

## 1 HOUSE BILL NO. 619

2 INTRODUCED BY J. ECK

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4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE QUOTA SYSTEM FOR ISSUING RESTAURANT  
5 BEER AND WINE LICENSES; INCREASING THE NUMBER OF RESTAURANT BEER AND WINE LICENSES  
6 THAT MAY BE ISSUED IN A QUOTA AREA; PROVIDING TRANSFER RESTRICTIONS ON CERTAIN NEW  
7 RESTAURANT BEER AND WINE LICENSES; PROVIDING A PHASE-OUT OF THE QUOTA SYSTEM FOR  
8 RESTAURANT BEER AND WINE LICENSES; PROVIDING A TRANSITION SECTION TO ELIMINATE THE  
9 QUOTA SYSTEM FOR AREAS THAT ARE NOT SUBJECT TO QUOTA LIMITATIONS; AMENDING SECTION  
10 16-4-420, MCA; AND PROVIDING AN EFFECTIVE DATE."

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12 WHEREAS, the Legislature desires to encourage the growth of small businesses; and  
13 WHEREAS, one way to encourage the growth of restaurants in the state is through the increased  
14 availability of restaurant beer and wine licenses; and  
15 WHEREAS, providing increased restaurant beer and wine licenses will give entrepreneurs options, create  
16 jobs, and provide consumers with more choices in the marketplace.

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

19  
20 **Section 1.** Section 16-4-420, MCA, is amended to read:

21 **"16-4-420. Restaurant beer and wine license.** (1) The department shall issue a restaurant beer and  
22 wine license to an applicant whenever the department determines that the applicant, in addition to satisfying the  
23 requirements of this section, meets the following qualifications and conditions:

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

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

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

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

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

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

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

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

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

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

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

25 (a) the applicant is qualified to receive a license;

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

27 (c) the requirements of this code and the rules promulgated by the department are complied with; and

28 (d) the seating capacity stated on the application is correct.

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

1 (5) If a premises proposed for licensing under this section is a new or remodeled structure, then the  
2 department may issue a conditional license prior to completion of the premises based on reasonable evidence,  
3 including a statement from the applicant's architect or contractor confirming that the seating capacity stated on  
4 the application is correct, that the premises will be suitable for the carrying on of business as a bona fide  
5 restaurant, as defined in subsection (6).

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

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

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

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

15 (iv) that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between the  
16 hours of 5 p.m. and 11 p.m. The provisions of subsection (6)(b) and this subsection (6)(a)(iv) do not apply to a  
17 restaurant for which a restaurant beer and wine license is in effect as of April 9, 2009, or to subsequent renewals  
18 of that license.

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

21 (7) (a) ~~A~~ Except as provided in subsection (8)(d), a restaurant beer and wine license may be transferred,  
22 upon approval by the department, from the original applicant to a new owner of the restaurant only after 1 year  
23 of use by the original owner.

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

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

30 (8) ~~(a)~~ The department shall issue a restaurant beer and wine license to a qualified applicant as follows:

- 1 ~~———(i) except as provided in subsection (8)(c), for a restaurant located in a quota area with a population of~~  
 2 ~~5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer~~  
 3 ~~and wine licenses issued in that quota area is equal to or less than 80% of the number of beer licenses that may~~  
 4 ~~be issued in that quota area pursuant to 16-4-105;~~
- 5 ~~———(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota~~  
 6 ~~area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota~~  
 7 ~~area is equal to or less than 160% of the number of beer licenses that may be issued in that quota area pursuant~~  
 8 ~~to 16-4-105;~~
- 9 ~~———(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota~~  
 10 ~~area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota~~  
 11 ~~area is equal to or less than 100% of the number of beer licenses that may be issued in that quota area pursuant~~  
 12 ~~to 16-4-105;~~
- 13 ~~———(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota~~  
 14 ~~area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota~~  
 15 ~~area is equal to or less than 80% of the number of beer licenses that may be issued in that quota area pursuant~~  
 16 ~~to 16-4-105; and~~
- 17 ~~———(v) for a restaurant located in a quota area that is also a resort community, as the resort community is~~  
 18 ~~designated by the department of commerce under 7-6-1501(5), if the number of restaurant beer and wine licenses~~  
 19 ~~issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer~~  
 20 ~~licenses that may be issued in that quota area pursuant to 16-4-105.~~
- 21 ~~———(b) In determining the number of restaurant beer and wine licenses that may be issued under this~~  
 22 ~~subsection (8) based on the percentage amounts described in subsections (8)(a)(i) through (8)(a)(v), the~~  
 23 ~~department shall round to the nearer whole number.~~
- 24 ~~———(c) If the department has issued the number of restaurant beer and wine licenses authorized for a quota~~  
 25 ~~area under subsection (8)(a)(i), there must be a one-time adjustment of four additional licenses for that quota~~  
 26 ~~area.~~
- 27 ~~(d) If there are more applicants than licenses available in a quota area, then the license must be awarded~~  
 28 ~~by lottery as provided in subsection (9).~~
- 29 (a) for a restaurant located in a quota area with a population of 20,000 persons or fewer, as the  
 30 population of the quota area is determined in 16-4-105, that is at or above the number of licenses authorized by

