

HOUSE BILL NO. 849

INTRODUCED BY C. SPRUNGER, D. FERN, M. BINKLEY, R. MARSHALL, E. BUTTREY, T. BROCKMAN, S.

FITZPATRICK, J. KASSMIER

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING COUNTY ALL-BEVERAGES ALCOHOL LICENSES;
PROVIDING FOR TEMPORARY RECLASSIFICATION OF COUNTY ALL-BEVERAGES LICENSES;
PROVIDING FOR COMPETITIVE BIDDING FOR THE LICENSES AND SETTING REQUIREMENTS;
PROVIDING FOR TRANSFER OF LICENSES; PROVIDING FOR QUOTA AREA DETERMINATION
CONSIDERATIONS; AND AMENDING SECTIONS 16-4-204 AND 16-4-430, MCA."

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

NEW SECTION. Section 1. Temporary reclassification of county all-beverages licenses. (1) A
new county all-beverages license may be reclassified and located within the quota area of an incorporated city
or incorporated town of that county as defined in 16-4-201 under the following conditions:

(a) the population of all incorporated cities or incorporated towns within the county have grown by
more than 5% between 2016 and 2021;

(b) the license may only be placed in an incorporated city or incorporated town that had an
overlapping quota area boundary with another incorporated city or incorporated town; and

(c) no more than six county all-beverages licenses may be reclassified and relocated in the
incorporated cities or incorporated towns and will be done on a basis determined by the department that is
proportionate with the population of the incorporated cities or incorporated towns in the county.

(2) The department shall use a competitive bidding process as provided in 16-4-430 to determine
the party afforded the opportunity to apply for a license pursuant to subsection (1). The department shall set the
minimum bid at 25% of the market value of all-beverages licenses in the incorporated city or incorporated town
in which the license will be located.

(3) An individual may not own an ownership interest in more than one of these licenses.

(4) A license that is reclassified pursuant to subsection (1) and retail alcoholic beverage sales

under it are subject to all statutes and rules governing all-beverages licenses except that the reclassified license is not eligible to:

(a) enter into concession agreements under 16-4-418;

(b) obtain a catering endorsement under 16-4-204; ~~and~~

(c) offer gambling under Title 23, chapter 5, parts 3, 5, or 6; and

(d) offer liquor for off-premises consumption, including curbside, prepared servings, or in original packaging.

(5) A license reclassified pursuant to subsection (1) is nontransferrable and the license must be reclassified back to a county all-beverages license when the individual no longer operates the license.

(6) The license lapses if the licensee exceeds more than 1 year of nonuse. A lapsed license must be reclassified back to a county all-beverages license and would then be eligible to offer gambling under Title 23, chapter 5, parts 3, 5, or 6.

Section 2. Section 16-4-204, MCA, is amended to read:

"16-4-204. Transfer -- catering endorsement -- competitive bidding -- rulemaking. (1) (a) Except as provided in [section 1] or subsection (3) of this section, a license may be transferred to a new owner and to a location outside the quota area where the license is currently located only when the following criteria are met:

(i) the total number of all-beverages licenses in the current quota area exceeded the quota for that area by at least 25% in the most recent census prescribed in 16-4-502, excluding licenses provided for in [section 1];

(ii) the total number of all-beverages licenses in the quota area to which the license would be transferred, exclusive of those issued under 16-4-209(1)(a) and (1)(b), did not exceed that area's quota in the most recent census prescribed in 16-4-502:

(A) by more than 33%; or

(B) in an incorporated city of more than 10,000 inhabitants and within 5 miles of its corporate limits, by more than 43%; or

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by a transfer.

(b) A license transferred pursuant to subsection (1)(a) that was issued pursuant to a competitive bidding process is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(2) When the department determines that a license may be transferred from one quota area to another under subsection (1), the department shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity to purchase and transfer a license.

(3) A license within an incorporated quota area, except those provided for in [section 1], may be transferred to a new owner and to a new unincorporated location within the same county on application to and with consent of the department when the total number of all-beverages licenses in the current quota area, exclusive of those issued under 16-4-209(1)(a) and (1)(b) and [section 1], exceeds the quota for that area by at least 25% in the most recent census and will not fall below that level because of the transfer.

(4) A license issued under 16-4-209(1)(a) may not be transferred to a location outside the quota area and the exterior boundaries of the Montana Indian reservation for which it was originally issued.

(5) (a) Any all-beverages licensee is, upon the approval and in the discretion of the department, entitled to a catering endorsement to the licensee's all-beverages license to allow the catering and sale of alcoholic beverages to persons attending a special event on premises not otherwise licensed for the sale of alcoholic beverages for on-premises consumption. The alcoholic beverages must be consumed on the premises where the event is held.

(b) A written application for a catering endorsement and an annual fee of \$250 must be submitted to the department for its approval.

(c) An all-beverages licensee who holds an endorsement granted under this subsection (5) may not cater an event in which the licensee is the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

(d) The licensee shall notify the local law enforcement agency that has jurisdiction over the premises where the catered event is to be held. A fee of \$35 must accompany the notice.

(e) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-6-103.

(f) The sale of alcoholic beverages pursuant to a catering endorsement is subject to the provisions of 16-3-306, unless entities named in 16-3-306 give their written approval.

