

HOUSE BILL NO. 71

INTRODUCED BY D. LOGE

BY REQUEST OF THE DEPARTMENT OF REVENUE

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOLIC BEVERAGE LAWS RELATING TO THE TRANSFER OF LICENSES; ALLOWING THE DEPARTMENT TO GRANT TEMPORARY OPERATING AUTHORITY TO AN APPLICANT; ALLOWING FOR THE TRANSFER OF ALCOHOLIC BEVERAGE INVENTORY WITH A BONA FIDE SALE IF CERTAIN CONDITIONS HAVE BEEN MET; PROVIDING THAT THE TEMPORARY OPERATING AUTHORITY MAY NOT EXCEED 180 DAYS; PROVIDING ELIGIBILITY REQUIREMENTS; AMENDING SECTIONS 16-4-404, 16-4-416, 16-4-801, 16-6-303, AND 23-5-119, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

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

NEW SECTION. Section 1. Temporary operating authority. (1) The department may grant temporary operating authority to an applicant for a license issued under this code for a period not to exceed 180 days. The department may not extend the period of temporary operating authority beyond 180 days and may not grant temporary operating authority more than once for the same application.

(2) To be eligible to obtain temporary operating authority, and in addition to application requirements established by the department, the following requirements must be met:

(a) the license applied for must be currently operated at the proposed premises and the premises must not have been altered from the last approved floor plan; or

(b) the applicant must be a current licensee in good standing.

(3) An applicant is eligible to exercise all of the privileges of the license if temporary operating authority is granted by the department.

(4) The department may refuse to grant temporary operating authority if the department believes that the applicant is not qualified to hold a license, the applicant's proposed premises are not suitable for the operation of the business, or the department has adverse information about the applicant or the applicant's

owners, officers, or managers. The department may immediately revoke temporary operating authority if the applicant or applicant's employees violate any provision of this code or any rules adopted under it. The refusal to grant temporary operating authority is not a contested case under the Montana Administrative Procedure Act.

(5) The granting of temporary operating authority is not a temporary license or a permit. It does not guarantee that the department will grant the application if it finds that the applicant is not qualified to hold a license or the premises are not suitable for the operation of the business.

Section 2. Section 16-4-404, MCA, is amended to read:

"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer. (1) A license may not be issued until on or after the date set in the notice for hearing protests.

(2) Every license issued under this code must state the name of the person to whom it is issued, the location, by street and number or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under the license, and other information the department considers necessary. If the licensee is a partnership or if more than one person has an interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises in which the business authorized under the license is conducted, and the license must be exhibited ~~upon~~on request to any authorized representative of the department or the department of justice or to any peace officer of the state of Montana.

(3) A license issued under the provisions of this code is a privilege personal to the licensee named in the license and is valid until the expiration of the license unless sooner revoked or suspended.

(4) A license may be transferred to the executor or administrator of the estate of a deceased licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under a license. The license may descend or be disposed of with the licensed business under appropriate probate proceedings.

(5) ~~(a)~~ A licensee may apply to the department for a transfer of the license to different premises within the quota area. ~~if:~~ The department may, after notice and opportunity for protest, permit a transfer if the transfer is justified by public convenience and necessity, pursuant to 16-4-203, unless a public convenience

1 and necessity hearing is required by 16-4-207.

2 ~~(i) there has been major loss or damage to the licensed premises by unforeseen natural causes;~~

3 ~~(ii) the lease of the licensed premises has expired;~~

4 ~~(iii) in case of rented licensed premises, there has been an eviction or increase of rent by the landlord;~~

5 ~~or~~

6 ~~(iv) the licensee has proposed removal of the license to premises that are as substantially suited for~~
7 ~~the retail alcoholic beverages business as the premises proposed to be vacated.~~

8 ~~(b) The department may, after notice and opportunity for protest, permit a transfer in the cases~~
9 ~~specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the~~
10 ~~licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant to~~
11 ~~16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department may not~~
12 ~~allow a transfer to different premises where the sanitary, health, and service facilities are less satisfactory than~~
13 ~~facilities that exist or had existed at the premises from which the transfer is proposed to be made.~~

