

1 HOUSE BILL NO. 894
2 INTRODUCED BY E. BUTTREY, K. ZOLNIKOV
3
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, 16-4-201, 16-4-212, 16-4-213, 16-4-406, 16-4-418, AND 16-4-420, MCA;
19 AND 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)."

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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 a licensee who has an all-beverages ~~licensee license~~ or a resort area all-
28 beverages ~~licensee license~~ to sell alcoholic beverages:

1 (i) in the building or other structural premises constituting the primary indoor lodging quarters of
2 the hotel or other short-term lodging facility;

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

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

9 (d)(iv) if the licensee's premises includes a golf course, the premises in addition to the main licensed
10 premises may include:

11 (A) the building or alcohol service structure constituting the clubhouse or primary recreational
12 quarters of the golf course that is separate from the main licensed premises; and

13 (B) the outdoor area within the boundaries of the golf course.

14 (b) All-buildingsBuildings or structural premises allowed under this subsection (4) may be separate
15 from the building comprising the main licensed premises but must otherwise must meet the premises suitability
16 requirements of 16-3-311. The licensee shall pay an application fee of \$100 for each area allowed under this
17 subsection (4)."

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

20 **"16-3-311. Suitable premises for licensed retail establishments.** (1) (a) A licensed retailer may
21 use a part of a building as premises licensed for on-premises consumption of alcoholic beverages, except as
22 otherwise allowed in 16-3-302(4). The licensed retailer must demonstrate that it has adequate control over all
23 alcoholic beverages to prevent self-service, service to underage persons, and service to persons who are
24 actually or apparently intoxicated. Except as provided in subsection (8), the premises must be separated from
25 the rest of the building by permanent walls but may have inside access to the rest of the building at all times
26 even if the businesses or uses in the other part of the building are unrelated to the operation of the premises in
27 which the alcoholic beverages are served. A licensee may lease the kitchen or another specified area to allow
28 another business entity to operate within its premises without permanent floor-to-ceilings walls and without a

1 concession agreement if the other business does not ~~take orders for, serve, or deliver alcohol and has a~~
2 separate point of sale system. If the premises are located in a portion of a building, the licensed retailer must be
3 able to demonstrate that there are adequate safeguards in place to prevent public access to alcoholic
4 beverages after hours, either by the presence of a lockable door or other security features such as rolling gates,
5 locking cabinets, tap locks, or key card access.

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

9 (2) A licensee may alter the approved floorplan of the premises. The alteration must be consistent
10 with the requirements of subsection (1)(a). A licensee shall provide a copy of the revised floorplan with the
11 proposed alteration for the licensed premises to the department within 7 days of beginning the alteration.
12 Department approval may not be unreasonably withheld. If the completed alteration differs from the approved
13 alteration due to modifications required for approval by other state or local government entities, such as
14 compliance with fire or building codes, the department must be notified, but preapproval is not required for
15 these modifications. An alteration for the purposes of this section is any structural change in a premises that
16 does not increase the square footage of the existing approved premises. An alteration that increases the
17 square footage of the existing approved premises must be approved by the department prior to beginning the
18 alteration. A cosmetic change, such as painting, carpeting, or other interior decorating, is not considered an
19 alteration under this section. If the alteration does not require the licensee to obtain a building permit, then
20 inspections by local government agencies may not be required for department approval.

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

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

1 impedes foot traffic.

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

3 (6) A licensed on-premises retailer may apply to the department to have a ~~up to three~~ noncontiguous
4 storage ~~area areas area~~ that is ~~are is~~ under the control of the licensed on-premises retailer approved for ~~onsite~~
5 alcoholic beverage storage, either onsite separate from its service area or offsite within 10 miles of the
6 premises as long as the licensed on-premises retailer demonstrates that there are adequate safeguards in
7 place to prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or
8 other security features such as rolling gates, locking cabinets, tap locks, or key card access. Alcohol stored at
9 an offsite noncontiguous storage area must be transported only by the licensee or the licensee's employees
10 who are 21 years of age or older. The application fee is \$100. An on-premises consumption retailer's keg
11 storage and beer lines running into the licensed premises may be in the same building location if the keg
12 storage and beer lines were in place and known to the department prior to January 1, 2023, provided that the
13 licensee is able to maintain control and adequate safeguards are in place to prevent public access. This
14 includes a location within an off-premises license provided the storage area is segregated between the
15 licensees and each licensee maintains control over its alcohol inventory.

