

## HOUSE BILL NO. 326

INTRODUCED BY P. NOONAN

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4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL LICENSE LAWS RELATING  
5 TO BREWERS AND BREWERIES; ALLOWING LICENSED BREWERS TO HOLD A RETAIL LICENSE;  
6 ALLOWING A HOLDER OF A RETAIL LICENSE TO HOLD A BREWER LICENSE; REVISING THE DEFINITION  
7 OF "SMALL BREWERY"; REVISING BREWER LICENSE APPLICATION REQUIREMENTS; AMENDING  
8 SECTIONS 16-3-213, 16-3-214, 16-3-241, 16-3-242, 16-3-244, 16-4-203, 16-4-207, 16-4-401, 16-4-405, AND  
9 16-4-413, MCA; AND PROVIDING EFFECTIVE DATES AND AN APPLICABILITY DATE."

10  
11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

12  
13 **NEW SECTION. Section 1. Additional license allowed.** (1) A licensed brewer that manufactures less  
14 than 60,000 barrels of beer a year may purchase or hold complete ownership of a license issued pursuant to  
15 16-4-104 or 16-4-201.

16 (2) A person that holds a license issued pursuant to 16-4-104 or 16-4-201 may purchase or hold  
17 complete ownership of a brewer license if that person manufactures less than 60,000 barrels of beer a year.

18 (3) A person that holds a brewer license and a license issued pursuant to 16-4-104 or 16-4-201 may  
19 continue to operate its licenses if brewery production grows to more than 60,000 barrels a year.

20 (4) A person that holds a brewer license and a license issued pursuant to 16-4-104 or 16-4-201:

21 (a) shall maintain both licenses on the same premises, as approved by the department, and may hold:

22 (i) additional brewer licenses; or

23 (ii) up to two additional licenses issued pursuant to 16-4-104 or 16-4-201.

24 (b) may not provide samples pursuant to 16-3-213 for the brewery located at the same premises as the  
25 license issued pursuant to 16-4-104 or 16-4-201 and all retail sales must be conducted through the license issued  
26 pursuant to 16-4-104 or 16-4-201;

27 (c) may operate pursuant to 16-3-214 with the exception of 16-3-214(1)(b); and

28 (d) is not subject to the limitations of 16-3-241, 16-3-242, 16-3-244, or 16-4-401 when the prohibited acts  
29 are conducted by a brewer in the operation of its license issued pursuant to 16-4-104 or 16-4-201.

30

1           **Section 2.** Section 16-3-213, MCA, is amended to read:

2           "**16-3-213. ~~Brewers or beer importers not to retail beer -- small~~ Small brewery sample room**  
3 **exceptions exception.** ~~(1) Except as provided for small breweries in subsection (2), it is unlawful for any brewer~~  
4 ~~or breweries or beer importer to have or own any permit to sell or retail beer at any place or premises. It is the~~  
5 ~~intention of this section to prohibit brewers and beer importers from engaging in the retail sale of beer. This~~  
6 ~~section does not prohibit breweries from selling and delivering beer manufactured by them, in original packages,~~  
7 ~~at either wholesale or retail.~~

8           ~~(2) (a)(1)~~ For the purposes of this section, a "small brewery" is a brewery that has an annual nationwide  
9 production of not less than 100 barrels or more than ~~40,000~~ 60,000 barrels.

10           ~~(b)(2) (a)~~ A small brewery may, at one location for each ~~brewery~~ brewer license, provide samples of  
11 beer that were brewed and fermented on the premises in a sample room located on the licensed premises. The  
12 samples may be provided with or without charge between the hours of 10 a.m. and 8 p.m. No more than 48  
13 ounces of malt beverage may be sold or given to each individual customer during a business day.

14           (b) A small brewery that has an annual nationwide production of more than 10,000 barrels but less than  
15 60,000 barrels may operate pursuant to subsection (2)(a) as long as on-premises consumption does not exceed  
16 500 barrels annually."

