HOUSE BILL NO. 871

INTRODUCED BY S. ESSMANN, C. KNUDSEN, B. MITCHELL, R. MARSHALL, C. HINKLE, J. ETCHART, Z. WIRTH, N. NICOL

A BILL FOR AN ACT ENTITLED: “AN ACT CREATING AN OFF-PREMISES ALL-BEVERAGES LICENSE; AMENDING CERTAIN OFF-PREMISES LICENSES; PROVIDING RESTRICTIONS ON THE SALE OF ALCOHOL AT THE PREMISES; PROVIDING FEES; AND AMENDING SECTIONS 16-3-306, 16-3-310, 16-4-115, 16-4-402, AND 16-4-501, MCA.”

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

Section 1. Section 16-3-306, MCA, is amended to read:

“16-3-306. Proximity to churches and schools restricted. (1) Except as provided in subsections (2) through (4), an on-premises retail license may not be issued pursuant to this code to any business or enterprise whose premises are within 600 feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship or as a school other than a commercially operated or postsecondary school. This distance must be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority.

(2) However, the department may renew an on-premises license for any establishment located in violation of this section if the licensee does not relocate an entrance any closer than the existing entrances and if the establishment:

(a) was located on the site before the place of worship or school opened; or

(b) was located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.

(3) Subsection (1) does not apply to licenses for the sale of beer, table wine, or both liquor in the original package for off-premises consumption.

(4) Subsection (1) does not apply within the applicable jurisdiction of a local government that has
supplanted the provisions of subsection (1) as provided in 16-3-309."

Section 2. Section 16-3-310, MCA, is amended to read:

"16-3-310. Lapse of license for nonuse. Any retail license issued pursuant to this code (including any retail license to sell beer, table wine, or liquor for off-premises consumption) not actually used in a going establishment for 90 days shall automatically lapse. Upon determining the fact of nonuse for such period, the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this section shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility, or like business, provided such licensee has secured written authority from the department to close and has licensed premises for a specified period of greater than 90 days' duration. Should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision shall not apply.""

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

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

(b) A retail license to sell beer, table wine, or liquor in the original packages for off-premises consumption may be issued only to a person, firm, or corporation that is approved by the department as a person, firm, or corporation qualified to sell beer, table wine, or liquor. The premises proposed for licensing must be a grocery store or drugstore licensed as a pharmacy that is at least 20,000 square feet. The number of licenses that the department may issue is not limited by the provisions of 16-4-201 but must be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny an application for any license or suspend or revoke any license for cause."
 discretion, for justifiable reasons under this code, grant or deny an application for any license or suspend or
revoke any license for cause.

(2) Licensees under this section must have alcohol in a designated alcohol-only area of the store
away from similar nonalcoholic products or items that appeal to children. The alcohol area may not exceed 10%
of the total square footage of the licensed premises.

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

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

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

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

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

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

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

Section 4. Section 16-4-402, MCA, is amended to read:

"16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter, the
applicant shall file with the department an application containing information and statements relative to the
applicant and the premises where the alcoholic beverage is to be sold as required by the department.

(2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
necessary license fee, the department of justice shall make a thorough investigation of all matters relating to
the application. Based on the results of the investigation or on other information, the department shall
determine whether:

(i) the applicant is qualified to receive a license; and
(ii) (A) the applicant’s premises are suitable for the carrying on of the business;

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

(C) if the applicant has already been issued a license, the proposed premises are suitable for the carrying on of the business.

(b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or 16-4-204(5), a retail beer and wine license for off-premises consumption as provided in 16-4-115, a retail beer, table wine, and liquor license for off-premises consumption as provided in 16-4-115, or a special permit provided in 16-4-301.

(c) For an original license application and an application for transfer of ownership or location of a license, the department of justice’s investigation and the department’s determination under this subsection (2) must be completed within 90 days of the receipt of a completed application. If information is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until the requested information is received by the requesting department. The time period is also tolled if the applicant requests and is granted a delay in the license determination or if the license is for premises that are to be altered, as provided in 16-3-311, or newly constructed. The basis for the tolling of the deadline must be documented.

(3) (a) Upon proof that an applicant made a false statement in any part of the original application, in any part of an annual renewal application, or in any hearing conducted pursuant to an application, the application for the license may be denied, and if issued, the license may be revoked.

