

HOUSE BILL NO. 958

INTRODUCED BY E. BUTTREY, K. ZOLNIKOV, S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT CREATING COUNTY RECREATION DISTRICTS AND COUNTY RECREATION DISTRICT RETAIL ALL-BEVERAGES SERVICE PERMITS; PROVIDING DEFINITIONS; PROVIDING REQUIREMENTS; PROVIDING FEES; PROVIDING FOR PREMISES SUITABILITY CONSIDERATIONS; AMENDING SECTIONS 16-3-301 AND 16-4-406, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. County recreation districts -- policy. It is the intent and purpose of [sections 1 through 5] to encourage the development of recreation districts within the county quota areas and to provide for the growth of new and existing recreational sites by the establishment of county recreation districts within which service permits may be issued by the department under [section 3]. It is the intent and purpose of [sections 1 through 5] that a county recreation district acts as an all-beverages license overlay to which retail all-beverages service permits are attached. For the purposes of [sections 1 through 5] and unless the context requires otherwise, laws applicable to retail licenses are applicable to county recreation district retail all-beverages service permits.

NEW SECTION. Section 2. Definitions. As used in [sections 1 through 5], unless the context clearly indicates otherwise, the following definitions apply:

(1) "Amenities" includes a downhill ski area, cross-country ski area, equine activity facility, mountain biking course, natural hot springs, golf course, shooting range, permanent concert venue, and guest ranch.

(2) "Control" means land or improvements that are owned or that are held under contract, lease, option, or permit. This may be demonstrated by leases, property ownership records, option contracts, covenants, conditions, and restrictions, or mandatory property owners' association membership.

1 (3) "Cross-country ski area" means an area improved by facilities and designated trails or routes
2 intended for cross-country skiing with not less than 15 miles of groomed cross-country ski trails.

3 (4) "Downhill ski area" means an area improved by facilities and designated trails or routes
4 intended for downhill skiing or any activity, including participation in or practice or training for competitions or
5 special events, that involves sliding or jumping on snow or ice while using skis, a snowboard, or any other
6 sliding device.

7 (5) "Equine activity facility" means real property improved by facilities to support one or more of the
8 following activities:

9 (a) equine shows, fairs, competitions, performances, or parades that involve any breed of equine
10 and any of the equine disciplines, including but not limited to dressage, hunter and jumper horse shows, grand
11 prix jumping, 3-day events, combined training, rodeos, driving, pulling, cutting, polo, steeplechasing, endurance
12 trail riding and western games, and hunting;

13 (b) equine training or teaching activities;

14 (c) boarding equines; and

15 (d) rides, trips, hunts, pack trips, or other equine activities of any type, however informal, that are
16 sponsored by an equine activity sponsor.

17 (6) "Golf course" includes a facility that has at least 9 holes and 2,500 lineal yards.

18 (7) (a) "Guest ranch" means a business or organization that provides guests with overnight
19 lodging, dining, and onsite outdoor recreational activities typical of western ranching for the purposes of
20 vacation or recreation. Recreational activities offered by a guest ranch may include but are not limited to
21 horseback riding, wagon or sleigh rides, fishing, shooting, and working with livestock. The premises of a guest
22 ranch may include restaurants, sporting and recreational equipment shops, event venues, arenas, and other
23 facilities that may be used by other persons in addition to the overnight guests.

24 (b) The term does not include premises used as rehabilitation centers, group homes, clinics,
25 nursing homes, church or other religious campgrounds, or other similar uses.

26 (8) "Mountain biking course" means real property improved by designated paths, trails, or routes
27 that are specifically designed for the sport of mountain biking. Mountain biking course trails are marked with
28 signs, trailheads, or color-coded trail markers for navigation and trail difficulty ratings based on factors such as

1 terrain, steepness, and technical features.

2 (9) "Natural hot springs" means an indoor or outdoor structure or basin containing an artificial body
3 of naturally hot water that is intended for swimming, soaking, or recreational bathing. The term includes but is
4 not limited to hot springs spas, hot springs swimming pools, and hot springs wading pools.

5 (10) "Permanent concert venue" is a facility designed and dedicated to hosting live musical
6 performances on a regular basis. The term includes a permanent stage, seating or standing areas for the
7 audience, sound and lighting systems, and other amenities necessary for the production and presentation of
8 music concerts, whether indoor or outdoor.

9 (11) "Shooting sport facility" means real property improved and operated for the use of rifles,
10 shotguns, pistols, silhouettes, skeet, trap, black powder, archery, or similar activity related to sport shooting.