(g) A catering endorsement issued for the purpose of selling and serving beer at a special event conducted on the premises of a county fairground or public sports arena authorizes the licensee to sell and serve beer in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(h) A catering endorsement issued for the purpose of selling and serving liquor or beer and wine at a sporting event conducted on the premises of a Montana university as provided in 16-4-112 authorizes the licensee to sell and serve liquor or beer and wine in the grandstand and bleacher area of the premises, as well as from a booth, stand, or other fixed place on the premises.

(i) A licensee may not share revenue from the sale of alcoholic beverages with the sponsor of the catered event unless the sponsor is the state of Montana, a political subdivision of the state, a Montana university as provided in 16-4-112, or a qualified entity under section 501(c) of the Internal Revenue Code, 26 U.S.C. 501(c), as amended.

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

Section 3. Section 16-4-430, MCA, is amended to read:

"16-4-430. Competitive bidding process -- all-beverages, retail beer and wine, and restaurant beer and wine licenses. (1) (a) When the department determines that a quota area is eligible for a license under 16-4-105, 16-4-201, 16-4-204, or 16-4-420, the department shall use a competitive bidding process to determine the party afforded the opportunity to apply for the license. The department shall use a competitive bidding process when:

(i) a new license becomes available in a quota area where a license of the same type is not currently available in the quota area;

(ii) the opportunity to transfer a license into a quota area becomes available where a license of the same type is not currently available in the quota area;

(iii) the lapse, revocation, or issuance of a license within the quota area where the license is located has created the last remaining license for that license type in the quota area; ~~or~~

(iv) the department's denial of an application for licensure or an applicant's withdrawal of an application for licensure has created the last remaining license for that license type in a quota area; or

(v) the department determines that licenses are available to temporarily be reclassified from a county to a city quota area under [section 1].

(b) The department shall:

(i) determine the minimum bid based on 75% of the market value of applicable licenses in the quota area;

(ii) publish notice that a quota area is eligible for a new license;

(iii) notify the bidder with the highest bid; and

(iv) keep confidential the identity of bidders, number of bids, and bid amounts until the highest bidder has been approved.

(2) (a) To enter the competitive bidding process, a bidder shall submit:

(i) an electronic bid form provided by the department; and

(ii) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary of at least the bid amount. The financial institution may issue the irrevocable letter of credit in the name of the bidder, if the bidder is a business entity, or in the name of an individual who is an owner of the business entity.

(b) The department shall contact any bidder whose timely submitted bid form has a deficiency and shall provide that bidder with an opportunity to resubmit the bid form within 5 business days to correct any deficiency.

(3) In the case of a tie for the highest bid, the tied bidders may submit new bids. The minimum bid must be the tied bid amount. To submit a new bid, a tied bidder shall submit:

(a) an electronic bid form provided by the department; and

(b) an irrevocable letter of credit from a financial institution establishing the department as the beneficiary of at least the new bid amount. The financial institution may issue the irrevocable letter of credit in the name of the bidder, if the bidder is a business entity, or in the name of an individual who is an owner of the business entity.

(4) The highest bidder shall:

(a) submit an application provided by the department and applicable fees for the license within 60 days of the department's notification of being the highest bidder;

(b) pay the bid amount prior to approval of the license;

(c) meet all other requirements to own the license; and

(d) commence business within 1 year of the department's notification, unless the department grants an extension because commencement was delayed by circumstances beyond the applicant's control. Any extension request must be made in writing to the department prior to the deadline for commencing business.

(5) If the highest bidder is not approved to own the license, the department shall offer the license to the next highest bidder. That bidder shall comply with the requirements of subsection (4). If no qualified bidder is approved to own the license, the department shall reopen the competitive bidding process for the license.

(6) (a) If no bids are received during the competitive bidding process, the department shall reopen the bid at a lower bid amount than initially determined in subsection (1).

(b) If, after holding a competitive bidding process, the department determines that there is no significant market value for a particular license, the department may withdraw that license from the competitive bidding process and process applications for the license in the order received.

(c) If a quota area is already eligible for a license as of November 24, 2017, the department shall process applications for the license in the order received.

(7) (a) The successful applicant is subject to forfeiture of the license, the license fees, and the original bid amount if the successful applicant:

(i) transfers the awarded license to another person or business entity within 1 year after receiving the license unless that transfer is due to a death of an owner;

(ii) proposes a location for the license within the first year of operation that had the same license type within the previous 12 months; or

(iii) does not use the license within 1 year of receiving the license or stops using the license within 5 years. The department may extend the time for use if the successful applicant provides evidence that the delay in use is for reasons outside the applicant's control. Evidence of the delay must be made in writing to the department prior to the deadline for commencing business.

(b) If a license is forfeited, the department shall determine whether there is a lien against the

license. If there is a lien, the department shall notify the lienholder or secured party of the forfeiture and the lienholder or secured party may foreclose on the license and request transfer of the license pursuant to 16-4-801. If there is not a lien on the license or if the lienholder or secured party does not foreclose on the license pursuant to 16-4-801, the department shall conduct another competitive bidding process for the license.

(8) A license issued under this section is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6.

(9) Nothing in subsection (7) relating to forfeiture prohibits a lienholder or secured party from foreclosing on a license. A lien may be placed on a license issued under this section and may be foreclosed on. If a license is foreclosed on, the department shall keep the license fees and the original bid amount and the lienholder or secured party may resell the license, pending department approval of the applicant."

NEW SECTION. **Section 4. Codification instruction.** [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, and the provisions of Title 16, chapter 4, apply to [section 1].

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