17

18           **Section 3.** Section 16-3-214, MCA, is amended to read:

19           "**16-3-214. Beer sales by brewers -- sample room exception.** (1) Subject to the limitations and  
20 restrictions contained in this code, a brewer ~~who~~ that manufactures less than 60,000 barrels of beer a year, upon  
21 payment of the annual license fee imposed by 16-4-501 ~~and~~, upon presenting satisfactory evidence to the  
22 department as required by 16-4-101, and upon determination of public convenience and necessity as required  
23 by 16-4-203, must be licensed by the department, in accordance with the provisions of this code and rules  
24 prescribed by the department, to:

25           (a) sell and deliver beer from its storage depot or brewery to:

26           (i) a wholesaler;

27           (ii) licensed retailers if the brewer uses the brewer's own equipment, trucks, and employees to deliver  
28 the beer and if:

29           (A) individual deliveries, other than draught beer, are limited to the case equivalent of 8 barrels a day  
30 to each licensed retailer; and

1 (B) the total amount of beer sold or delivered directly to all retailers does not exceed 10,000 barrels a  
2 year; or

3 (iii) the public;

4 (b) provide its own products for consumption on its licensed premises without charge or, if it is a small  
5 brewery, provide its own products at a sample room as provided in 16-3-213; or

6 (c) do any one or more of the acts of sale and delivery of beer as provided in this code.

7 (2) A brewery may not use a common carrier for delivery of the brewery's product to the public or to  
8 licensed retailers.

9 (3) A brewery may import or purchase, upon terms and conditions the department may require,  
10 necessary flavors and other nonbeverage ingredients containing alcohol for blending or manufacturing purposes.

11 (4) An additional license fee may not be imposed on a brewery providing its own products on its licensed  
12 premises for consumption on the premises.

13 (5) This section does not prohibit a licensed brewer from shipping and selling beer directly to a  
14 wholesaler in this state under the provisions of 16-3-230."

15

16 **Section 4.** Section 16-3-241, MCA, is amended to read:

17 **"16-3-241. Furnishing of fixtures or interior advertising matter to retailers by brewers, beer**  
18 **importers, and wholesalers unlawful -- exceptions.** (1) (a) ~~Except as provided in [section 1],~~ it is unlawful  
19 for any brewer, beer importer, or wholesaler to lease, furnish, give, or pay for any premises, furniture, fixtures,  
20 equipment, or any other advertising matter or any other property to a retail licensee, used or to be used in the  
21 dispensation of beer in and about the interior of the place of business of the licensed retailer, or to furnish, give,  
22 or pay for any repairs, improvements, or painting on or within the premises.

23 (b) It is lawful for a brewer, beer importer, or wholesaler to furnish, give, or loan to a retail licensee:

24 (i) bottle openers, can openers, trays, tap handles, menus, apparel, coasters, glassware, cups, napkins,  
25 or other functional advertising matter that does not exceed \$300 in value in any 1 calendar year to any one retail  
26 establishment for display use within the interior of the retail establishment;

27 (ii) not more than six illuminated or electrical signs, neon signs, lamps, or lighted clocks for each brand  
28 of beer in any 1 calendar year to any one retailer for display use within the interior of the retailer's place of  
29 business. These signs, displays, lamps, or lighted clocks may bear the name, brand name, trade name,  
30 trademark, or other designation indicating the name of the manufacturer of beer and the place of manufacture.

1 Any beer advertised must be available for sale on the retailer's premises at the time the displays are used unless  
 2 the displays are the property of the retailer or, if supplied by a brewer, beer importer, or wholesaler, a display has  
 3 been in the retailer's possession for more than 9 months.

4 (iii) permanent or temporary advertising matter of a decorative nature, excluding items described in  
 5 subsection (1)(b)(ii) but including nonelectric clocks, mirrors, banners, flags, and pennants; and

6 (iv) maintenance or repair services on draft beer equipment to keep it sanitary and in good working  
 7 condition.

8 (2) A wholesaler may furnish portable equipment used for the temporary cooling, handling, and  
 9 dispensing of beer to a special permittee or a retailer for use:

10 (a) in catering an event that is off the permittee's or retailer's regular premises; or

11 (b) up to three times a year, on a retailer's regular premises, for a period not to exceed 72 hours."  
 12

13 **Section 5.** Section 16-3-242, MCA, is amended to read:

14 "**16-3-242. Financial interest in retailers prohibited.** (1) ~~A~~ Except as provided in [section 1], a brewer,  
 15 beer importer, or wholesaler may not:

16 (a) ~~advance, or loan, or furnish~~ money to ~~or furnish money for~~ or pay for or on behalf of any retailer any  
 17 license or tax that may be required to be paid for any by the retailer. ~~A brewer, beer importer, or wholesaler may~~  
 18 ~~not, or~~

19 (b) be financially interested, either directly or indirectly, in the conduct or operation of the business of a  
 20 retailer.