11
12 **NEW SECTION. Section 3. County recreation district classification.** (1) To obtain a county
13 recreation district classification, the proposed district developer or landowner shall submit an application with an
14 exhibit setting forth the county recreation district boundaries and demonstrating the common ownership or
15 control of the land within the county recreation district. The exhibit must show the locations of improvements
16 and amenities existing or to be constructed in the county recreation district. A county recreation district
17 classification must be operated under a county recreation district retail all-beverages license, and for the
18 purposes of [sections 1 through 5], service permits are considered an extension of the license.

19 (2) In order to qualify, at the time of application, the county recreation district:

20 (a) may not be located within the boundaries of incorporated city and town quota areas as
21 described in 16-4-201, except if the district is located in a county having a consolidated city-county unit of local
22 government, the district must be more than 5 miles from the historical corporate limits of the city or town that
23 existed immediately before abandonment or consolidation into the consolidated city-county unit of local
24 government;

25 (b) must be under the ownership or control of one person or entity;

26 (c) must contain a minimum of 125 contiguous acres of land;

27 (d) must provide details of the county recreation district amenities that are or will be within the
28 district to warrant the classification being granted; and

1 (e) must have investments in real property, amenities as defined in [section 2], or improvements of
2 at least \$10 million at the time of application.

3 (3) Within 10 business days after an application is filed, the department shall schedule a public
4 hearing to be held in person or electronically to determine whether the area meets the criteria for approval. At
5 least 30 days prior to the date of the hearing, the department shall publish a notice of the hearing in a
6 newspaper published in the county or counties in which the county recreation district is located once a week for
7 2 consecutive weeks and may publish the notice in any online format. The notice must include a description of
8 the proposed county recreation district. The applicant shall, at the time of application, pay the department an
9 application fee of \$250.

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

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

15 (6) If a county recreation district application is approved, the applicant has 5 years from the date of
16 approval to demonstrate substantial progress toward completion of the improvements and amenities described
17 in the application and obtain at least one county recreation district retail all-beverages service permit. If the
18 applicant's development plans have substantially changed or the applicant cannot demonstrate substantial
19 progress toward completion, the applicant shall submit information to the department proving the applicant still
20 qualifies for the county recreation district classification. If this cannot be proved, then the department may
21 revoke the county recreation district approval. Nothing in this section prevents an applicant from reapplying for
22 the classification under a new application.

23
24 **NEW SECTION. Section 4. County recreation district retail all-beverages service permits. (1)**

25 After a county recreation district has been approved, applications may be filed with the department for the
26 issuance of county recreation district retail all-beverages service permits within the boundaries of the county
27 recreation district.

28 (2) A county recreation district may be issued service permits to retailers according to the following

1 fee schedule:

2 (a) 1 to 3 permits for an application fee of \$25,000;

3 (b) 4 to 10 permits for an application fee of \$500,000; and

4 (c) 11 to 30 permits for an application fee of \$1 million.

5 (d) If applications for additional service permits exceeding the number currently held are later
6 submitted, the applicant shall pay the additional application fee due, if any, less the amount already paid.

7 (e) An existing resort area with one or more licenses issued pursuant to 16-4-213 that is later
8 approved as a county recreation district may elect to surrender existing resort retail all-beverages licenses to
9 the department in exchange for a credit of \$20,000 or \$100,000 for each license toward county recreation
10 district service permit fees depending on each original license cost. The credit is nonrefundable.

11 (3) Regardless of the number of county recreation district retail all-beverages service permits that
12 are issued in a county recreation district, no more than 20 gambling machine permits may be issued for the
13 county recreation district.

14 (4) County recreation district retail all-beverages service permits are not subject to the quota
15 limitations set forth in 16-4-201.

16 (5) Each county recreation district retail all-beverages service permit holder shall pay an annual
17 renewal fee of \$400.

18

19 **NEW SECTION. Section 5. Premises suitability exceptions -- requirements -- county recreation**
20 **district retail all-beverages service permits.** (1) A county recreation district retail all-beverages service permit
21 within the county recreation district is subject to all other requirements of an all-beverages license in this code,
22 except for the following:

23 (a) For the purposes of premises suitability under 16-3-311, a licensed service permit holder shall
24 designate all or part of one building as its primary interior permitted premises and may include one additional
25 ancillary structure and contiguous outdoor service areas on the same property as part of the permitted
26 premises for the consumption of alcoholic beverages within the county recreation district.

27 (b) The permit holder must be able to demonstrate that there are adequate safeguards in place to
28 prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other

1 security features such as rolling gates, locking cabinets, tap locks, or key card access.

2 (c) The interior portion of the permitted premises must be a continuous area that is under the
3 control of the permit holder and not interrupted by any area in which the permit holder does not have adequate
4 control, and includes multiple floors on the premises and common areas necessarily shared by multiple building
5 tenants in order to allow patrons to access other tenant businesses or private dwellings in the same building,
6 including but not limited to entryways, hallways, stairwells, and elevators.

