of \$400,000 each.

21 (iii) If the resort area is located within the boundaries of a quota area as provided in 16-4-201(1) or
22 (2) as of the date of submission for a resort retail all-beverages license, then notwithstanding the number of
23 accommodation units, the resort area is not eligible for additional resort retail all-beverages licenses beyond
24 those issued prior to January 1, 2028, and described in subsections (2)(c)(i) and (2)(c)(ii). Any additional resort
25 retail all-beverages licenses issued to a resort area under this subsection (2)(c) must meet the accommodation
26 unit requirement in subsection (2)(a) of this section and pay the license fee and renewal fees as provided in 16-
27 4-501.

28 (d) (i) For purposes of this code, "accommodation unit" means a unit that is available for short-term

1 guest rental and includes:

2 (A)(i) a single-family home;

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

4 (C)(iii) a single room of a hotel or motel; or

5 (D)(iv) similar living space. A space under this subsection ~~(2)(d)(i)(D)~~ (2)(d)(iv) must be distinctly
6 separated from other living spaces within the building and have its own sleeping, bath, and toilet facilities.

7 ~~(ii) In order to qualify toward the required total for the purposes of subsection (2)(a), accommodation~~
8 ~~units may not be located within the boundaries of a quota area as provided in 16-4-201(1) or (2) as of the date~~
9 ~~of submission for a resort retail all-beverages license.~~

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

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

13 (a) is subject to all other requirements of an all-beverages license in this code, except:

14 (i) for the purposes of premises suitability under 16-3-311 and 16-3-302(4), a licensed retailer may
15 use a part of the building as a licensed premises for the consumption of alcoholic beverages on the premises.
16 The premises must be separated from the rest of the building by permanent walls but may have inside access
17 to the rest of the building at all times even if the businesses or uses in the other part of the building are
18 unrelated to the operation of the premises in which alcoholic beverages are served. If the premises are located
19 in a portion of a building, the licensed retailer must be able to demonstrate that there are adequate safeguards
20 in place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door
21 or other security features such as rolling gates, locking cabinets, tap locks, or key card access;

22 (ii) the interior portion of the licensed premises must be a continuous area that is under the control of
23 the licensee and not interrupted by any area in which the licensee does not have adequate control, and
24 includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in
25 order to allow patrons to access other tenant businesses or private dwellings in the same building, including but
26 not limited to entryways, hallways, stairwells, and elevators; and

27 (iii) the premises may include one or more exterior patios or decks as long as sufficient physical
28 safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional

1 perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and
2 impedes foot traffic.

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

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

6 (5) For licenses issued under this section, a licensee may apply to the department to allow for the
7 delivery of alcohol to guests of accommodation units and the prestocking of alcoholic beverages in
8 accommodation units within the designated resort area property as long as the purchaser's age is verified. The
9 application fee is \$100.

10 (6) Employees of the resort licensee who sell, serve, or deliver alcohol must be trained as provided in
11 16-4-1005.

12 (7) A resort retail all-beverages licensee whose license was issued under subsection (2)(c)(i) may
13 enter into one concession agreement as provided in 16-4-418, regardless of whether the licensee's premises is
14 located outside of a quota area as defined in 16-4-201(1) or (2). A resort retail all-beverages licensee whose
15 premises is located outside of a quota area as defined in 16-4-201(1) or (2) may enter into a maximum of one
16 concession agreement per license with an unlicensed entity to serve alcoholic beverages. Except for 16-4-
17 418(1), the provisions of 16-4-418 apply.

18 (8) If a resort area has two or more resort retail all-beverage licenses or retail all-beverages licenses
19 within the boundaries of the resort, the licensees may also apply to use a resort alternate alcoholic beverage
20 storage facility to be located within the resort area. The application fee is \$100. The alternate storage facility will
21 be considered part of each licensee's existing licensed premises, though it does not need to be contiguous to
22 qualify for approval. The licensees using the alternate storage facility must meet all requirements to ensure the
23 secure storage of alcoholic beverages and prevent on-site consumption of alcoholic beverages. Alcoholic
24 beverages in sealed containers belonging to multiple licensees within the resort area may be stored in the
25 same storage facility. A resort retail licensee or retail licensee who is approved to use the alternate storage
26 facility may accept delivery of alcoholic beverages at the alternate storage facility and may transfer alcoholic
27 beverages to another licensee approved to use the alternate storage facility. Any transfer of alcoholic
28 beverages between approved licensees must be properly accounted for. Approval to use the alternate storage

1 facility must be documented on the face of each license within the resort area that applies to use the alternate
2 storage facility.

