

Amendment - 2nd Reading-yellow - Requested by: Laurie Bishop - (H) Committee of the Whole

68th Legislature

Drafter: Jameson Walker, 406-444-3722

HB0165.002.001

HOUSE BILL NO. 165

INTRODUCED BY D. HARVEY, J. KARLEN

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO THE NUMBER AND LOCATION OF AGENCY STORES; CLARIFYING THAT A COMMUNITY WITH AN EXISTING AGENCY LIQUOR STORE MAY OBTAIN ADDITIONAL AGENCY LIQUOR STORES IF CERTAIN POPULATION REQUIREMENTS ARE MET; PROVIDING FOR COMPETITIVE BIDDING OF AGENCY LIQUOR STORES; PROVIDING COMMISSION RATES FOR NEW AGENCY LIQUOR STORES; AMENDING SECTION SECTIONS 16-2-101 AND 16-2-109, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. SECTION 1. COMPETITIVE BIDDING. (1) (A) WHEN THE DEPARTMENT DETERMINES THAT AN AREA IS ELIGIBLE FOR AN AGENCY STORE UNDER 16-2-109, THE DEPARTMENT SHALL USE A COMPETITIVE BIDDING PROCESS TO DETERMINE THE PARTY AFFORDED THE OPPORTUNITY TO BE AWARDED THE AGENCY FRANCHISE AGREEMENT.

(B) THE DEPARTMENT SHALL DETERMINE THE MINIMUM BID BASED ON POPULATION AS FOLLOWS:

(i) \$225,000 FOR A QUOTA AREA WITH A POPULATION OF 1,000 OR LESS;

(ii) \$425,000 FOR A QUOTA AREA WITH A POPULATION BETWEEN 1,001 AND 2,000;

(iii) \$900,000 FOR A QUOTA AREA WITH A POPULATION BETWEEN 2,001 AND 5,000;

(iv) \$2,000,000 FOR A QUOTA AREA WITH A POPULATION BETWEEN 5,001 AND 10,000; AND

(v) \$3,250,000 FOR A QUOTA AREA WITH A POPULATION GREATER THAN 10,000.

(2) (A) TO ENTER THE COMPETITIVE BIDDING PROCESS, A BIDDER SHALL SUBMIT AN ELECTRONIC BID FORM PROVIDED BY THE DEPARTMENT.

(B) THE DEPARTMENT SHALL CONTACT ANY BIDDER WHOSE TIMELY SUBMITTED BID FORM HAS A DEFICIENCY AND SHALL PROVIDE THE BIDDER WITH AN OPPORTUNITY TO RESUBMIT THE BID FORM WITHIN 5 BUSINESS

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HB0165.002.001

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 AN ELECTRONIC BID FORM PROVIDED BY THE DEPARTMENT.

(4) TO BE AWARDED THE AGENCY FRANCHISE AGREEMENT, THE HIGHEST BIDDER SHALL:

(A) SUBMIT ALL THE INFORMATION NECESSARY FOR THE DEPARTMENT TO DETERMINE SUITABILITY TO OPERATE AN AGENCY LIQUOR STORE WITHIN 60 DAYS OF THE DEPARTMENT'S NOTIFICATION OF BEING THE HIGHEST BIDDER;

(B) PAY THE BID AMOUNT PRIOR TO BEING AWARDED THE AGENCY FRANCHISE AGREEMENT;

(C) MEET ALL OTHER REQUIREMENTS TO OPERATE AN AGENCY LIQUOR STORE; 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 BIDDER'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 AWARDED THE AGENCY FRANCHISE AGREEMENT, THE DEPARTMENT SHALL OFFER THE OPPORTUNITY TO BE AWARDED THE AGENCY FRANCHISE AGREEMENT TO THE NEXT HIGHEST BIDDER. THAT BIDDER SHALL COMPLY WITH THE REQUIREMENTS OF SUBSECTION (4). IF NO QUALIFIED BIDDER IS APPROVED TO OPERATE THE AGENCY LIQUOR STORE, THE DEPARTMENT SHALL REOPEN THE COMPETITIVE BIDDING PROCESS.

(6) 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).

(7) The department shall transfer all funds collected pursuant to this section to the department of public health and human services to be used to support grants to school and community-based organizations for afterschool and summer programs for school-age youth.

SECTION 2. SECTION 16-2-101, MCA, IS AMENDED TO READ:

"16-2-101. Establishment and closure of agency liquor stores -- agency franchise agreement -- kinds and prices of liquor. (1) The department shall enter into agency franchise agreements to operate

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68th Legislature

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HB0165.002.001

1 agency liquor stores as the department finds feasible for the wholesale and retail sale of liquor.

2 (2) (a) The department may from time to time fix the posted prices at which the various classes,
3 varieties, and brands of liquor may be sold, and the posted prices must be the same at all agency liquor stores.

4 (b) (i) The department shall supply from the state liquor warehouse to agency liquor stores the
5 various classes, varieties, and brands of liquor for resale at the state posted price to persons who hold liquor
6 licenses and to all other persons at the retail price established by the agent.