7 (d) The premises may include one or more outdoor service areas, such as exterior patios, decks,
8 lawns, gazebos, yurts, or pavilions, as long as sufficient physical safeguards are in place to ensure proper
9 service and consumption of alcoholic beverages. An additional perimeter barrier may not be required. Storage
10 of alcoholic beverages after hours must meet the requirements of subsection (1)(b).

11 (2) Service permits are transferable to another location within the boundaries of the county
12 recreation district or to another owner to be used at a location within the boundaries of the county recreation
13 district.

14 (3) For service permits issued under this section, a permit holder may apply to the department to
15 allow for the delivery of alcohol to guests of accommodation units and to other homes within the district and the
16 prestocking of alcoholic beverages in accommodation units and other homes within the county recreation
17 district property as long as the purchaser's age is verified. The application fee is \$100.

18 (4) Employees of the permit holder who sell, serve, or deliver alcohol must be trained as provided
19 in 16-4-1005.

20 (5) A county recreation district retail all-beverages permit holder may enter into a maximum of one
21 concession agreement for each permit with an unlicensed entity to serve alcoholic beverages. Except as
22 provided in 16-4-418(1), the provisions of 16-4-418 apply.

23 (6) If a county recreation district has two or more county recreation district retail all-beverages
24 service permits, retail all-beverages licenses, resort retail all-beverages licenses, or retail beer licenses within
25 the boundaries of the county recreation district, the permit holders may also apply to use one or more
26 noncontiguous alternate alcoholic beverages storage facilities to be located within the county recreation district.
27 The application fee is \$100. The alternate storage facility must be considered part of each permit holder's
28 existing premises. The permit holders using an alternate storage facility must meet all requirements to ensure

1 the secure storage of alcoholic beverages and prevent onsite consumption of alcoholic beverages. Alcoholic
 2 beverages in sealed containers belonging to multiple permit holders within the county recreation district may be
 3 stored in the same storage facility. A licensee or permit holder who is approved to use an alternate storage
 4 facility may accept delivery of alcoholic beverages at an alternate storage facility and may transfer alcoholic
 5 beverages to another licensee or permit holder approved to use an alternate storage facility within the county
 6 recreation district. Any transfer of alcoholic beverages between approved licensees or permit holders must be
 7 properly accounted for. Approval to use an alternate storage facility must be documented on the face of each
 8 license or permit within the county recreation district that applies to use an alternate storage facility.

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

11 (8) For the purposes of 16-4-406(2), proposed penalties must be attributed to each licensed
 12 service permit holder as appropriate, and not to the county recreation district as a whole.

13

14 **Section 6.** Section 16-3-301, MCA, is amended to read:

15 **"16-3-301. Unlawful purchases, transfers, sales, or deliveries -- presumption of legal age.** (1) It
 16 is unlawful for a licensed retailer to purchase or acquire beer or wine from anyone except a brewery, winery, or
 17 wholesaler licensed under the provisions of this code except as allowed in 16-4-213(8) and [section 5].

18 (2) It is unlawful for a licensed retailer to transport beer or wine from one licensed premises or
 19 other facility to any other licensed premises owned by the licensee except as allowed in 16-4-213(8) and
 20 [section 5].

21 (3) It is unlawful for a licensed retailer to purchase or acquire liquor from anyone except an agency
 22 liquor store except as allowed in 16-4-213(8) and [section 5].

23 (4) It is unlawful for a licensed wholesaler to purchase beer or wine from anyone except a brewery,
 24 winery, or wholesaler licensed or registered under this code.

25 (5) It is unlawful for any licensee, a licensee's employee, or any other person to sell, deliver, or
 26 give away or cause or permit to be sold, delivered, or given away any alcoholic beverage to:

- 27 (a) any person under 21 years of age; or
- 28 (b) any person actually, apparently, or obviously intoxicated.

1 (6) Any person under 21 years of age or any other person who knowingly misrepresents the
2 person's qualifications for the purpose of obtaining an alcoholic beverage from the licensee is equally guilty with
3 the licensee and, upon conviction, is subject to the penalty provided in 45-5-624. However, nothing in this
4 section may be construed as authorizing or permitting the sale of an alcoholic beverage to any person in
5 violation of any federal law.

6 (7) All licensees shall display in a prominent place in their premises a placard, issued by the
7 department, stating fully the consequences for violations of the provisions of this code by persons under 21
8 years of age.