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

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

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

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

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

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

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

5 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of**
6 **license -- exceptions -- competitive bidding -- rulemaking.** (1) Except as provided in 16-4-109, 16-4-110,
7 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
8 accordance with the provisions of this code and the rules of the department, may be issued to any person or
9 business entity that is approved by the department, subject to the following exceptions:

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

13 (i) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the
14 towns, not more than one retail beer license;

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

18 (iii) in incorporated cities of more than 2,000 inhabitants and within 5 miles of the corporate limits of the
19 cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the next
20 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for each
21 additional 2,000 inhabitants.

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

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

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

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

11 (A) In the Helena and East Helena previously combined quota area, the straight line will be drawn
12 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area
13 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a
14 Helena license or with a physical address of East Helena will become an East Helena license, regardless of
15 where it falls in the new quota areas.

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

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

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

26 (e) The limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
27 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal military
28 reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a lodge of a

1 recognized national fraternal organization if the veterans' or fraternal organization has been in continuous
2 existence for a period of 5 years or more prior to January 1, 1949, and it is applying for a license at the same
3 location that it has occupied for the last 5 years. A lodge of a fraternal order or post of a nationally chartered
4 veterans' organization that has held a fraternal or veterans' license within the past 10 years is not subject to the
5 5-year same location requirement.

6 (f) The number of retail beer licenses that the department may issue for use at premises situated
7 outside of any incorporated city or incorporated town and outside of the area within 5 miles of the corporate
8 limits or for use at premises situated within any unincorporated area must be determined by the department in
9 its discretion, except that a retail beer license may not be issued for any premises so situated unless the
10 department determines that the issuance of the license is required by public convenience and necessity
11 pursuant to 16-4-203. Subsection (8) does not apply to licenses issued under this subsection (1)(f). The owner
12 of the license whose premises are situated outside of an incorporated city or incorporated town may offer
13 gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter
14 5, part 3, 5, or 6.

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

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

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

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

28 (4) When the department determines that a quota area is eligible for a new retail beer license under

1 subsection (1) or (2)(b), the department shall use a competitive bidding process as provided in 16-4-430 to
2 determine the party afforded the opportunity to apply for the new license.

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

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

13 (b) A person licensed under this subsection (6) may apply to the department and pay a fee for an
14 endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original
15 packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The
16 purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

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

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

23 (8) Except as provided in subsection (1)(f), a license issued pursuant to this section after October 1,
24 1997, must have a conspicuous notice that the license may not be used for premises where gambling is
25 conducted.

26 (9) An applicant for a license issued through a competitive bidding process in 16-4-430 shall pay a
27 \$25,000 new license fee and in subsequent years pay the annual fee for the license as provided in 16-4-501.

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

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Section 5. Section 16-4-201, MCA, is amended to read:

"16-4-201. All-beverages license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer, and table wine at retail, an all-beverages license, in accordance with the provisions of this code and the rules of the department, may be issued to any person who is approved by the department as a fit and proper person to sell alcoholic beverages, except that the number of all-beverages licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within 5 miles of the corporate limits of those cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

- (a) in incorporated towns of 500 inhabitants or fewer and within 5 miles of the corporate limits of the towns, not more than two retail licenses;
- (b) in incorporated cities or incorporated towns of more than 500 inhabitants and not more than 3,000 inhabitants and within 5 miles of the corporate limits of the cities and towns, three retail licenses for the first 1,000 inhabitants and one retail license for each additional 1,000 inhabitants;
- (c) in incorporated cities of more than 3,000 inhabitants and within 5 miles of the corporate limits of the cities, five retail licenses for the first 3,000 inhabitants and one retail license for each additional 1,500 inhabitants.