7 (ii) (A) According to the ordering and delivery schedule set by the department, an agency liquor
8 store may place a liquor order with the department at its state liquor warehouse in the manner to be established
9 by the department.

10 (B) The agency liquor store's purchase price is the department's posted price less the agency
11 liquor store's commission rate. The commission rates constitute the only compensation the department
12 provides to agency liquor stores and reflect that agency liquor stores sell at retail and wholesale and must
13 provide the discount in 16-2-201.

14 (C) All liquor purchased from the state liquor warehouse by an agency liquor store must be paid for
15 within 60 days of the date on which the department invoices the liquor to the agency liquor store.

16 (c) An agency liquor store may sell table wine at retail for off-premises consumption.

17 (3) Agency liquor stores may not be located in or adjacent to grocery stores in communities with
18 populations over 3,000.

19 (4) (a) Beginning February 1, 2016, each agency liquor store's commission rate is equal to the
20 agency liquor store's combined commission rate on December 31, 2015, plus 1/3 of the difference between the
21 agency liquor store's commission rate as determined in subsection (4)(b) and the agency liquor store's
22 combined commission rate on December 31, 2015. Beginning February 1, 2017, each agency liquor store's
23 commission rate is equal to the agency liquor store's combined commission rate on December 31, 2015, plus
24 2/3 of the difference between the agency liquor store's commission rate as determined in subsection (4)(b) and
25 the agency liquor store's combined commission rate on December 31, 2015. Beginning February 1, 2018, each
26 agency liquor store's commission rate is determined as in subsection (4)(b).

27 (b) Agency liquor stores must receive an annual commission rate based on the total posted price

Amendment - 2nd Reading-yellow - Requested by: Laurie Bishop - (H) Committee of the Whole

68th Legislature

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HB0165.002.001

1 of liquor purchased in the previous calendar year, as follows:

2 (i) 16% commission for stores that purchased not more than \$250,000;

3 (ii) 15.5% commission for stores that purchased more than \$250,000 but not more than \$500,000;

4 (iii) 15% commission for stores that purchased more than \$500,000 but not more than \$720,000;

5 (iv) 14.5% commission for stores that purchased more than \$720,000 but not more than \$950,000;

6 (v) 14% commission for stores that purchased more than \$950,000 but not more than \$1.525

7 million;

8 (vi) 13.5% commission for stores that purchased more than \$1.525 million but not more than \$1.85

9 million;

10 (vii) 13% commission for stores that purchased more than \$1.85 million but not more than \$2.25

11 million;

12 (viii) 12.75% commission for stores that purchased more than \$2.25 million but not more than \$3.25

13 million;

14 (ix) 12.5% commission for stores that purchased more than \$3.25 million but not more than \$7

15 million; or

16 (x) 12.15% commission for stores that purchased more than \$7 million.

17 (c) For commissions determined under subsection (4)(b), the department shall by February 1 of
18 each year:

19 (i) calculate purchases based on all liquor invoiced to the agency liquor store during the previous
20 calendar year;

21 (ii) notify agency liquor stores of their commission rate to be applied for the period beginning
22 February 1 and ending January 31; and

23 (iii) adjust the dollar values for purchase amounts under subsection (4)(b) based on the consumer
24 price index for the prior calendar year and notify all agency liquor stores of the adjustment.

25 (d) New stores must receive a commission ~~established by competitive bidding~~ of 16% for quota
26 areas with a population of 1,000 or less, 15.5% for quota areas with a population between 1,001 and 2,000,
27 15% for quota areas with a population between 2,001 and 5,000, 14.5% for quota areas with a population

Amendment - 2nd Reading-yellow - Requested by: Laurie Bishop - (H) Committee of the Whole

68th Legislature

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HB0165.002.001

1 between 5,001 and 10,000, and 14% for quota areas with a population over 10,000, which is guaranteed for 3
2 calendar years, after which time the agency liquor store's commission is subject to subsection (4)(b).

3 (5) An agency franchise agreement must:

4 (a) be effective for a 10-year period, renewable for additional 10-year periods, if the requirements
5 of the agency franchise agreement have been satisfactorily performed;

6 (b) require the agent to maintain comprehensive general liability insurance and liquor liability
7 insurance throughout the term of the agency franchise agreement in an amount established by the department
8 of administration. The insurance policy must:

9 (i) declare the department as an additional insured; and

10 (ii) hold the state harmless and agree to defend and indemnify the state in a cause of action
11 arising from or in connection with the agent's negligent acts or activities in the execution and performance of the
12 agency franchise agreement.

13 (c) provide that upon termination by the department for cause or upon mutual termination, the
14 agent is liable for any outstanding liquor purchase invoices. If payment is not made within the appropriate time,
15 the department may immediately repossess all liquor inventory, wherever located.

16 (d) specify the reasonable service and space requirements that the agent will provide throughout
17 the term of the agency franchise agreement.