9 (8) For purposes of 45-5-623 and this title, the establishment of the following facts by a person
10 making a sale of alcoholic beverages to a person under the legal age constitutes prima facie evidence of
11 innocence and a defense to a prosecution for sale of alcoholic beverages to a person under the legal age:

12 (a) the purchaser falsely represented and supported with documentary evidence that an ordinary
13 and prudent person would accept that the purchaser was of legal age to purchase alcoholic beverages;

14 (b) the appearance of the purchaser was such that an ordinary and prudent person would believe
15 the purchaser to be of legal age to purchase alcoholic beverages; and

16 (c) the sale was made in good faith and in reasonable reliance upon the representation and
17 appearance of the purchaser that the purchaser was of legal age to purchase alcoholic beverages. (See
18 compiler's comments for contingent termination of certain text.)"

19

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

21 **"16-4-406. Renewal -- suspension or revocation -- penalty -- mitigating and aggravating**
22 **circumstances -- contrived events.** (1) The department shall, upon a written, verified complaint of a person,
23 request that the department of justice investigate the action and operation of a brewer, winery, wholesaler,
24 domestic distillery, table wine distributor, beer or wine importer, retailer, concessionaire, or any other person or
25 business licensed or registered under this code.

26 (2) Subject to the opportunity for a hearing under the Montana Administrative Procedure Act, if the
27 department, after reviewing admissions of either the licensee ~~or~~, concessionaire, or permit holder receiving the
28 results of the department of justice's or a local law enforcement agency's investigation, has reasonable cause

1 to believe that a licensee ~~or~~₁ concessionaire, or permit holder has violated a provision of this code or a rule of
 2 the department, it may, in its discretion and in addition to the other penalties prescribed:

3 (a) reprimand a licensee ~~or~~₁ concessionaire, or permit holder, or ~~both~~₁ all three;

4 (b) proceed to revoke the license or permit of the licensee or permit holder or the concession
 5 agreement of the concessionaire₁ or ~~both~~₁ all three, only if the violations jeopardize health, welfare, and safety or
 6 there is not a proposed cure in place;

7 (c) suspend the license, permit, or ~~the~~₁ concession agreement₁ or ~~both~~₁ all three, for a period of not
 8 more than 3 months;

9 (d) refuse to grant a renewal of the license, permit, or concession agreement₁ or ~~both~~₁ all three,
 10 after its expiration only if the violations jeopardize health, welfare, and safety or there is not a proposed cure in
 11 place; or

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

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

16 (a) there have been no violations by the licensee ~~or~~₁ concessionaire, or permit holder, or ~~both~~₁ all
 17 three, within the past 3 years;

18 (b) there have been good faith efforts by the licensee ~~or~~₁ concessionaire, or permit holder, or ~~both~~₁
 19 all three, to prevent a violation;

20 (c) written policies exist that govern the conduct of the licensee's employees ~~or~~₁ the
 21 concessionaire's employees, the permit holder's employees, or ~~both~~₁ all three;

22 (d) there has been cooperation in the investigation of the violation that shows that the licensee ~~or~~₁
 23 concessionaire, permit holder, or ~~both~~₁ all three, or an employee or agent of the licensee ~~or~~₁ concessionaire,
 24 permit holder, or ~~both~~₁ all three, accepts responsibility; or

25 (e) the licensee, permit holder, or concessionaire₁ or ~~both~~₁ all three, have provided responsible
 26 alcohol server training to all of their employees.

27 (4) The department shall consider aggravating circumstances and may adjust penalties within
 28 penalty ranges based on its consideration of aggravating circumstances. Examples of aggravating

1 circumstances are:

- 2 (a) prior warnings about compliance problems;
- 3 (b) prior violations within the past 3 years;
- 4 (c) lack of written policies governing employee conduct;
- 5 (d) multiple violations during the course of the investigation;
- 6 (e) efforts to conceal a violation;
- 7 (f) the intentional nature of the violation; or
- 8 (g) involvement of more than one patron or employee in a violation.

9 (5) The department may not issue a violation to a licensee, permit holder, or a concessionaire
 10 provided the investigation was not based on complaints or on observed misconduct but was based solely on a
 11 contrived event by the investigating authority or another designated organization creating the opportunity for a
 12 violation. The department may issue a violation only if the licensee, permit holder, or concessionaire fails more
 13 than two contrived event investigations within a 3-year period beginning with the first failure. For purposes of
 14 this section, the first two violations resulting from a contrived event investigation within a 3-year period do not
 15 constitute a violation of this code, and the department may not consider these violations in considering any
 16 mitigating circumstances and penalties as provided in this section."

17
 18 **NEW SECTION. Section 8. Codification instruction.** [Sections 1 through 5] are intended to be
 19 codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [sections 1
 20 through 5].

21
 22 **NEW SECTION. Section 9. Effective date.** [This act] is effective on passage and approval.

23 - END -