

1 SENATE BILL NO. 59
2 INTRODUCED BY S. FITZPATRICK
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4

5 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOLIC BEVERAGE LAWS;
6 REVISING LAWS RELATING TO PUBLIC CONVENIENCE AND NECESSITY; PROVIDING THAT PUBLIC
7 CONVENIENCE AND NECESSITY CONSIDERATIONS ARE LIMITED TO CONSIDERATION OF THE
8 ALCOHOLIC BEVERAGE; REVISING LAWS RELATED TO DEPARTMENT REQUESTS FOR ADDITIONAL
9 LICENSING INFORMATION; REVISING LAWS RELATED TO TABLE WINE; REVISING LAWS RELATING
10 TO SPECIAL PERMITS; AND AMENDING SECTIONS 16-3-103, 16-4-203, 16-4-212, 16-4-213, 16-4-207,
11 AND 16-4-301, MCA."
12

13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
14

15 **Section 1.** Section 16-3-103, MCA, is amended to read:

16 **"16-3-103. Unlawful sales solicitation or advertising -- exceptions.** (1) A person within the state
17 may not:

18 (a) canvass for, receive, take, or solicit orders for the purchase or sale of any liquor or act as agent
19 or intermediary for the sale or purchase of any liquor or be represented as an agent or intermediary unless
20 permitted to do so under rules that are promulgated by the department to govern the activities;

21 (b) canvass for or solicit orders for the purchase or sale of any beer or malt liquor except in the
22 case of beer proposed to be sold to beer licensees duly authorized to sell beer under the provisions of this
23 code;

24 (c) exhibit, publish, or display or permit to be exhibited, published, or displayed any form of
25 advertisement or any other announcement, publication, or price list of or concerning liquor or where or from
26 whom the same may be had, obtained, or purchased unless permitted to do so by the rules of the department
27 and then only in accordance with the rules.

Amendment - 1st Reading/2nd House-blue - Requested by: Edward Buttrey - (H) Business and Labor

- 2023

68th Legislature 2023

Drafter: Jameson Walker, 406-444-3722

SB0059.003.003

1 grounds for denial of an application provided for in 16-4-405, exclusive of public convenience and necessity.

2 The hearing must be governed by the provisions of Title 2, chapter 4, part 6.

3 (b) If the department receives the number of protests required for a public convenience and
4 necessity determination as specified in subsection (4)(c) and the application is for an original license or for a
5 transfer of location, the department shall schedule a public hearing to be held in the county of the proposed
6 location of the license to determine whether the protest presents sufficient cause to deny the application based
7 on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application
8 provided for in 16-4-405 including public convenience and necessity. The hearing must be governed by the
9 provisions of Title 2, chapter 4, part 6.

10 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an
11 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the
12 proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-
13 beverages licenses determined for that quota area according to 16-4-201(1), (2), and (9) but in no case less
14 than two. The minimum number of protests determined in this manner will apply only to applications for either
15 on-premises consumption beer or all-beverages licenses.

16 (d) A resident of a county in another state that adjoins the county in Montana from which an
17 application comes may protest an application only if the county or state of residence of the person has certified
18 to the department that a similarly situated Montana resident would be able to make formal protest of an
19 alcoholic beverage license application in that state or county. The department may, by rule, establish how the
20 certification is to be made."

21

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

23 **"16-4-212. Resort area determination.** (1) To obtain a resort area designation, the resort area
24 developer or landowner must submit an application with a plat setting forth the resort area boundaries and
25 designating the ownership of the lands within the resort area. The plat must show the location and general
26 design of the buildings and other improvements existing or to be built in the resort area. A master plan for the
27 development of the resort area may be filed by the resort area developer in satisfaction of this section.

