

## HOUSE BILL NO. 315

INTRODUCED BY L. DEMING

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING RESTAURANT BEER AND WINE ALCOHOL LICENSES; REVISING THE RATIO OF GROSS INCOME RELATING TO FOOD SALES VERSUS ALCOHOL SALES; REVISING HOURS OF OPERATION TO PROVIDE THAT THEY ARE AT THE LICENSEE'S DISCRETION; REQUIRING NOTICE TO THE DEPARTMENT FOR CHANGE IN OPERATING HOURS; AND AMENDING SECTIONS 16-4-420, 16-4-422, AND 16-4-423, MCA."

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

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

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

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

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

(i) the applicant intends to open a restaurant that will meet the requirements of subsection (4) and intends to operate the restaurant so that at least ~~65%~~ 70% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food. The department may audit the ~~65%~~ 70% requirement at any time in the first year of ownership.

(ii) the restaurant beer and wine license will be used in conjunction with that restaurant, that the restaurant ~~will~~ may serve beer and wine ~~only to a patron regardless of whether the patron who orders food, and~~ that beer and wine purchases will be stated on the food any bill; and

(iii) the restaurant will serve beer and wine from a service bar, as service bar is defined by the

1 department by rule; and

2 (c) the applicant states the planned seating capacity of the restaurant, if it is to be built, or the  
3 current seating capacity if the restaurant is operating.

4 (2) A completed application for a license under this section and the appropriate application fee, as  
5 provided in subsection (8), must be submitted to the department. The department shall investigate the items  
6 relating to the application as described in subsections (2)(a) and (2)(b). Based on the results of the investigation  
7 and the exercise of its sound discretion, the department shall determine whether:

8 (a) the applicant is qualified to receive a license; and

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

10 (ii) the applicant is qualified to receive a license prior to a determination that the applicant's  
11 premises are suitable for carrying on with the business in accordance with 16-4-417; or

12 (iii) if the applicant has already been issued a license, the proposed premises are suitable for the  
13 carrying on of the business and the seating capacity stated on the application is correct.

14 (3) An application for a license submitted under this section is subject to the provisions of 16-4-  
15 203, 16-4-207, and 16-4-405.

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

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

18 (ii) where at least ~~65%~~ 70% of the restaurant's annual gross income from the operation must be  
19 from the sale of food prepared on the premises and not from the sale of alcoholic beverages. Each year after a  
20 license is issued, the applicant shall file with the department a statement, in a form approved by the  
21 department, attesting that at least ~~65%~~ 70% of the gross income of the restaurant during the prior year resulted  
22 from the sale of food prepared on the premises.

23 (iii) that has a dining room, a kitchen, and the number and kinds of employees necessary for the  
24 preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for use  
25 as a full-service restaurant. The dining room for the restaurant must contain at least half of the total available  
26 seats.

27 ~~(iv) — that serves an evening dinner meal at least 4 days a week for at least 2 hours a day between~~  
28 ~~the hours of 5 p.m. and 11 p.m.~~

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

(c) The provisions of ~~subsections (4)(a)(iv) and subsection~~ (4)(b) do not apply to a restaurant for which a restaurant beer and wine license was in effect as of April 9, 2009, or to subsequent renewals of that license.

(5) (a) The department shall issue a restaurant beer and wine license to a qualified applicant:

(i) except as provided in subsection (5)(c), for a restaurant located in a quota area with a population of 5,000 persons or fewer, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer and wine licenses that may be issued in that quota area pursuant to 16-4-105;

(ii) for a restaurant located in a quota area with a population of 5,001 to 20,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 160% of the number of beer and wine licenses that may be issued in that quota area pursuant to 16-4-105;

(iii) for a restaurant located in a quota area with a population of 20,001 to 60,000 persons, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 100% of the number of beer and wine licenses that may be issued in that quota area pursuant to 16-4-105;

(iv) for a restaurant located in a quota area with a population of 60,001 persons or more, as the quota area population is determined in 16-4-105, if the number of restaurant beer and wine licenses issued in that quota area is equal to or less than 80% of the number of beer and wine licenses that may be issued in that quota area pursuant to 16-4-105; and

(v) for a restaurant located in a quota area that is also a resort community, as defined in 7-6-1501, if the number of restaurant beer and wine licenses issued in the quota area that is also a resort community is equal to or less than 200% of the number of beer and wine licenses that may be issued in that quota area pursuant to 16-4-105.

(b) In determining the number of restaurant beer and wine licenses that may be issued under this subsection (5) based on the percentage amounts described in subsections (5)(a)(i) through (5)(a)(v), the

1 department shall round to the nearer whole number.

2 (c) If the department has issued the number of restaurant beer and wine licenses authorized for a  
3 quota area under subsection (5)(a)(i), there must be a one-time adjustment of four additional licenses for that  
4 quota area.

5 (d) (i) When the 5-mile boundary of one incorporated city or incorporated town overlaps the 5-mile  
6 boundary of another incorporated city or incorporated town, the quota area for each city or town terminates in a  
7 straight line equidistant between each city or town. A license that is restricted by quota limitations in this section  
8 may not be located farther than:

9 (A) the county boundary within which the incorporated city or incorporated town is located; or

10 (B) the line that separates the incorporated city's or incorporated town's boundary from another  
11 incorporated city or incorporated town as specified in this section.

