

## HOUSE BUSINESS AND INDUSTRY

January 14, 1981

## SUMMARY OF HB 52 -

Introduced by Rep. Feda, amends the Montana Uniform Gifts to Minors Act by deleting the more restrictive of the alternate options of whom the donor can select as the original custodian by removing the requirement that the adult person be a member of the minor's family or his guardian.

## HOUSE BILL 104 - Information requested by Committee Chairman

MONTANA SUPREME COURT RULING ON LOCATION OF RURAL UTILITY'S  
ANNUAL MEETING

In August 1978, the Montana Supreme Court ruled in Dreyer vs Mid-Rivers Telephone, Inc., in one section of its opinion, that Section 35-18-303, MCA, does not allow the trustees of a rural utility cooperative unlimited discretion in choosing the site of a meeting of members.

A meeting may be held in some location other than the principal place of business, but that location must be specified in the bylaws. If an alternate location is not specified by name in the bylaws, the cooperative has no choice but to assemble its members at the town where its principal office is located.

The chairman asked the researcher to determine if incorporation into the co-op's bylaws of the language proposed in the amendment to subsection (3) in HB 104 would resolve the problem.

Probably not as long as 35-18-303 contains its present language, because the Supreme Court opinion seems to require that under existing law, the name of the location of the annual meeting must be expressly stated in the bylaws.

Attached is copy of that portion of the opinion in Dreyer vs Mid-Rivers that addresses this question.

## HOUSE BUSINESS AND INDUSTRY COMMITTEE

Rep. W. Jay Fabrega, Chairman, called this meeting to order at 8:00 a.m., January 14, 1981, in Room 129, Capitol Building, Helena. All members were present except Rep. Bob Ellerd who was excused. HB 52 was to be heard, and a report was to be given by the Department of Revenue on liquor license quotas.

## HOUSE BILL 52 -

REP. G. C. "JERRY" FEDA, House District #4, Valley County, sponsor, said HB 52 is a housekeeping bill allowing a donor to appoint any adult person or trust as guardian of a minor, and not requiring that person to be a member of the minor's family or his guardian.

Rep. Andreason suggested in the title, line 6, following "OPTIONS", strike "ON", insert "AS TO".

There were no opponents and no questions were asked.

## EXECUTIVE SESSION -

LEON MESSERLY, Administrator of the Liquor Division of the Department of Revenue, and LEE WILLIAMS, Licensing Bureau chief were present to explain.

The quota system came into being in 1947. It was based on population of a 10-year census. This was extremely difficult because quotas were filled when the system came into being because of the grandfather clause. See EXHIBIT A.

Rep. O'Hara - Floater licenses can only be transferred by inheritance and cannot float again?

Rep. Vincent - You can issue so many licenses and then if the population drops those areas are overquota? Mr. Messerly - Those in business in 1947 were allowed to remain because of the grandfathering clause. Liquor by the drink came in in 1937. Many cities and counties had overquotas when the system was adopted.

Rep. Wallin - Are special licenses such as resort licenses included in the quota? Mr. Williams - Butte with 23,368 should be allowed to have 18, but there were 87 bars in existence and they were over quota. Great Falls with 61,000 should have 43 licenses, and they have 73 - 30 over quota. They are quite valuable because of no more being available. There will be a few licenses available both in Billings and Bozeman.

Rep. Jensen - Any large cities that will be under quota? Mr. Williams - Few counties are under quota. Rep. Jensen - If they have an opening for that many licenses and 50 applications are made, how do you decide who gets them? Mr. Williams - They will put an ad in the paper and put a closing date on that and accept applications until a certain time. Anyone who applies in that time is considered an applicant. They state their case and what they have, and then they hire an outside person who makes the decision as to who best fits into the area. The price is established by an annual renewal fee. Licenses are considered to be personal property.

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Rep. Ellison - Is there any time limit to be issued? Mr. Williams - County licenses are all out in the county. If there is someone who wants to apply for that license, and they qualify and can show a need, the applicant would get the license.

Rep. Kitselman - If Billings is over quota, and you say six new licenses might be available, why issue a license at all? Mr. Williams - There won't be any additional licenses in Billings unless there are floater licenses which might be available. There won't be any just original licenses available. Mr. Messerly - No cost involved if there is a city of over 10,000 population, a \$20,000 one time fee is paid to the state for a new license. A person has to have a piece of land and has to have a plan, and then they have six months to get going. They are watched very closely.

Rep. Ellison - Is there any hearing process by which people can protest? Mr. Williams - Cases can go all the way to the Supreme Court.

Rep. Robbins - Licenses should not be made transferrable when the value of an old one is \$135,000 and a new one is issued for \$20,000. Mr. Messerly - There is a bill doing away with the system over a 15-year time that has been introduced, as has another one establishing a price.