21 (2) A brewer, beer importer, or wholesaler is considered to have a financial interest within the meaning  
 22 of this section if:

23 ~~(+)~~(a) the brewer, beer importer, or wholesaler owns or holds any interest in or a lien or mortgage against  
 24 the retailer or the retailer's premises;

25 ~~(-)~~(b) the brewer, beer importer, or wholesaler is under any contract with a retailer concerning future  
 26 purchases or the sale of merchandise by one from or to the other; or

27 ~~(-)~~(c) any retailer holds an interest, as a stockholder or otherwise, in the business of the wholesaler."  
 28

29 **Section 6.** Section 16-3-244, MCA, is amended to read:

30 "**16-3-244. Beer advertising limitations.** (1) ~~It~~ Except as provided in subsection (2), it is lawful to

1 advertise beer, as defined and regulated, subject to the restrictions on brewers and beer importers contained in  
 2 16-3-241 ~~of this code~~ and subject to the following restrictions on retailers. A retail licensee may not display or  
 3 permit to be displayed on the exterior portion or surface of the retailer's place of business or on the exterior  
 4 portion or surface of any building of which the place of business is a part or on any premises adjacent to the place  
 5 of business, whether any of the premises are owned or leased by the retailer, any sign, poster, or advertisement  
 6 bearing the name, brand name, trade name, trademark, or other designation indicating the manufacturer, brewer,  
 7 beer importer, wholesaler, or place of manufacture of any beer, unless it is on a marquee, board, or other space  
 8 used for temporary advertisements and is not displayed for more than 10 days per display period.

9 (2) A person that holds a brewer license and a license issued pursuant to 16-4-104 or 16-4-201 under  
 10 [section 1] is not subject to the restrictions in subsection (1) for products manufactured by the person."

11

12 **Section 7.** Section 16-4-203, MCA, is amended to read:

13 **"16-4-203. Determination of public convenience and necessity.** (1) An original license issued  
 14 pursuant to 16-3-214, 16-4-104, 16-4-201, 16-4-202, or 16-4-208 or the transfer of location of ~~an on-premises~~  
 15 ~~retail license~~ these licenses may be approved if the department does not receive the minimum number of protests  
 16 required for a public convenience and necessity determination pursuant to 16-4-207, in which case the application  
 17 must be regarded as a prima facie showing of public convenience and necessity and no further determination  
 18 of public convenience and necessity is allowed.

19 (2) (a) If the department receives at least the minimum number of protests required for a public  
 20 convenience and necessity determination, as provided in 16-4-207, an application must be approved when  
 21 evidence indicates that the issuance of an original license or transfer of location will materially promote the  
 22 public's ability to engage in the licensed activity.

23 (b) The issuance of an original license or a transfer of location will materially promote the public's ability  
 24 to engage in the licensed activity if:

25 (i) the applicant's history and experience demonstrate the capacity to operate the proposed license in  
 26 a lawful manner;

27 (ii) the approval of the application for the premises at the proposed location is consistent with the public's  
 28 demand or probable demand for the licensed activity that presently exists or is reasonably expected to exist within  
 29 the next 5 years in the quota area where the proposed premises is located and in quota areas adjacent to the  
 30 quota area where the proposed premises is located;

1 (iii) the approval of the application for the premises at the proposed location contributes to the public's  
2 ability to participate in the licensed activity throughout the quota area where the proposed premises is located  
3 and quota areas adjacent to the quota area where the proposed premises is located;

4 (iv) the approval of the application for the premises at the proposed location is consistent with adopted  
5 or pending planning, annexation, and zoning ordinances of local governments that confer or will confer jurisdiction  
6 over business and developments such as the proposed license in the quota area where the proposed premises  
7 is located and in quota areas adjacent to the quota area where the proposed premises is located.

8 (3) When determining whether or not an application is justified by public convenience and necessity, the  
9 department may:

10 (a) receive evidence at the public hearing specified in 16-4-207 only from the applicant, any protestors  
11 whose protests the department has accepted pursuant to 16-4-207, and any other person summoned or called  
12 by either a protestor or applicant;

13 (b) find that the application is justified by public convenience and necessity if the applicant has provided  
14 substantial credible evidence as provided for in this subsection (3) that shows that the department's approval of  
15 the application will materially promote the public's ability to engage in the licensed activity. The substantial  
16 credible evidence required must include a consideration of each of the components of materially promoting the  
17 public's ability to engage in the licensed activity as provided in subsection (2)(b).