12 (ii) If there are more than two overlapping quota areas, the quota area for each city or town  
13 terminates from the center of the overlap in a straight line to the intersecting exterior point of overlap. Licenses  
14 existing as of November 24, 2017, will be designated as belonging to whichever quota area they are in as a  
15 result of the straight line equidistant between each city or town, except for the following:

16 (A) In the Helena and East Helena previously combined quota area, the straight line will be drawn  
17 connecting the two outermost edges of the Helena corporate boundaries and extend outward to the quota area  
18 boundaries. Any license existing as of November 24, 2017, with a physical address of Helena will become a  
19 Helena license or with a physical address of East Helena will become an East Helena license, regardless of  
20 where it falls in the new quota areas.

21 (B) In the Pinesdale and Hamilton previously combined quota area, the straight line will be drawn  
22 along Mill Creek road to the quota area boundaries.

23 (C) In the Polson and Ronan quota areas, the straight line will be drawn from U.S. highway 93 west  
24 on Pablo West road to the quota area boundary and east on Clairmont road extending out to the quota area  
25 boundary. Any license existing as of November 24, 2017, within the Polson quota area will become a Polson  
26 license, regardless of where it falls in the new quota areas. Any license existing as of November 24, 2017,  
27 within the Ronan quota area will become a Ronan license, regardless of where it falls in the new quota areas.

28 (6) For a period of 12 years after November 24, 2017, existing licenses or licenses that resulted

1 from applications in process as of November 24, 2017, in either of two quota areas that were established as  
2 provided in 16-4-105 and subsection (5)(d) of this section may be transferred between the two quota areas if  
3 they were part of the combined quota area prior to November 24, 2017.

4 (7) When more than one new restaurant beer and wine license is subject to the competitive  
5 bidding process in the same quota area, the department shall conduct a separate competitive bidding process  
6 at separate times for each available license.

7 (8) When a restaurant beer and wine license becomes available by the initial issuance of licenses  
8 under this section or as the result of an increase in the population in a quota area, the nonrenewal of a  
9 restaurant beer and wine license, or the lapse or revocation of a license by the department, then the  
10 department shall advertise the availability of the license in the quota area for which it is available.

11 (9) When the department determines that a quota area is eligible for a new restaurant beer and  
12 wine license under subsection (6) or (8), the department shall use a competitive bidding process as provided in  
13 16-4-430 to determine the party afforded the opportunity to apply for a new license.

14 (10) (a) Except as provided in subsection (10)(b), beer and wine may be sold for off-premises  
15 consumption, including curbside pickup, between the hours of ~~11 a.m. and 11 p.m.~~ as determined in 16-4-422  
16 in original packaging, prepared servings, or growlers. If offering off-premises sales, food must also be ordered,  
17 the purchase price of the off-premises beer and wine may not exceed the purchase price of the food ordered,  
18 the beer or wine must be stated on the food bill, and the sales must count toward the ~~65%~~ 70% limit as  
19 provided in this section.

20 (b) A restaurant beer and wine licensee may apply to the department and pay a fee for an  
21 endorsement to, with the licensee's own employees 21 years of age or older, deliver beer and wine in original  
22 packaging if the delivery includes food that is prepared by the licensee at the licensee's premises. The  
23 purchase price of the delivered beer and wine may not exceed the purchase price of the delivered food.

24 (11) The amount of the initial licensing fee is determined according to the following schedule and  
25 must be paid before the license is issued:

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

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

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

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

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

6           (14)    The number of licenses issued under this section to restaurants with a stated seating capacity  
7 of 101 persons or more may not exceed 25% of the number of restaurant beer and wine licenses allowed in the  
8 quota area.

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

12          (16)    A person licensed under this section may possess and use liquor in the kitchen of the licensed  
13 premises only for the preparation of food and as long as the alcohol content is cooked out of the food at the  
14 time of serving. Nothing in this subsection authorizes a licensee to consume, sell, serve, or give away liquor.

15          (17)    The department may adopt rules to implement this section."  
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17           **Section 2.** Section 16-4-422, MCA, is amended to read:

18           **"16-4-422. Sale of beer and wine prohibited during certain hours.** Except as provided in 16-3-305,  
19 restaurants licensed pursuant to 16-4-420 in which beer and wine are sold, offered for sale, or given away at  
20 retail may ~~not serve beer and wine between the hours of 11 p.m. and 11 a.m.~~ serve beer and wine for 12  
21 consecutive hours but not earlier than 8 a.m. or later than 11 p.m., subject to the limitations on serving hours as  
22 provided in this code. A licensee shall provide the department with its operating hours and shall obtain  
23 department approval before altering its serving hours. However, if an incorporated city or town has by  
24 ordinance further restricted the hours of sale of beer and wine, then the sale of beer and wine in restaurants  
25 licensed to sell beer and wine, pursuant to 16-4-420, is prohibited within the limits of the city or town during the  
26 time that the sale is prohibited by this section and in addition to the hours that the sale is prohibited by  
27 ordinance."  
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