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

- (a) the county boundary within which the incorporated city or incorporated town is located; or
- (b) the line that separates the incorporated city's or incorporated town's boundary from another incorporated city or incorporated town as specified in this section.

(3) (a) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile

1 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a
2 straight line equidistant between each city or town.

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

7 (i) In the Helena and East Helena previously combined quota area, the straight line will be drawn
8 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area
9 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a
10 Helena license or with a physical address of East Helena will become an East Helena license, regardless of
11 where it falls in the new quota areas.

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

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

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

23 (5) (a) If any new retail all-beverages licenses are allowed by separating a combined quota area that
24 existed as of November 24, 2017, as provided in subsection (3), the department shall publish the availability of
25 no more than one new retail all-beverages license a year until the quota has been reached. The department
26 shall use a competitive bidding process as provided in 16-4-430 to determine the party afforded the opportunity
27 to apply for the new license.

28 (b) If any new all-beverages licenses are allowed by license transfers as provided in subsection (4),

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

3 (6) Except as provided in subsection (5)(a), when more than one new all-beverages license becomes
4 available at the same time in the same quota area, the department shall conduct a separate competitive bidding
5 process at separate times for each available license.

6 (7) Retail all-beverages licenses of issue on March 7, 1947, and all-beverages licenses issued under
7 16-4-209 that are in excess of the limitations in subsections (1) and (2) are renewable, but new licenses may
8 not be issued in violation of the limitations.

9 (8) The limitations in subsections (1) and (2) do not prevent the issuance of a nontransferable and
10 nonassignable, as to ownership only, retail license to:

11 (a) an enlisted personnel, noncommissioned officers', or officers' club located on a state or federal
12 military reservation on May 13, 1985;

13 (b) any post of a nationally chartered veterans' organization or any lodge of a recognized national
14 fraternal organization if the veterans' or fraternal organization has been in continuous existence for a period of 5
15 years or more prior to January 1, 1949, and is applying for a license at the same location that it has occupied
16 for the last 5 years. A post of a nationally chartered veterans' organization or a lodge of a recognized national
17 fraternal organization that has held a veterans' or fraternal license within the past 10 years is not subject to the
18 5-year same-location requirement; or,

19 (c) a continuing care retirement community as provided in 16-4-315.

20 (9) The number of retail all-beverages licenses that the department may issue for use at premises
21 situated more than 5 miles outside of any incorporated city or incorporated town may not be more than one
22 license for each 750 in population of the county after excluding the population of incorporated cities and
23 incorporated towns in the county.

24 (10) An all-beverages license issued under subsection (9) that becomes located within 5 miles of an
25 incorporated city or town because of annexation after April 15, 2005, may not be transferred to another location
26 within the city quota area any sooner than 5 years from the date of annexation.

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

1 (12) A person licensed under this section may apply to the department and pay a fee for an
 2 endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original
 3 packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The
 4 purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.
 5 (13) The department may adopt rules to implement this section."
 6

7 **Section 6.** Section 16-4-212, MCA, is amended to read:

8 **"16-4-212. Resort area determination.** (1) To obtain a resort area designation, the resort area
 9 developer or landowner must submit an application with a plat setting forth the resort area boundaries and
 10 designating the ownership of the lands within the resort area. The plat must show the location and general
 11 design of the buildings and other improvements existing or to be built in the resort area. A master plan for the
 12 development of the resort area may be filed by the resort area developer in satisfaction of this section.

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

- 15 (i) not be located within the boundaries of a quota area as described in 16-4-201;
- 16 (ii) have a current actual valuation of resort or recreational facilities, including land and improvements,
 17 of not less than \$1 million, at least half of which valuation must be for a structure or structures within the resort
 18 area;

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

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

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

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

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

28 (3) Within 15 business days after the application is filed, the department shall schedule a public

1 but are not limited to proposed changes in ownership of the license and the parties of an existing concession
2 agreement choosing to operate under the provisions of this section. The department shall approve or deny the
3 application within 30 business days unless additional information is required. A new or modified concession
4 agreement that does not alter the existing floorplan may not require inspections by local government agencies
5 for department approval. The existing concession agreement may remain in place pending department
6 approval or denial. An applicant may apply for temporary operating authority pending approval for a change in
7 ownership of a license or to operate under the provisions of this section without terminating an existing
8 concession agreement.