18 (4) For the purposes of this section, the following definitions apply:

19 (a) "Confer or will confer jurisdiction" means the power or authority that a local government or an  
20 appointed subsidiary of a local government has or may obtain within 1 year from the date of the hearing to  
21 consider and adopt planning, annexation, or zoning ordinances.

22 (b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in a  
23 business licensed to sell alcoholic beverages at retail for on-premises consumption.

24 (c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local government  
25 or an appointed subsidiary of a local government that were publicly considered within the year preceding the date  
26 of the hearing or are presently being considered."  
27

28 **Section 8.** Section 16-4-207, MCA, is amended to read:

29 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application  
30 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the location of

1 a retail on-premises license or a brewer license, the department shall review the application for completeness  
 2 and, based upon review of the application and any other information supplied to the department, determine  
 3 whether the applicant or the premises to be licensed meets criteria provided by law. The department may make  
 4 one request for additional information necessary to complete the application. The application is considered  
 5 complete when the applicant furnishes the application information requested by the department. When the  
 6 application is complete, the department of justice shall investigate the application as provided in 16-4-402. When  
 7 the department determines that an application for a license under this code is complete, the department shall  
 8 publish in a newspaper of general circulation in the city, town, or county from which the application comes a  
 9 notice that the applicant has made application for a retail on-premises license or a brewer license or a transfer  
 10 of location and that protests may be made against the approval of the application by residents of the county from  
 11 which the application comes, residents of adjoining Montana counties, or residents of adjoining counties in  
 12 another state if the criteria in subsection (4)(d) are met. Protests must be mailed to the department within 10 days  
 13 after the final notice is published. Notice of application for a new license must be published once a week for 4  
 14 consecutive weeks. Notice of application for transfer of ownership or location of a license must be published once  
 15 a week for 2 consecutive weeks. Notice may be substantially in the following form:

16 NOTICE OF APPLICATION FOR RETAIL  
 17 ALL-BEVERAGES LICENSE

18 Notice is given that on the ..... day of ....., 20..., one (name of applicant) filed an application for a retail  
 19 all-beverages license with the Montana department of revenue to be used at (describe location of premises where  
 20 beverages are to be sold). Residents of ..... counties may protest against the approval of the application. Each  
 21 protestor is required to mail a letter that contains in legible print the protestor's full name, mailing address, and  
 22 street address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures  
 23 of persons opposing the approval of an application may not be considered as a protest. Protests may be mailed  
 24 to ....., department of revenue, Helena, Montana, on or before the ..... day of ....., 20.....

25 Dated .....

26 Signed

27 .....

28 (2) Each applicant shall, at the time of filing an application, pay to the department an amount sufficient  
 29 to cover the costs of publishing the notice.

30 (3) (a) If the department receives no written protests, the department may approve the application without

1 holding a public hearing.

2 (b) A response to a notice of opportunity to protest an application may not be considered unless the  
3 response is a letter satisfying all the requirements contained in the notice in subsection (1).

4 (c) If the department receives sufficient written protests that satisfy the requirements in subsection (1)  
5 against the approval of the application, the department shall hold a public hearing as provided in subsection (4).

6 (4) (a) If the department receives at least one protest but less than the number of protests required for  
7 a public convenience and necessity determination as specified in subsection (4)(c), the department shall schedule  
8 a public hearing to be held in Helena, Montana, to determine whether the protest presents sufficient cause to  
9 deny the application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for  
10 denial of an application provided for in 16-4-405, exclusive of public convenience and necessity. The hearing  
11 must be governed by the provisions of Title 2, chapter 4, part 6.

12 (b) If the department receives the number of protests required for a public convenience and necessity  
13 determination as specified in subsection (4)(c) and the application is for an original license or for a transfer of  
14 location, the department shall schedule a public hearing to be held in the county of the proposed location of the  
15 license to determine whether the protest presents sufficient cause to deny the application based on the  
16 qualifications of the applicant as provided in 16-4-401 or on the grounds for denial of an application provided for  
17 in 16-4-405 including public convenience and necessity. The hearing must be governed by the provisions of Title  
18 2, chapter 4, part 6.