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

5 (10) Applications may be made to the department for resort retail all-beverages licenses provided in
6 subsection (2)(c)(i) or (2)(c)(ii) at any time before January 1, 2028. If the applicant does not have a premises,
7 the department may approve the applications without approving the premises if all other requirements of this
8 code related to an applicant are met. A license issued without a premises must be immediately put on nonuse
9 status until a premises is approved by the department and may not be transferred to another person or
10 business entity prior to approval of the premises unless that transfer is due to death of an owner or was
11 reasonably beyond the control of the licensee. On issuance of a license without a premises as provided in this
12 subsection, the licensee shall apply for a premises located within the resort area and must have the premises
13 approved no later than January 1, 2029."

14

15 **Section 7.** Section 16-4-406, MCA, is amended to read:

16 **"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating**
17 **circumstances -- contrived events.** (1) The department shall, upon a written, verified complaint of a person,
18 request that the department of justice investigate the action and operation of a brewer, winery, wholesaler,
19 domestic distillery, table wine distributor, beer or wine importer, retailer, concessionaire, or any other person or
20 business licensed or registered under this code.

21 (2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the
22 department, after reviewing admissions of either the licensee or concessionaire or receiving the results of the
23 department of justice's or a local law enforcement agency's investigation, has reasonable cause to believe that
24 a licensee or concessionaire has violated a provision of this code or a rule of the department, it may, in its
25 discretion and in addition to the other penalties prescribed:

26 (a) reprimand a licensee or concessionaire or both;

27 (b) proceed to revoke the license of the licensee or the concession agreement of the concessionaire
28 or both only if the violations jeopardize health, welfare, and safety or there is not a proposed cure in place;

1 (c) suspend the license or the concession agreement or both for a period of not more than 3 months;

2 (d) refuse to grant a renewal of the license or concession agreement or both after its expiration only if
3 the violations jeopardize health, welfare, and safety or there is not a proposed cure in place; or

4 (e) impose a civil penalty not to exceed \$1,500.

5 (3) The department shall consider mitigating circumstances and may adjust penalties within penalty
6 ranges based on its consideration of mitigating circumstances. Examples of mitigating circumstances are:

7 (a) there have been no violations by the licensee or concessionaire or both within the past 3 years;

8 (b) there have been good faith efforts by the licensee or concessionaire or both to prevent a violation;

9 (c) written policies exist that govern the conduct of the licensee's employees or the concessionaire's
10 employees or both;

11 (d) there has been cooperation in the investigation of the violation that shows that the licensee or
12 concessionaire or both or an employee or agent of the licensee or concessionaire or both accepts
13 responsibility; or

14 (e) the licensee or concessionaire or both have provided responsible alcohol server training to all of
15 their employees.

16 (4) The department ~~shall~~ may not consider aggravating circumstances unless there are more than 3
17 violations within the last 3 years arising out of separate occurrences and may adjust penalties within penalty
18 ranges based on its consideration of aggravating circumstances. Examples of aggravating circumstances are:

19 ~~(a) prior warnings about compliance problems;~~

20 ~~(b) prior violations within the past 3 years;~~

21 ~~(c) lack of written policies governing employee conduct;~~

22 ~~(d) multiple violations during the course of the investigation;~~

23 ~~(e) efforts to conceal a violation;~~

24 ~~(f) the intentional nature of the violation; or~~

25 ~~(g) involvement of more than one patron or employee in a violation.~~

26 (5) The department may not issue a violation to a licensee or a concessionaire provided the
27 investigation was not based on complaints or on observed misconduct but was based solely on a contrived
28 event by the investigating authority or another designated organization creating the opportunity for a violation.

1 The department may issue a violation only if the licensee or concessionaire fails more than two contrived event
 2 investigations within a 3-year period beginning with the first failure. For purposes of this section, the first two
 3 violations resulting from a contrived event investigation within a 3-year period do not constitute a violation of
 4 this code, and the department may not consider these violations in considering any mitigating circumstances
 5 and penalties as provided in this section."

6

7 **Section 8.** Section 16-4-418, MCA, is amended to read:

8 **"16-4-418. Concession agreements.** (1) Except for entities licensed under 16-4-105(1)(e) or 16-4-
 9 201(8) on or after January 1, 2021, the department may allow entities licensed under 16-4-105 or 16-4-201 to
 10 enter into concession agreements with unlicensed entities to serve alcoholic beverages. A licensee may enter
 11 into a maximum of three concession agreements for each license at any given time.

12 (2) To be considered for approval, a concession agreement must:

13 (a) demonstrate that the licensed premises is a contiguous premises that includes the space utilized
 14 by the concessionaire; and

15 (b) provide that the licensee retains ultimate control over and responsibility for operating the license,
 16 including:

17 (i) the ordering, purchase, sale, and service of alcoholic beverages;

18 (ii) the right to discipline or otherwise sanction any employee in relation to the service of alcoholic
 19 beverages;

20 (iii) reconciling the proceeds of alcoholic beverage sales at least monthly;

21 (iv) terminating the concession agreement with cause where cause includes but is not limited to any
 22 violation of Title 16 and the sale or transfer of the license; and

23 (v) the exclusive operation of all gaming activities if the licensee offers any gaming.