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- 1 (2) (a) In addition to the other requirements of this code, at the time of application, a resort area
2 ~~must:~~
- 3 (i) ~~may~~ not be located within the boundaries of ~~a-an incorporated city or town~~ quota area as
4 described in 16-4-201(1) or (2), ~~except that if the resort area is located in a county having a consolidated city-~~
5 ~~county unit of local government, the resort area must be more than 5 miles from the historical corporate limits of~~
6 ~~the city or town that existed immediately before the abandonment or consolidation into the consolidated city-~~
7 ~~county unit of local government;~~
- 8 (ii) ~~must~~ have a current actual valuation of resort or recreational facilities, including land and
9 improvements, of not less than ~~\$1 \$10~~ million, at least ~~half \$5 million~~ of which valuation must be for a structure
10 or structures within the resort area;
- 11 (iii) ~~must~~ be under the sole ownership or control of one person or entity;
- 12 (iv) ~~must~~ contain a minimum of ~~50-125~~ acres of land; and
- 13 (v) ~~must~~ provide details of the ~~outdoor~~ recreational facilities that are or will be on the grounds of
14 the resort that warrant the resort designation being granted. These recreational facilities must be completed
15 prior to licenses being issued in 16-4-213.
- 16 (b) ~~A resort area's current actual valuation under subsection (2)(a)(ii) may be determined by using~~
17 ~~an independent appraisal or the department's tax appraisals of the property.~~
- 18 (c) ~~_____~~ For the purposes of this ~~section subsection (2)~~, "control" means land or improvements that are
19 owned or that are held under contract, lease, option, or permit.
- 20 (3) Within 15 business days after the application is filed, the department shall schedule a public
21 hearing to be held in the proposed area to determine whether the facility proposed by the resort area developer
22 or landowner is a resort area. At least 30 days prior to the date of the hearing, the department shall publish
23 notice of the hearing in a newspaper published in the county or counties in which the resort area is located,
24 once a week for 4 consecutive weeks. The notice must include a description of the proposed resort area. The
25 resort area developer or landowner shall, at the time of filing an application, pay to the department an amount
26 sufficient to cover the costs of publication.
- 27 (4) A person may present, in person or in writing, a statement to the department at the hearing in

1 opposition to or in support of the application.

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

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

7 (7) (a) Except as provided in subsection (7)(b), an approved resort area designation lapses if no
8 resort all-beverages licenses are issued pursuant to 16-4-213 within 5 years of the department's approval of the
9 resort area or if the resort area applicant cannot demonstrate substantial progress toward completion of the
10 improvements and outdoor recreational facilities described in the application.

11 (b) A resort area designation that received department approval prior to January 1, 2024, lapses if
12 no resort all-beverages licenses are issued pursuant to 16-4-213 by January 1, 2029.

13 (c) A developer or landowner of a lapsed resort area may reapply to the department to obtain a
14 new resort area designation."

15
16 **Section 5.** Section 16-4-213, MCA, is amended to read:

17 **"16-4-213. Resort retail all-beverages licenses.** (1) After a resort area has been approved,
18 applications may be filed with the department for the issuance of resort retail all-beverages licenses within the
19 resort area.

20 (2) (a) Except as provided in subsections (2)(b) and (2)(c), the department may issue one resort
21 retail all-beverages license for the first 100 accommodation units and an additional license for each additional
22 50 accommodation units within an approved resort area as long as the recreational facilities under 16-4-212
23 have also been completed.

24 (b) (i) For a resort area with a perimeter containing at least ~~1,000~~ 500 contiguous acres that has a
25 current actual valuation of completed recreational facilities, including land and improvements, of not less than
26 ~~\$30~~\$20 million, the department may issue up to 10 resort retail all-beverages licenses regardless of the number
27 of accommodation units.

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1 (ii) For a resort area with a perimeter containing at least 2,000 contiguous acres that has a current
2 actual valuation of completed recreational facilities, including land and improvements, of not less than \$40
3 million, the department may issue up to 25 resort retail all-beverages licenses regardless of the number of
4 accommodation units.

5 (c) (i) A resort area designation application to the department that received approval prior to
6 January 1, 1999, is entitled to the issuance of one resort retail all-beverages license for a \$20,000 license fee.
7 ~~Any additional resort retail all-beverages licenses issued to a resort area under this subsection (2)(c) must meet~~
8 ~~the accommodation unit requirement in subsection (2)(a) of this section and pay the license fee and renewal~~
9 ~~fees as provided in 16-4-504.~~

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

14 (iii) If the resort area is located within the boundaries of a quota area as provided in 16-4-201(1) or
15 (2) as of the date of submission for a resort retail all-beverages license, then notwithstanding the number of
16 accommodation units, the resort area is not eligible for additional resort retail all-beverages licenses beyond
17 those issued prior to January 1, 2028, and described in subsections (2)(c)(i) and (2)(c)(ii).