Rep. Wallin - Floater licenses cannot be mortgaged? Mr. Williams - They cannot sell a floater license, they can only be inherited. A bank will show on the face of the license if they are mortgaged.

Rep. Fabrega - Is inheriting only by lineal descent? Mr. Williams - It depends upon how your will is made out. Rep. Fabrega - The law specifically forbids mortgaging.

Rep. Vincent - Does the Liquor Division have a position? Are you just in the position of administering the law? If you separate having a quota system or cutting down on the availability of liquor from the market place, you are going to preclude some applicants because of the quota system. He thinks the marketplace would be a better regulator.

Rep. O'Hara - Why was the floater license made in 1977 so it could not be mortgaged? Mr. Williams - Because of the type of license it is. All people want is the right to serve liquor. Rep. Fabrega - You can go to Butte and buy a license for \$5-10,000, float it into Bozeman at a value of \$100,000, but you couldn't sell it. What are licenses being mortgaged at? Mr. Williams - Lot of them are package deals. Some floaters in the past have gone for \$10-12,000, some from \$20-80,000. It is plain demand - whatever people are willing to pay for them. The \$100,000 ones are usually a package deal, a bar setup with the license.

Mr. Messerly - Beer licenses are under the same quota as all-beverage. Beer licenses are right on. They came into effect in 1967. For a wine license, they must serve some kind of food on the premises. As long as they sell some kind of food, they can get a wine license along with a beer license. It costs \$650-800 for a beer license, a wine license is \$400. There will be a good many beer licenses available because they weren't over quota. Beer licenses are considered personal property.

Mr. Williams - Off premise licenses are issued to bona fide groceries or firms doing \$3,000 worth of saleable food stuff business.

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You have to have the beer license to get the wine license for an on-premise license. An on-premise license you can sell beer or wine, but you cannot allow any to be taken from the premise.

Rep. Kitselman - How would a two-year census help you? Mr. Williams - It would help a lot. Ten years is an awfully long time to wait for a license. It will be simpler every two years to get the figures and go through them.

Rep. Vincent - Have you reviewed the 15-year phase-out start? Mr. Messerly - Every three years they issue a variable amount of licenses, it continues for 15 years, so that at the end of the 15 years, they can get a license. Rep. Fabrega - A combination of the tavern association and council of churches in an effort to eliminate wide spread use of liquor was what initiated the quota system.

Rep. Bergene - Are you aware of the revenue that the state gets from these fees? Mr. Messerly - That would probably increase. They get an annual renewal fee. It would maybe double or triple the licensing fees. Mr. Williams - Even if phased out, licenses would still be considered personal property. Could come to the state and be awarded a license, but you would not be just buying a piece of paper. Rep. Andreason - Would this drop the price of a liquor license? Mr. Messerly - Yes, it would take away the option of selling. Rep. Fabrega - The revenue oversight committee recommended simply having an annual fee.

All-beverage and catering licenses can be used at a dance, picnic, wedding reception, they are connected to the all beverage license. Veterans and fraternal organizations are outside the quota. An airport can lease their license, every other license is by ownership. They apply, and then lease their license. The operator has to be the owner of the license. There are two airport lessee licenses.

A resort license does not fall under the quota. The purpose is not for the drinking, it is for recreational purposes. You have to have \$500,000 worth of buildings, seating capacity for 50, swimming pools, tennis courts, golf courses, etc., and have to have 15 contiguous acres.

Rep. Schultz - Is any agency keeping some of the profits to pay for the license? Mr. Messerly - There is no withholding system. Montana cities have an open container law. Eighteen years ago you could sell and own liquor, but were not allowed to drink it. Licenses are not advertised separately.

Rep. Robbins - Feel here is a chance for a hearing officer to get himself a lot of money - how do you determine which is the best applicant? Mr. Williams - They go on building, on-going business, affidavit of public need and convenience, and he has to decide which place would serve the best needs of the public. There is an appeal process straight on through. If a felon is now clean, he could hold a license. Anyone has to show need for a license. It is a statutory requirement to show proof of public need and convenience.

#### EXECUTIVE SESSION -

Rep. Schultz moved HOUSE BILL 52 DO PASS. Rep. Andreason moved to amend the title, line 6, following "OPTIONS", strike "ON", insert "AS TO", and this motion carried with Rep. Manning voting No. Rep. Schultz reworded his motion to HOUSE BILL 52 AS AMENDED DO PASS. Motion carried unanimously.

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HOUSE BILL 105 - Rep. Kitselman moved HB 105 DO NOT PASS. He feels this legislation is unnecessary.

Rep. Jacobsen - This would just make it the same as under state reporting. Rep. Kitselman - State lands is a single lessee. When you have private leases, you could have many lessees. Rep. Jacobsen - Oil companies are making separate production reports on each well anyway. Some lessees are wondering about the report's accuracy. They would have to hire an attorney to learn the accuracy of accounting of royalties.