19 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an  
20 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for the  
21 proposed premises located within a quota area described in 16-4-201 must be 25% of the quota for all-beverages  
22 licenses determined for that quota area according to 16-4-201(1), (2), and (5) but in no case less than two. The  
23 minimum number of protests determined in this manner will apply only to applications for either on-premises  
24 consumption beer or all-beverages licenses.

25 (d) A resident of a county in another state that adjoins the county in Montana from which an application  
26 comes may protest an application only if the county or state of residence of the person has certified to the  
27 department that a similarly situated Montana resident would be able to make formal protest of a liquor license  
28 application in that state or county. The department may, by rule, establish how the certification is to be made."  
29

30 **Section 9.** Section 16-4-401, MCA, is amended to read:

1           **"16-4-401. License as privilege -- criteria for decision on application -- exceptions.** (1) A license  
2 under this code is a privilege that the state may grant to an applicant and is not a right to which any applicant is  
3 entitled.

4           (2) Except as provided in 16-4-311 and subsection (6) of this section and subject to subsection (8), in  
5 the case of a license that permits on-premises consumption, the department shall find in every case in which it  
6 makes an order for the issuance of a new license or for the approval of the transfer of a license that:

7           (a) if the applicant is an individual:

8           (i) and the application is approved, the applicant will not possess an ownership interest in more than  
9 three establishments licensed under this chapter for all-beverages sales;

10           (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

11           (iii) except as provided in subsections (9) and (10), the applicant or any member of the applicant's  
12 immediate family is without financing from or any affiliation to a manufacturer, importer, bottler, or distributor of  
13 alcoholic beverages;

14           (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business  
15 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all  
16 applicable laws of the state and local governments; and

17           (v) the applicant is not under 19 years of age;

18           (b) if the applicant is a publicly traded corporation:

19           (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
20 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the  
21 applicant shall designate two or more officers or board members, each of whom must meet the requirements for  
22 an individual applicant listed in subsection (2)(a).

23           (ii) each individual who has control over the operation of the license meets the requirements for an  
24 individual applicant listed in subsection (2)(a);

25           (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
26 individual applicant listed in subsection (2)(a). This subsection (2)(b)(iii) does not apply to a shareholder of a  
27 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of  
28 subsection (8) apply.

29           (iv) the corporation is authorized to do business in Montana;

30           (c) if the applicant is a privately held corporation:

1 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
2 applicant listed in subsection (2)(a). If no single owner owns more than 10% of the outstanding stock, the  
3 applicant shall designate two or more officers or board members, each of whom must meet the requirements for  
4 an individual applicant listed in subsection (2)(a), and the owners of 51% of the outstanding stock must meet the  
5 requirements of subsection (2)(a).

6 (ii) each individual who has control over the operation of the license meets the requirements for an  
7 individual applicant listed in subsection (2)(a);

8 (iii) each person who shares in the profits or liabilities of a license meets the requirements for an  
9 individual applicant listed in subsection (2)(a). This subsection (2)(c)(iii) does not apply to a shareholder of a  
10 corporation who owns less than 10% of the outstanding stock in that corporation except that the provisions of  
11 subsection (8) apply.

12 (iv) the corporation is authorized to do business in Montana;

13 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection  
14 (2)(a);

15 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all  
16 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements  
17 of subsection (2)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners  
18 must meet the requirements of subsection (2)(a).

19 (f) if the applicant is a limited liability company, all managing members and those members whose  
20 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (2)(a). If  
21 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of  
22 subsection (2)(a).

23 (3) In the case of a license that permits only off-premises consumption and subject to subsection (8),  
24 the department shall find in every case in which it makes an order for the issuance of a new license or for the  
25 approval of the transfer of a license that:

26 (a) if the applicant is an individual:

27 (i) and the application is approved, the applicant will not possess an ownership interest in more than  
28 three establishments licensed under this chapter for all-beverages sales;

29 (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

30 (iii) the applicant or any member of the applicant's immediate family is without financing from or any

1 affiliation to a manufacturer, importer, bottler, or distributor of alcoholic beverages;

2 (iv) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,  
3 the applicant's rights have been restored;

4 (v) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business  
5 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all  
6 applicable laws of the state and local governments; and

7 (vi) the applicant is not under 19 years of age;

8 (b) if the applicant is a publicly traded corporation:

9 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed  
10 in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall  
11 designate two or more officers or board members, each of whom must meet the requirements for an individual  
12 applicant listed in subsection (3)(a).