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

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

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

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

19 (11) (a) For the purposes of this section, the term "contiguous premises" means the interior portion of
20 the premises that must be a continuous area under the control of the licensee or the concessionaire and not
21 interrupted by any area in which one of the parties does not have control.

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

25

26 **Section 10.** Section 16-4-420, MCA, is amended to read:

27 **"16-4-420. Restaurant beer and wine license -- competitive bidding -- rulemaking.** (1) The
28 department shall issue a restaurant beer and wine license to an applicant whenever the department determines

1 that the applicant, in addition to satisfying the requirements of this section, meets the following qualifications
2 and conditions:

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

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

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

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

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

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

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

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

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

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

1 to a new purchaser.

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

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

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

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

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

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

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

20 (6) (a) For purposes of this section, "restaurant" means a public eating place:

21 (i) where individually priced meals are prepared and served for on-premises consumption;

22 (ii) where at least 65% of the restaurant's annual gross income from the operation must be from the
23 sale of food and not from the sale of alcoholic beverages. Each year after a license is issued, the applicant shall
24 file with the department a statement, in a form approved by the department, attesting that at least 65% of the
25 gross income of the restaurant during the prior year resulted from the sale of food.

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

1 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the
2 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
3 restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent
4 renewals of that license.

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

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

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

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

17 (8) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

18 (i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of
19 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant
20 beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses
21 that may be issued in that quota area pursuant to 16-4-105;

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

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

1 pursuant to 16-4-105;

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

6 (v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if
7 the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is
8 equal to or less than 200% of the number of beer licenses that may be issued in that quota area pursuant to 16-
9 4-105.

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

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

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

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

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

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

27 (A) In the Helena and East Helena previously combined quota area, the straight line will be drawn
28 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area

1 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a
2 Helena license or with a physical address of East Helena will become an East Helena license, regardless of
3 where it falls in the new quota areas.

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

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

11 (9) (a) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted
12 from applications in process as of November 24, 2017, in either of two quota areas that were established as
13 provided in 16-4-105 and subsection (8)(d) of this section may be transferred between the two quota areas if
14 they were part of the combined quota area prior to November 24, 2017.

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

19 (c) If any new restaurant beer and wine licenses are allowed by license transfers as provided in
20 subsection (9)(a), the department may publish the availability of more than one new license a year until the
21 quota has been reached.

22 (10) Except as provided in subsection (9)(b), when more than one new restaurant beer and wine
23 license becomes available at the same time in the same quota area, the department shall conduct a separate
24 competitive bidding process at separate times for each available license.

25 (11) When a restaurant beer and wine license becomes available by the initial issuance of licenses
26 under this section or as the result of an increase in the population in a quota area, the nonrenewal of a
27 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the
28 department shall advertise the availability of the license in the quota area for which it is available.

1 (12) When the department determines that a quota area is eligible for a new restaurant beer and wine
2 license under subsection (9) or (11), the department shall use a competitive bidding process as provided in 16-
3 4-430 to determine the party afforded the opportunity to apply for a new license.

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

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

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

- 20 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or fewer;
21 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or
22 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

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

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

28 (17) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101

1 persons or more may not exceed 25% of the total licenses issued.

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

5 (19) A person licensed under this section may have and possess liquor in the kitchen of the licensed
6 premises only for the purpose of the preparation of food if the alcohol content is cooked out at the time of
7 selling. Nothing in this subsection may be construed to allow the licensee to consume, sell, ~~or~~ serve, or give
8 away liquor.

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

10

11 NEW SECTION. Section 11. Effective date. [This act] is effective on passage and approval.

12

- END -