Rep. Andreason - Making it statutory would not require an individual to hire an attorney. Rep. Jacobsen - Maybe all oil companies don't have a stub fastened to their check. There is no requirement that this report be made.

Rep. Jacobsen made a substitute motion to postpone action on HOUSE BILL 105. And this motion carried with 15 for and 4 against it.

Meeting adjourned at 9:30 a.m.

  
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REP. W. JAY FABREGA, CHAIRMAN

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Josephine Lahti, Secretary

1980 C E N S U S

The availability of additional licenses will be determined on the basis of increase in population as shown by the official U.S. Census that was taken in 1980.

When the enumeration is received and it is determined by using the formula in Section 16-4-201, M.C.A., that there are now licenses authorized by the adjusted quota figures, we will submit ads to all newspapers of general circulation in the city, town, or county affected. This will serve to notify all interested parties of the availability of a license(s). The advertisements will include all pertinent information such as quota area, where to get applications, and will also list the closing date for submittal of applications.

The bureau will then process the applications received and when it is determined all are complete and in compliance with Montana Statute, the division will promptly publish in the area newspaper that such applicant(s) has made application. By statute, the notice of application for a new license shall be published once a week for four consecutive weeks. Also, in accordance to Section 14-4-501(f), M.C.A., an applicant for the issuance of an original license shall pay a one-time original license fee of \$20,000. in incorporated cities with a population of 10,000 or more.

A hearing is then set and an independent hearing officer gives all applicant(s) the opportunity to "state their case" explaining their locations, premise, financial status, and also included is an affidavit explaining how public need and convenience will be served if they receive the license. The Hearing Officer then tenders the decision on which applicant best fulfills all the requirements and the license(s) is issued.

### FLOATER LICENSES

As of July 1, 1975, Senate Bill One allowed transfer of liquor licenses between quota areas. Circumstances to float a license are as follows:

1. Licenses can be transferred out of areas which are 25% or more over quota;
2. Licenses can be transferred only into areas which do not exceed their quota by 25%.
  - a. Licenses transferred between quota areas are further restricted in:
    - (1) They may be held only by natural persons. Natural persons for purposes of the Alcoholic Beverage Code shall not include limited partnerships or any other business entities of any kind in which each natural person is not a full participant in the ownership and operation of the business being conducted under the license
    - (2) Licenses transferred may no longer be mortgaged or pledged as security.
    - (3) Licenses may not be transferred to another person except by inheritance.

There are 12 floater licenses issued in the following locales around the state:

Billings	3	Gallatin County	1
Flathead County	2	Bozeman	4
Whitefish	1	Broadus	1

BRIEF OVERVIEW - QUOTA SYSTEM

Liquor by the drink was authorized in 1937. The quota system for issuance of liquor and beer licenses came into law in 1947.

Liquor licenses are issued under a quota system which is based on the population as reported by the U.S. Census. There are two quota areas, one quota area encompasses incorporated cities and the other area includes the area in that county outside the incorporated city limits. County licenses cannot be issued or transferred within five miles of an incorporated city. In many instances, especially in the cities, the quotas were filled and some areas were over quota when the law was put into effect. Any license issued when the law was instituted was retained under the grandfather clause.

Licenses are issued as follows:

ALL BEVERAGE -

Counties: 1 license for each 750 people (Example: Fergus County -  
(Population 5186 ÷ 750 = 6)

Cities:

<u>Population</u>	<u>Licenses</u>	<u>Example</u>	<u>Quota</u>
500 or less	2 all beverage licenses	Moore-219 population	2
500 - 3000	3 1st 1000 1 each additional 1000	Hamilton: . . . . 2499 1000 - 3 (1499) 1000 - 1 400 quota	4
over 3000	5 1st 3000 1 each additional 1500	Miles City: . . . . 9023 3000 - 5 6023 (6023 ÷ 1500) 6000 - 4 23 quota	9

BEER LICENSES - (consumption retail on-premise)

Counties: no quota

Cities: Incorporated cities and towns and within a distance of five miles from the corporate limits:

500 inhabitants or less . . . . .	1 retail beer license
1000 inhabitants . . . . .	3 retail beer licenses
1500 inhabitants . . . . .	3 retail beer licenses
2000 inhabitants . . . . .	4 retail beer licenses

Over 2000 . . . 2 additional licenses for the next 2000 inhabitants or major fraction thereof, and 1 for each additional 2000

EXAMPLE

Kalispell population . . . . .	10526
Licenses for first 2000 inhabitants 4	2000
	8526
Licenses for next 2000 inhabitants or major fraction thereof 2	2000
	6526
Licenses for next 6526 (6000 of which apply) 3	6000
	526
Total retail on-premise beer licenses available for Kalispell 9	