13 (ii) the corporation is authorized to do business in Montana;

14 (c) if the applicant is a privately held corporation:

15 (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
16 applicant listed in subsection (3)(a). If no single owner owns more than 10% of the outstanding stock, the  
17 applicant shall designate two or more officers or board members, each of whom must meet the requirements for  
18 an individual applicant listed in subsection (3)(a), and the owners of 51% of the outstanding stock must meet the  
19 requirements of subsection (3)(a).

20 (ii) the corporation is authorized to do business in Montana;

21 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection  
22 (3)(a);

23 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all  
24 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements  
25 of subsection (3)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners  
26 must meet the requirements of subsection (3)(a).

27 (f) if the applicant is a limited liability company, all managing members and those members whose  
28 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (3)(a). If  
29 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of  
30 subsection (3)(a).

1           (4) Subject to 16-4-311, in the case of a license that permits the manufacture, importing, or wholesaling  
2 of an alcoholic beverage, the department shall find in every case in which it makes an order for the issuance of  
3 a new license or for the approval of the transfer of a license that:

4           (a) if the applicant is an individual:

5           (i) except as provided in subsections (9) and (10), the applicant has no ownership interest in any  
6 establishment licensed under this chapter for retail alcoholic beverages sales;

7           (ii) the applicant does not possess an ownership interest in an agency liquor store as defined in 16-1-106;

8           (iii) the applicant has not been convicted of a felony or, if the applicant has been convicted of a felony,  
9 the applicant's rights have been restored;

10          (iv) the applicant's past record and present status as a purveyor of alcoholic beverages and as a business  
11 person and citizen demonstrate that the applicant is likely to operate the establishment in compliance with all  
12 applicable laws of the state and local governments;

13          (v) the applicant is not under 19 years of age; and

14          (vi) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or  
15 controlled by a manufacturer of an alcoholic beverage;

16          (b) if the applicant is a publicly traded corporation:

17          (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual listed  
18 in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the applicant shall  
19 designate two or more officers or board members, each of whom must meet the requirements for an individual  
20 applicant listed in subsection (4)(a).

21          (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or  
22 controlled by a manufacturer of an alcoholic beverage; and

23          (iii) the corporation is authorized to do business in Montana;

24          (c) if the applicant is a privately held corporation:

25          (i) each owner of 10% or more of the outstanding stock meets the requirements for an individual  
26 applicant listed in subsection (4)(a). If no single owner owns more than 10% of the outstanding stock, the  
27 applicant must designate two or more officers or board members, each of whom must meet the requirements for  
28 an individual applicant listed in subsection (4)(a) and the owners of 51% of the outstanding stock must meet the  
29 requirements of subsection (4)(a).

30          (ii) an applicant for a wholesale license is not a manufacturer of an alcoholic beverage or owned or

1 controlled by a manufacturer of an alcoholic beverage; and

2 (iii) the corporation is authorized to do business in Montana;

3 (d) if the applicant is a general partnership, each partner must meet the requirements of subsection

4 (4)(a);

5 (e) if the applicant is a limited partnership or a limited liability partnership, each general partner and all

6 limited partners whose ownership interest in the partnership equals or exceeds 10% must meet the requirements

7 of subsection (4)(a). If no single limited partner's interest equals or exceeds 10%, then 51% of all limited partners

8 must meet the requirements of subsection (4)(a).

9 (f) if the applicant is a limited liability company, all managing members and those members whose

10 ownership interest in the company equals or exceeds 10% must meet the requirements of subsection (4)(a). If

11 no single member's interest equals or exceeds 10%, then 51% of all members must meet the requirements of

12 subsection (4)(a).

13 (5) In the case of a corporate applicant, the requirements of subsections (2)(b), (3)(b), and (4)(b) apply

14 separately to each class of stock.

15 (6) The provisions of subsection (2) do not apply to an applicant for or holder of a license pursuant to

16 16-4-302.

17 (7) An applicant's source of funding must be from a suitable source. A lender or other source of money

18 or credit may be found unsuitable if the source:

19 (a) is a person whose prior financial or other activities or criminal record:

20 (i) poses a threat to the public interest of the state;

21 (ii) poses a threat to the effective regulation and control of alcoholic beverages; or

22 (iii) creates a danger of illegal practices, methods, or activities in the conduct of the licensed business;

23 or

24 (b) has been convicted of a felony offense within 5 years of the date of application or is on probation or

25 parole or under deferred prosecution for committing a felony offense.