18 (d) ~~(i)~~ For purposes of this code, "accommodation unit" means a unit that is available for short-
19 term guest rental and includes:

20 ~~(A)(i)~~ a single-family home;

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

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

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

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

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- 1 (3) Regardless of how many resort area all-beverages licenses are issued in a resort area, no
2 more than 20 gambling machine permits may be issued for the resort area.
- 3 (4) A resort retail all-beverages license within the resort area:
- 4 (a) is subject to all other requirements of an all-beverages license in this code, except:
- 5 (i) for the purposes of premises suitability under 16-3-311, a licensed retailer may use a part of
6 the building as a licensed premises for the consumption of alcoholic beverages on the premises. The premises
7 must be separated from the rest of the building by permanent walls but may have inside access to the rest of
8 the building at all times even if the businesses or uses in the other part of the building are unrelated to the
9 operation of the premises in which alcoholic beverages are served. If the premises are located in a portion of a
10 building, the licensed retailer must be able to demonstrate that there are adequate safeguards in place to
11 prevent public access to alcoholic beverages after hours, either by the presence of a lockable door or other
12 security features such as rolling gates, locking cabinets, tap locks, or key card access;
- 13 (ii) the interior portion of the licensed premises must be a continuous area that is under the control
14 of the licensee and not interrupted by any area in which the licensee does not have adequate control, and
15 includes multiple floors on the premises and common areas necessarily shared by multiple building tenants in
16 order to allow patrons to access other tenant businesses or private dwellings in the same building, including but
17 not limited to entryways, hallways, stairwells, and elevators; and
- 18 (iii) the premises may include one or more exterior patios or decks as long as sufficient physical
19 safeguards are in place to ensure proper service and consumption of alcoholic beverages. An additional
20 perimeter barrier may not be required if an existing boundary naturally defines the outdoor service area and
21 impedes foot traffic.
- 22 (b) is not subject to the quota limitations set forth in 16-4-201; and
- 23 (c) is transferable to another location within the boundaries of the resort area or to another owner
24 to be used at a location within the boundaries of the resort area.
- 25 (5) For licenses issued under this section, a licensee may apply to the department to allow for the
26 delivery of alcohol to guests of accommodation units and the prestocking of alcoholic beverages in
27 accommodation units within the designated resort area property as long as the purchaser's age is verified. The

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1 application fee is \$100.

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

4 (7) A resort retail all-beverages licensee whose license was issued under subsection (2)(c)(i) may
5 enter into one concession agreement as provided in 16-4-418, regardless of whether the licensee's premises is
6 located outside of a quota area as defined in 16-4-201(1) or (2). A resort retail all-beverages licensee whose
7 premises is located outside of a quota area as defined in 16-4-201(1) or (2) may enter into a maximum of one
8 concession agreement per license with an unlicensed entity to serve alcoholic beverages. Except for 16-4-
9 418(1), the provisions of 16-4-418 apply.

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

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

25 (10) Applications may be made to the department for resort retail all-beverages licenses provided in
26 subsection (2)(c)(i) or (2)(c)(ii) at any time before January 1, 2028. If the applicant does not have a premises,
27 the department may approve the applications without approving the premises if all other requirements of this

1 code related to an applicant are met. A license issued without a premises must be immediately put on nonuse
2 status until a premises is approved by the department and may not be transferred to another person or
3 business entity prior to approval of the premises unless that transfer is due to death of an owner or was
4 reasonably beyond the control of the licensee. On issuance of a license without a premises as provided in this
5 subsection, the licensee shall apply for a premises located within the resort area and must have the premises
6 approved no later than January 1, 2029."

7
8 **Section 6.** Section 16-4-301, MCA, is amended to read:

9 **"16-4-301. Special permits to sell all alcoholic beverages, beer, and table wine -- application**
10 **and issuance.** (1) (a) The following organizations or institutions that conduct a special event may receive up to
11 three-TWELVE special permits a year to sell beer and table wine to the patrons of the special event:

12 (i) An-an organization or institution that has a tax-exempt designation under the provisions of
13 section 501(c)(3) of the Internal Revenue Code, 26 U.S.C. 501(c)(3), as amended;

14 (ii) an organization or institution that is organized and operated to raise funds for a needy person;

15 or

16 (iii) an organization or institution that is an accredited Montana postsecondary school and that
17 conducts a special event may receive a special permit to sell beer and table wine to the patrons of that special
18 event. An organization may receive up to three special permits a year.

19 (b) A civic league or organization that has a tax-exempt designation under section 501(c)(4) of the
20 Internal Revenue Code, 26 U.S.C. 501(c)(4), as amended, or an organization authorized by an accredited
21 Montana postsecondary school to engage in fundraising activities for intercollegiate athletics that has a tax-
22 exempt designation under the provisions of section 501(c)(3) of the Internal Revenue Code, 26 U.S.C.
23 501(c)(3), as amended, may receive up to 12 special permits a year to sell beer and table wine. For purposes
24 of fundraising activities for intercollegiate athletics, only one organization for each Montana postsecondary
25 school may be authorized to apply for and receive special permits under this section. All net earnings from the
26 sale of beer and table wine must be contributed to the state of Montana or a political subdivision of the state or
27 must be devoted to purposes required of entities under section 501(c)(3) of the Internal Revenue Code, 26