1 this section on June 30, 2015, the department shall publish the availability of one new restricted license for that  
2 quota area during each calendar year:

3 (b) for a restaurant located in a quota area with a population of more than 20,000 persons, as the  
4 population of the quota area is determined in 16-4-105, that is at or above the number of licenses authorized by  
5 this section on June 30, 2015, the department shall publish the availability of two new restricted licenses for that  
6 quota area during each calendar year:

7 (c) if at the end of a calendar year all the new licenses authorized for a given quota area under  
8 subsections (8)(a) and (8)(b) are not issued or if the department has not received completed applications for  
9 which licenses subsequently are issued, then that area is not subject to a population-based quota in subsequent  
10 calendar years; and

11 (d) a new license that is issued under the provisions of subsection (8)(a) or (8)(b) is restricted, and may  
12 not be transferred to another location or applicant until the quota area where the license is issued is no longer  
13 subject to a population-based quota. This subsection (8)(d) does not prohibit the transfer of a license to an  
14 applicant when the license is used at the same location.

15 (9) (a) When a restaurant beer and wine license becomes available by the initial issuance of licenses  
16 under this section or as the result of an increase in the population in the quota area, the nonrenewal of a  
17 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the department  
18 shall advertise the availability of the license in the quota area for which it is available. If there are more applicants  
19 than number of licenses available, the license must be awarded to an applicant by a lottery.

20 (b) A preference must be given to an applicant who does not yet have in any quota area a restaurant  
21 beer and wine license or a retail beer license and who operates a restaurant that is in the quota area described  
22 in subsection (8) in which the license has become available and that meets the qualifications of subsection (6)  
23 for at least 12 months prior to the filing of an application. An applicant with a preference must be awarded a  
24 license before any applicant without a preference.

25 (c) The department shall numerically rank all applicants in the lottery. Only the successful applicants will  
26 be required to submit a completed application and a one-time required fee. An applicant's ranking may not be  
27 sold or transferred to another person or entity. The preference and an applicant's ranking apply only to the  
28 intended license advertised by the department or to the number of licenses determined under subsection (8)  
29 when there are more applicants than licenses available. The applicant's qualifications for any other restaurant  
30 beer and wine license awarded by lottery must be determined at the time of the lottery.

1 (d) If a successful lottery applicant does not use a license within 1 year of notification by the department  
2 of license eligibility, the applicant shall forfeit the license. The department shall refund any fees paid except the  
3 application fee and offer the license to the next eligible ranked applicant in the lottery.

4 (10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises  
5 consumption.

6 (11) An application for a restaurant beer and wine license must be accompanied by a fee equal to 20%  
7 of the initial licensing fee. If the department does not make a decision either granting or denying the license within  
8 4 months of receipt of a complete application, the department shall pay interest on the application fee at the rate  
9 of 1% a month until a license is issued or the application is denied. Interest may not accrue during any period that  
10 the processing of an application is delayed by reason of a protest filed pursuant to 16-4-203 or 16-4-207. If the  
11 department denies an application, the application fee, plus any interest, less a processing fee established by rule,  
12 must be refunded to the applicant. Upon the issuance of a license, the licensee shall pay the balance of the initial  
13 licensing fee. The amount of the initial licensing fee is determined according to the following schedule:

14 (a) \$5,000 for restaurants with a stated seating capacity of 60 persons or less;

15 (b) \$10,000 for restaurants with a stated seating capacity of 61 to 100 persons; or

16 (c) \$20,000 for restaurants with a stated seating capacity of 101 persons or more.

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

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

22 (14) The number of beer and wine licenses issued to restaurants with a stated seating capacity of 101  
23 persons or more may not exceed 25% of the total licenses issued.

24 (15) Possession of a restaurant beer and wine license is not a qualification for licensure of any gaming  
25 or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant with a  
26 restaurant beer and wine license."

27

28 **NEW SECTION. Section 2. Transition.** If a quota area has licenses available for issue as of June 30,  
29 2015, then the quota area is not subject to a population-based quota for subsequent years.

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1            NEW SECTION. **Section 3. Saving clause.** [This act] does not affect rights and duties that matured,  
2 penalties that were incurred, or proceedings that were begun before [the effective date of this act].

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4            NEW SECTION. **Section 4. Effective date.** [This act] is effective July 1, 2015.

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