14 ~~(6) Upon~~On a bona fide sale of the business operated under a license, the license may be
15 transferred to a qualified purchaser. A transfer of a license to a person or location is not effective unless
16 approved by the department. A licensee or transferee or proposed transferee who operates or attempts to
17 operate under a supposedly transferred license prior to the approval of the transfer by the department,
18 ~~endorsed upon~~on the license in writing, is considered to be operating without a license and the license affected
19 may be revoked or suspended by the department. ~~The department may, within its discretion, permit a qualified~~
20 ~~purchaser to operate the business to be transferred pending final approval if there has not been a change in~~
21 ~~location and the application for transfer has been filed with the department.~~

22 ~~(7) On a bona fide sale of the business operated under a license, the alcoholic beverage inventory~~
23 ~~of the existing licensee may be transferred to a qualified purchaser of the license when temporary operating~~
24 ~~authority has been granted to the buyer to operate the license or the transfer of the license to the buyer has~~
25 ~~been approved by the department ;~~ THE ALCOHOLIC BEVERAGE INVENTORY OF AN EXISTING LICENSEE MAY BE
26 TRANSFERRED UNDER THE FOLLOWING SCENARIOS:

27 (A) ON A BONA FIDE SALE OF THE BUSINESS OPERATED UNDER A LICENSE WHEN THE DEPARTMENT:

28 (I) HAS GRANTED TEMPORARY OPERATING AUTHORITY TO THE BUYER TO OPERATE THE LICENSE; OR

(II) HAS APPROVED TRANSFER OF THE LICENSE TO THE BUYER;

(B) ON A LICENSE TYPE CHANGE AT AN EXISTING LICENSED PREMISES WHEN THE DEPARTMENT HAS GRANTED TEMPORARY OPERATING AUTHORITY OR APPROVED THE ISSUANCE OF THE NEW LICENSE, AS LONG AS THE ALCOHOLIC BEVERAGE IS ALLOWED BY THE NEW LICENSE TYPE;

(C) ON APPROVAL OF A CORPORATE STRUCTURE CHANGE AT AN EXISTING LICENSED PREMISES;

(D) ON THE SALE OF A LICENSE TO BE FLOATED OUT OF A QUOTA AREA WHEN THE DEPARTMENT HAS GRANTED TEMPORARY OPERATING AUTHORITY OR APPROVED THE LICENSE TRANSFER; OR

(E) WHEN A LICENSEE IS GOING OUT OF BUSINESS BUT ONLY IF THE UNOPENED ALCOHOL IS IN ITS ORIGINAL PACKAGING AND THE LICENSEE RECEIVING THE ALCOHOL IS LICENSED FOR THAT TYPE OF ALCOHOL.

~~(7)~~(8) Except as provided in 16-4-204 and subsections (2) through ~~(6)~~(7) of this section, a license may not be transferred or sold or used for any place of business not described in the license. A license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, ~~upon~~on application to and approval of the department, must be endorsed on the license. Beer or wine sold to a licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien ~~upon~~on a license, but a subsequent licensee has the obligation to pay for the beer or wine."

Section 3. Section 16-4-416, MCA, is amended to read:

"16-4-416. Ownership of ~~liquor~~alcoholic beverage license by United States. (1) Whenever right, title, and interest in ~~a liquor~~an alcoholic beverage license vests in the United States, the United States shall promptly give notice to the department of its interest and ~~must~~shall have the license placed on nonuse status. The United States shall transfer ownership of the license to a qualified applicant within ~~200~~180 days from the date on which it obtained an interest in the license. ~~Upon~~On receipt of an application to transfer the license, the department may, pursuant to ~~16-4-404~~[section 1], grant the applicant temporary operating authority to operate the license.

(2) The department, ~~upon~~on a showing of good cause, may in its discretion extend the time for sale of the license for an additional period of up to 180 days."

Section 4. Section 16-4-801, MCA, is amended to read:

1 **"16-4-801. Security interest in ~~liquor~~ alcoholic beverage license -- definitions.** (1) (a) A security
2 interest in a ~~liquor~~ alcoholic beverage license is an interest in the ~~liquor~~ alcoholic beverage license that
3 secures payment or performance of an obligation. A contract for the sale of a ~~liquor~~ alcoholic beverage
4 license, including a provision allowing the seller to retain an ownership interest in the license solely for the
5 purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security
6 interest.

7 (b) For the purposes of this section:

8 (i) "default" means that:

9 (A) the defaulting party has acknowledged in writing pursuant to the terms of a written security
10 agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights
11 to possess or control the ~~liquor~~ alcoholic beverage license;

12 (B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's
13 interests in the license; or

14 (C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform
15 Commercial Code and the secured party has provided written proof of the sale to the department; and

16 (ii) ~~"liquor license"~~ "alcoholic beverage" means a license issued under this chapter.