18 (6) The liability insurance requirement may be reviewed every 3 years at the request of either the
19 agent or the department. If the agent concurs, the department may adjust the requirements to be effective
20 during the remaining term of the agency franchise agreement if the adjustments adequately protect the state
21 from risks associated with the agent's negligent acts or activities in the execution and performance of the
22 agency franchise agreement. The amount of liability insurance coverage may not be less than the minimum
23 requirements of the department of administration.

24 (7) (a) The department may terminate an agency franchise agreement if the agent has not
25 satisfactorily performed the requirements of the agency franchise agreement because the agent:

26 (i) charges retail prices that are less than the department's posted price for liquor, sells liquor to
27 persons who hold liquor licenses at less than the posted price, or sells liquor at case discounts greater than the

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68th Legislature

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HB0165.002.001

discount provided for in 16-2-201 to persons who hold liquor licenses;

(ii) fails to maintain sufficient liability insurance;

(iii) has not maintained a quantity and variety of product available for sale commensurate with demand, delivery cycle, repayment schedule, mixed case shipments from the department, and the ability to purchase special orders;

(iv) at an agency liquor store located 35 miles or more from the nearest agency liquor store, has operated the agency liquor store in a manner that makes the premises unsanitary or inaccessible for the purpose of making purchases of liquor; or

(v) fails to comply with the express terms of the agency franchise agreement.

(b) The department shall give an agent 30 days' notice of its intent to terminate the agency franchise agreement for cause and specify the unmet requirements. The agent may contest the termination and request a hearing within 30 days of the date of notice. If a hearing is requested, the department shall suspend its termination order until after a final decision has been made pursuant to the Montana Administrative Procedure Act.

(c) In the case of failure to make timely payments to the department for liquor purchased, the department may terminate the agency franchise agreement and immediately repossess any liquor purchased and in the possession of the agent. If an agency franchise agreement is terminated, the agent may contest the termination and request a hearing within 30 days of the department's repossession of the liquor. The agency liquor store shall remain closed until a final decision has been reached following a hearing held pursuant to the Montana Administrative Procedure Act.

(8) An agency franchise agreement may be terminated upon mutual agreement by the agent and the department.

(9) An agent may assign an agency franchise agreement to a person who, upon approval of the department, is named agent in the agency franchise agreement, with the rights, privileges, and responsibilities of the original agent for the remaining term of the agency franchise agreement. The agent shall notify the department of an intent to assign the agency franchise agreement 60 days before the intended effective date of the assignment. The department may not unreasonably withhold approval of an assignment request.

Amendment - 2nd Reading-yellow - Requested by: Laurie Bishop - (H) Committee of the Whole

68th Legislature

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HB0165.002.001

(10) A person or entity may not hold an ownership interest in more than one agency liquor store.

(11) The department shall maintain sufficient inventory in the state warehouse in order to meet a monthly service level of at least 97%.

(12) For the purposes of this section, the term "combined commission rate" means the agency liquor store's weighted average discount rate plus the discount rate provided for sales volume plus the agency liquor store's commission rate that existed on December 31, 2015."

Section 3. Section 16-2-109, MCA, is amended to read:

"16-2-109. Number and location of agency liquor stores. (1) (a) In a community with a population of 12,000 or less, there may be one agency liquor store. In communities with populations greater than 12,000, there may be one agency liquor store for the first 12,000 inhabitants and one additional agency liquor store within increments of population of 40,000 inhabitants above 12,000 inhabitants. In determining population, the department shall use the same methods used for determining increases in the retail license quota system as provided in 16-4-201.

(b) In communities that are eligible for more than one agency liquor store, an agency liquor store established after April 25, 1995, may not be located within a 1-mile radius of any other agency liquor store in the community.

(2) An agency liquor store established after April 25, 1995, may not be located in a community that is closer than 35 miles to another community in which an agency liquor store is presently located, except in the circumstance when the most recent population estimates show a 25% growth in population or a growth of 1,000 inhabitants within a 2-year period, whichever is greater, and when this population increase is reasonably expected to continue for at least 5 years.

(3) Nothing in subsection (2) prohibits a community with an existing agency liquor store from obtaining additional agency liquor stores when the population allows as provided in subsection (1).

(4) THE DEPARTMENT SHALL USE A COMPETITIVE BIDDING PROCESS AS PROVIDED IN [SECTION 1] TO DETERMINE THE PARTY AFFORDED THE OPPORTUNITY TO APPLY FOR THE NEW AGENCY FRANCHISE AGREEMENT."

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68th Legislature

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HB0165.002.001

1 NEW SECTION. SECTION 4. CODIFICATION INSTRUCTION. [SECTION 1] IS INTENDED TO BE CODIFIED AS AN
2 INTEGRAL PART OF TITLE 16, CHAPTER 2, AND THE PROVISIONS OF TITLE 16, CHAPTER 2, APPLY TO [SECTION 1].

3

4 NEW SECTION. Section 5. Effective date. [This act] is effective on passage and approval.

5

- END -

AMENDED