26 (8) (a) An individual applying for an all-beverages license or having any ownership interest in an entity

27 applying for an all-beverages license may not, if the application were to be approved, own an interest in more

28 than half the total number of allowable all-beverages licenses in any quota area described in 16-4-201.

29 (b) If two or more individuals through business or family relationship share in the profits or liabilities of

30 all-beverages licenses, the aggregate number of licenses in which they share profits or liabilities may not exceed

1 half the total number of allowable all-beverages licenses in the specific quota area in which the all-beverages  
2 licenses will be held.

3 (9) Pursuant to [section1]:

4 (a) A person licensed as a brewer may also hold a license issued pursuant to 16-4-104 or 16-4-201.

5 (b) A person who holds a license issued pursuant to 16-4-104 or 16-4-201 may hold a brewer license.

6 (10) The prohibited acts described in subsections (2)(a)(iii) and (4)(a)(i) are not prohibited if the acts are  
7 conducted by an applicant that holds a brewer and retail license pursuant to [section 1]."

8

9 **Section 10.** Section 16-4-405, MCA, is amended to read:

10 **"16-4-405. Denial of license.** (1) The department may deny the issuance of a ~~retail alcoholic beverages~~  
11 license to sell alcoholic beverages at retail if it determines that the premises proposed for licensing are off regular  
12 police beats and cannot be properly policed by local authorities.

13 (2) A ~~retail~~ license to sell alcoholic beverages at retail may not be issued by the department for a  
14 premises situated within a zone of a city, town, or county where the sale of alcoholic beverages is prohibited by  
15 ordinance, a certified copy of which has been filed with the department.

16 (3) A license under this code may not be issued if the department finds from the evidence at the hearing  
17 held pursuant to 16-4-207(3) that:

18 (a) the welfare of the people residing or of retail licensees located in the vicinity of the premises for which  
19 the license is desired will be adversely and seriously affected;

20 (b) if required, there is not a public convenience and necessity justification pursuant to 16-4-203;

21 (c) the applicant or the premises proposed for licensing fail to meet the eligibility or suitability criteria  
22 established by this code;

23 (d) a possible reason for denial listed in a conditional approval letter, as provided in 16-4-402, has been  
24 verified; or

25 (e) the purposes of this code will not be carried out by the issuance of the license."  
26

26

27 **Section 11.** Section 16-4-413, MCA, is amended to read:

28 **"16-4-413. Denial of application -- five-year moratorium.** (1) If an application for the issuance of a new  
29 license or for the transfer of an existing license has been denied for any reason provided in 16-4-405, the  
30 department may not consider an application or issue any ~~retail~~ license to sell alcoholic beverages at retail, special

1 permit, or special license for those premises for 5 years unless the department, using the criteria described in  
2 subsection (3), determines that the proposed use is substantially different from the use that was rejected. The  
3 prohibition period commences on the date of the final agency decision or, if judicially reviewed, on the date the  
4 judicial decision is final.

5 (2) If an application is withdrawn after a hearing has been held in which testimony is received regarding  
6 any reason for denial provided in 16-4-405, the effect of the withdrawal is the same as if a final decision had been  
7 made denying the application for any reason provided in 16-4-405. The 5-year prohibition against considering  
8 an application or issuing a license for that vicinity commences on the date of the withdrawal.

9 (3) The department shall determine whether a proposed use is substantially different by considering:

- 10 (a) the capacity of the proposed use;  
11 (b) the nature of the establishment;  
12 (c) the presence and character of any entertainment; and  
13 (d) the characteristics of the neighborhood."  
14

15 **NEW SECTION. Section 12. Codification instruction.** [Section 1] is intended to be codified as an  
16 integral part of Title 16, chapter 3, part 2, and the provisions of Title 16, chapter 3, part 2, apply to [section 1].  
17

18 **NEW SECTION. Section 13. Saving clause.** [This act] does not affect rights and duties that matured,  
19 penalties that were incurred, or proceedings that were begun before [the effective date of this act].  
20

21 **NEW SECTION. Section 14. Effective dates.** (1) Except as provided in subsection (2), [this act] is  
22 effective July 1, 2015.

23 (2) [Sections 3, 7, and 8] are effective January 1, 2017.  
24

25 **NEW SECTION. Section 15. Applicability.** [Sections 3, 7, and 8] apply to brewer license applications  
26 submitted on or after January 1, 2017.  
27

- END -