17 (2) The department, after review of the underlying documents creating the security interest, may
18 approve a transfer of ownership of a ~~liquor~~ alcoholic beverage license subject to a security interest as
19 provided in subsection (1). A person holding a security interest may not have any control in the operation of the
20 business operated under a license subject to a security interest nor may that person share in the profits or the
21 liabilities of the business other than the payment or performance of the licensee's obligation under a security
22 agreement.

23 (3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give
24 notice to the department of the licensee's default and either apply to have the license transferred to that person,
25 subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or
26 the person shall place the license on ~~nonuser~~ nonuse status. ~~Upon~~ On receipt of an application to transfer the
27 license, the department may, pursuant to ~~16-4-404~~ [section 1], grant the applicant temporary operating authority
28 to operate the license. If the person holding the license places the license on ~~nonuser~~ nonuse status, the

1 person shall transfer ownership of the license within 180 days from the date on which the notice of the default
2 was given to the department. The operation of a business under a license by a person holding a security
3 interest for more than 7 days after default of the licensee or without temporary operating authority issued by the
4 department must be considered to be a violation of this code and constitutes grounds for the department to
5 either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

6 (b) If the person holding the security interest does not qualify for or cannot qualify for ownership of
7 ~~a liquor~~ an alcoholic beverage license under 16-4-401, the secured party shall transfer ownership of the ~~liquor~~
8 alcoholic beverage license within 180 days of the notice of the default of the licensee.

9 (c) The department, ~~upon~~ on a showing of good cause, may in its discretion extend the time for
10 sale of the license for an additional period of up to 180 days.

11 (4) (a) A regulated lender, as defined in 31-1-111, may obtain a security interest in ~~a liquor~~ an
12 alcoholic beverage license or in other assets of a business operating ~~a liquor~~ an alcoholic beverage license to
13 secure a loan or a guaranty of a loan. A regulated lender may use loan and collateral documentation and loan
14 and collateral structure consistent with that used by the regulated lender in commercial loans generally, and the
15 documentation and structure used by the lender do not create an undisclosed ownership interest in the ~~liquor~~
16 alcoholic beverage license or the licensee's business by a coborrower or guarantor if the department
17 determines the borrower, coborrower, guarantor, and owner or owners of the assets pledged as collateral meet
18 the requirements of 16-4-401. As used in this subsection (4), permissible loan and collateral structuring
19 includes but is not limited to permitting owners and nonowners of ~~a liquor~~ an alcoholic beverage license to:

20 (i) be coborrowers of a borrower's loan;

21 (ii) be guarantors of a borrower's loan, with or without a requirement that the regulated lender
22 exhaust remedies against the borrower before collecting from the guarantor; or

23 (iii) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan.

24 (b) A person claiming a security interest in ~~a liquor~~ an alcoholic beverage license may submit to
25 the department copies of documents evidencing the security interest, the license number, and a \$30 notification
26 fee. The department shall deposit the fee as provided in 16-2-108. The department may create and provide a
27 form to be used for this purpose.

28 (c) The department shall notify ~~by certified mail~~ those that have filed information provided in

1 subsection (4)(b):

2 (i) at least 20 days prior to issuance of an order of default for revocation, nonrenewal, or lapse of
3 a license; or

4 (ii) immediately after the department's office of dispute resolution has issued a decision to uphold
5 the department's revocation or nonrenewal of a license under 16-4-406 or lapse of a license under 16-3-310.

6 (5) When a licensee is the borrower, an owner of the licensee may make a payment on the
7 institutional loan. If a payment is made under this subsection (5):

8 (a) the party making the payment must be vetted and approved prior to making the payment;

9 (b) the licensee ~~must~~shall notify the department within 90 days that the payment was made and
10 designate whether the payment will be treated as a loan or an equity investment as follows:

11 (i) for a payment treated as a loan, the licensee ~~must~~shall memorialize the loan by a written
12 agreement, which must be provided to the department; or

13 (ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as
14 a result, the licensee ~~must~~shall follow department requirements for disclosing changes in ownership
15 percentages; and

16 (c) the funds used for the payment must be the party's own funds or funds borrowed from an
17 institutional lender.