24 (3) A licensee's gaming endorsement may not be extended through a concession agreement.

25 (4) Nothing in this section precludes a licensee and a concessionaire from sharing employees.

26 (5) A licensee may enter into a management agreement to satisfy the provisions of subsection (2)(b).

27 (6) (a) The licensee may compensate the concessionaire for the sale of alcoholic beverages based
 28 only on one of the following or a combination of the following considerations:

1 (i) a percentage of gross alcoholic beverage sales;

2 (ii) a percentage of gross alcoholic beverage revenue less cost of goods;

3 ~~(iii)~~(iii) a percentage of employee overhead; and

4 ~~(iii)~~(iv) a fixed dollar amount to be negotiated by the parties.

5 (b) If the licensee and concessionaire change the structure of the compensation arrangement, the
6 department must be provided with a copy of the amended compensation arrangement but does not have the
7 ability to deny the amended compensation arrangement as long as it meets the requirements of this section.

8 (7) (a) Other than changes provided in subsection (6)(b), a licensee shall submit any proposed
9 modification to an existing concession agreement for review and approval by the department. Changes include
10 but are not limited to proposed changes in ownership of the license and the parties of an existing concession
11 agreement choosing to operate under the provisions of this section. The department shall approve or deny the
12 application within 30 business days unless additional information is required. A new or modified concession
13 agreement that does not alter the existing floorplan may not require inspections by local government agencies
14 for department approval. The existing concession agreement may remain in place pending department
15 approval or denial. An applicant may apply for temporary operating authority pending approval for a change in
16 ownership of a license or to operate under the provisions of this section without terminating an existing
17 concession agreement.

18 (b) Parties with a concession agreement existing prior to May 14, 2021, that elect to operate under
19 the provisions of this section shall operate under the existing concession agreement pending department
20 approval of the new concession agreement.

21 (8) A concession agreement does not constitute an ownership interest in the license.

22 (9) The department shall create a standardized concession agreement that includes only the
23 requirements of this section.

24 (10) The concessionaire shall pay the department an application fee of \$500 for each new concession
25 agreement or for existing concession agreements that elect to operate under the provisions of this section. The
26 new concession agreement application fee does not apply to modification of existing concession agreements.
27 The annual renewal fee for each concession agreement is \$100.

28 (11) (a) For the purposes of this section, the term "contiguous premises" means the interior portion of

1 the premises that must be a continuous area under the control of the licensee or the concessionaire and not
2 interrupted by any area in which one of the parties does not have control.

3 (b) The term includes multiple floors on the premises and common areas necessarily shared by
4 multiple building tenants in order to allow patrons to access other tenant businesses or private dwellings in the
5 same building, including but not limited to entryways, hallways, stairwells, and elevators."
6

7 **Section 9.** Section 16-4-420, MCA, is amended to read:

8 **"16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The
9 department shall issue a restaurant beer and wine license to an applicant whenever the department determines
10 that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications
11 and conditions:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

1 (6) (a) For purposes of this section, "restaurant" means a public eating place:
 2 (i) where individually priced meals are prepared and served for on-premises consumption;
 3 (ii) where at least 65% of the restaurant's annual gross income from the operation must be from the
 4 sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall
 5 file with the department a statement, in a form approved by the department, attesting that at least 65% of the
 6 gross income of the restaurant during the prior year resulted from the sale of food.

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

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

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

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

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

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

26 (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:
 27 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of
 28 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant

1 beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses
2 that may be issued in that quota area pursuant to 16-4-105;

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

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

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

15 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if
16 the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is
17 equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-
18 4-105.

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

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

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

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

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

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

8 (A) 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 (B) 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 (C) 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 (9) (a) 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 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if
23 they were part of the combined quota area prior to November 24, 2017.

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

28 (c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in

1 subsection (9)(a), the department may publish the availability of more than one new license a year until the
2 quota has been reached.

3 (10) Except as provided in subsection (9)(b), when more than one new restaurant beer and wine
4 license 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 (11) When a restaurant beer and wine license becomes available by the initial issuance of licenses
7 under this section or as the result of an increase in the population in a quota area, the nonrenewal of a
8 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the
9 department shall advertise the availability of the license in the quota area for which it is available.

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

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

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

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

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

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

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

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

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

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

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

14 (19) A person licensed under this section may have and possess liquor in the kitchen of the licensed
15 premises only for the purpose of the preparation of food if the alcohol content is cooked out at the time of
16 servicing. Nothing in this subsection may be construed to allow the licensee to consume, sell, or serve liquor.

17 (20) The department may adopt rules to implement this section."

18

19 **NEW SECTION. Section 10. Effective date.** [This act] is effective on passage and approval.

20

- END -