(b) A statement on an application or at a hearing that is based upon a verifiable assertion made by a governmental officer, employee, or agent that an applicant relied upon in good faith may not be used as the basis of a false statement for a denial or revocation of a license.”

Section 5. Section 16-4-501, MCA, is amended to read:

“16-4-501. License and permit fees. (1) Each beer licensee licensed to sell either beer or table wine only or both beer and table wine under the provisions of this code shall pay a license fee. Unless otherwise specified in this section, the fee is an annual fee and is imposed as follows:

(a) (i) each brewer and each beer importer, wherever located, whose product is sold or offered for
sale within the state, $500;

(ii) for each storage depot, $400;

(b) (i) each beer wholesaler, $400; each winery, $200; each table wine distributor, $400;

(ii) for each subwarehouse, $400;

(c) each beer retailer, $200;

(d) (i) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer license;

(ii) for a license to sell table wine at retail for off-premises consumption only, either alone or in conjunction with beer, $200;

(iii) for a license to sell beer, table wine, and liquor at retail for off-premises consumption only, initial application fee of $1,000 and an annual renewal fee of $800;

(e) any unit of a nationally chartered veterans' organization, $50.

(2) The permit fee under 16-4-301(1) is computed at the following rate:

(a) $10 a day for each day that beer and table wine are sold at events, activities, or sporting contests, other than those applied for pursuant to 16-4-301(1)(c); and

(b) $1,000 a season for professional sporting contests or junior hockey contests held under the provisions of 16-4-301(1)(c).

(3) The permit fee under 16-4-301(2) is $10 for the sale of beer and table wine only or $20 for the sale of all alcoholic beverages.

(4) Passenger carrier licenses must be issued upon payment by the applicant of an annual license fee in the sum of $300.

(5) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer-only license pursuant to 16-4-105, is $200.

(6) The annual renewal fee for:

(a) a brewer producing 10,000 or fewer barrels of beer, as defined in 16-1-406, is $200;

(b) resort retail all-beverages licenses within a given resort area is $2,000 for each license; and

(c) a continuing care retirement community limited all-beverages license is $500 for each license.

(7) Except as provided in this section, each licensee licensed under the quotas of 16-4-201 shall
pay an annual license fee as follows:

(a) for each license outside of incorporated cities and incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000, $250 for a unit of a nationally chartered veterans’ organization and $400 for all other licensees;

(b) for each license in incorporated cities with a population of more than 2,000 and less than 5,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $350 for a unit of a nationally chartered veterans’ organization and $500 for all other licensees;

(c) for each license in incorporated cities with a population of more than 5,000 and less than 10,000 or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $500 for a unit of a nationally chartered veterans’ organization and $650 for all other licensees;

(d) for each license in incorporated cities with a population of 10,000 or more or within a distance of 5 miles, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city, $650 for a unit of a nationally chartered veterans’ organization and $800 for all other licensees;

(e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of the city or town; and where the premises of the applicant to be licensed are situated within 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different populations, the license fee chargeable by the larger incorporated city or incorporated town applies and must be paid by the applicant. When the premises of the applicant to be licensed are situated within an incorporated town or incorporated city and any portion of the incorporated town or incorporated city is without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city applies and must be paid by the applicant.

(f) an applicant for the issuance of a resort retail all-beverages license shall pay a $100,000 license fee on issuance of the license. The resort retail all-beverages license may be transferred to another location within the boundaries of the resort area or to another owner to be used at a location within the
boundaries of the resort area.

(8) The fee for one all-beverages license to a public airport is $800. This license is nontransferable.

(9) The annual fee for a retail beer and wine license to the Yellowstone airport is $400.

(10) The annual fee for a special beer and table wine license for a nonprofit arts organization under 16-4-303 is $250.

(11) The annual fee for a distillery is $600.

(12) The license fees provided in this section are exclusive of and in addition to other license fees chargeable in Montana for the sale of alcoholic beverages.

(13) In addition to other license fees, the department of revenue may require a licensee to pay a late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year or 1 year after the licensee's anniversary date, 66 2/3% of any license fee delinquent on August 1 of the renewal year or 1 year and 1 month after the licensee's anniversary date, and 100% of any license fee delinquent on September 1 of the renewal year or 1 year and 2 months after the licensee's anniversary date.

(14) All license and permit fees collected under this section must be deposited as provided in 16-2-108."