18 (6) If a borrower, coborrower, or guarantor is not the licensee or an owner of the licensee, the
19 coborrower or guarantor may make a payment on the institutional loan, and the payment does not create an
20 undisclosed ownership interest in the ~~liquor~~alcoholic beverage license by the borrower, coborrower, or
21 guarantor only if:

22 (a) the licensee notifies the department within 90 days that the payment was made;

23 (b) the payment is made as a loan that is memorialized by a written agreement; and

24 (c) the funds used for the payment are the coborrower's or guarantor's own funds or funds
25 borrowed from an institutional lender.

26 (7) A regulated lender that obtains a security interest in ~~a liquor~~an alcoholic beverage license or in
27 other assets of a business operating ~~a liquor~~an alcoholic beverage license has no duty to ensure a
28 coborrower's or guarantor's compliance with the requirements of subsection (5) or (6) in connection with loan or

1 guaranty payments it may receive from the coborrower or guarantor.

2 (8) For the purposes of subsections (5) and (6), the term "borrower" means the party that is
3 primarily responsible for making payments and that receives the funds or on whose behalf the funds were paid."

4
5 **SECTION 5. SECTION 16-6-303, MCA, IS AMENDED TO READ:**

6 **"16-6-303. Sale of liquor not purchased or transferred from agency liquor store forbidden --**
7 **penalty.** It is unlawful for any licensee to sell or keep for sale or have on the licensee's premises for any
8 purpose ~~whatever~~ any liquor except that purchased from an agency liquor store or transferred as allowed in 16-
9 4-404(7), and any . Any licensee found in possession of or selling and keeping for sale any liquor that was not
10 purchased from an agency liquor store or transferred as allowed in 16-4-404(7) shall, upon conviction, be
11 punished by a fine of not less than \$500 or more than \$1,500, by imprisonment for not less than 3 months or
12 more than 1 year, or by both fine and imprisonment. If the department is satisfied that the liquor was knowingly
13 sold or kept for sale within the licensed premises by the licensee or by the licensee's agents, servants, or
14 employees, the department shall immediately revoke the license."

15
16 **Section 6.** Section 23-5-119, MCA, is amended to read:

17 **"23-5-119. Appropriate alcoholic beverage license for certain gambling activities.** (1) Except as
18 provided in subsection (3), to be eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6, an applicant
19 must own in the applicant's name:

20 (a) a retail all-beverages license issued under 16-4-201, but the owner of a license transferred
21 after July 1, 2007, pursuant to 16-4-204 is not eligible to offer gambling;

22 (b) except as provided in subsection (1)(c), a license issued prior to October 1, 1997, under 16-4-
23 105, authorizing the sale of beer and wine for consumption on the licensed premises;

24 (c) a beer and wine license issued in an area outside of an incorporated city or town as provided in
25 16-4-105(1)(f). The owner of the license whose premises are situated outside of an incorporated city or town
26 may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title
27 23, chapter 5, part 3, 5, or 6.

28 (d) a retail beer and wine license issued under 16-4-109;

(e) a resort retail all-beverages license issued under 16-4-213; or

(f) a retail all-beverages license issued under 16-4-208.

(2) For purposes of subsection (1)(b), a license issued under 16-4-105 prior to October 1, 1997, may be transferred to a new owner or to a new location or transferred to a new owner and location by the department of revenue pursuant to the applicable provisions of Title 16. The owner of the license that has been transferred may offer gambling if the owner and the premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(3) Lessees of retail all-beverages licenses issued under 16-4-208 or beer and wine licenses issued under 16-4-109 who have applied for and been granted a gambling operator's license under 23-5-177 are eligible to offer and may be granted permits for gambling authorized under Title 23, chapter 5, part 3, 5, or 6.

(4) A license transferee or a qualified purchaser operating pending final approval under ~~16-4-404(6)~~ [section 1] who has been granted a gambling operator's license under 23-5-177 may be granted permits for gambling under Title 23, chapter 5, part 3, 5, or 6.

(5) A license issued under a competitive bidding process as provided in 16-4-430 is not eligible to offer gambling under Title 23, chapter 5, part 3, 5, or 6."

NEW SECTION. Section 7. Codification instruction. [Section 1] is intended to be codified as an integral part of Title 16, chapter 4, part 4, and the provisions of Title 16, chapter 4, part 4, apply to [section 1].

NEW SECTION. Section 8. Effective date. [This act] is effective on passage and approval.

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