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INTRODUCED BY

R. Johnson House BILL NO. 495
Ernst

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO ALLOW RESTAURANTS TO SERVE BEER AND WINE; PROHIBITING GAMING AND GAMBLING IN CONJUNCTION WITH A RESTAURANT BEER AND WINE LICENSE; PROHIBITING A RESTAURANT BEER AND WINE LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR LIQUOR LICENSE; EXEMPTING RESTAURANT BEER AND WINE LICENSES FROM THE QUOTA SYSTEM; PROVIDING THAT THE LICENSES ARE NONTRANSFERABLE; PROVIDING FOR AN APPLICATION FEE AND AN ANNUAL RENEWAL FEE; AMENDING SECTIONS 23-5-176, 23-5-306, 23-5-502, AND 23-5-603, MCA; AND PROVIDING AN EFFECTIVE DATE."

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

NEW SECTION. Section 1. Restaurant beer and wine license. (1) The department shall issue a restaurant beer and wine license whenever:

- (a) the applicant is otherwise qualified to possess a beer and wine license;
 - (b) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department:
 - (i) of the intent to open a restaurant; and
 - (ii) that the restaurant beer and wine license will be used in conjunction with that restaurant;
 - (c) the applicant understands that this license prohibits the applicant from the licensure of any gambling activity or machines and that if any gambling activity or machines exist at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license is in effect;
 - (d) the owner of an existing all-beverages, beer, wine, or beer-and-wine license agrees to sell any existing license before the restaurant beer and wine license is in effect; and
 - (e) the applicant does not hold any other retail license for the sale of beer, wine, or any other alcoholic beverages.
- (2) For purposes of this section, "restaurant" means a public eating place where individually priced

1 meals are prepared and served for on-premises consumption. At least 75% of the restaurant's gross income
2 from the operation must be from the sale of food and not from the sale of alcoholic beverages. The
3 restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the
4 preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for
5 use as a full-service restaurant.

6 (3) A restaurant beer and wine license is not transferable and may not be sold by a licensee.

7 (4) The department shall issue a restaurant beer and wine license to a qualified applicant regardless
8 of the number of beer and wine licenses already issued within a beer license quota area in which the
9 restaurant is located.

10 (5) Under a restaurant beer and wine license, beer and wine may be sold only in the restaurant
11 dining room. Beer and wine may not be sold for off-premises consumption under a restaurant beer and
12 wine license. Beer and wine may be sold and consumed on the premises only between 11 a.m. and 11
13 p.m.

14 (6) An application for a restaurant beer and wine license must be accompanied by a fee of \$1,000.
15 The annual fee for a restaurant beer and wine license is \$300.

16 (7) Possession of a restaurant beer and wine license is not a qualification for licensure of any
17 gambling or gaming activity. A gambling or gaming activity may not occur on the premises of a restaurant
18 with a restaurant beer and wine license.

19

20 **Section 2.** Section 23-5-176, MCA, is amended to read:

21 **"23-5-176. Qualifications for licensure.** (1) A person who the department determines is qualified
22 to receive a license under the provisions of this chapter may, based on information available to, required
23 by, or supplied to the department under department rules, be issued a state gambling license.

24 (2) Except as provided in subsection (4), the department shall issue a license unless the department
25 can demonstrate that the applicant:

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

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

28 (ii) poses a threat to the effective regulation and control of gambling; or

29 (iii) creates a danger of illegal practices, methods, or activities in the conduct of gambling or in the
30 carrying on of the business and financial arrangements incidental to gambling;

1 (b) has been convicted of a felony offense within 5 years of the date of application or is on
2 probation or parole or under deferred prosecution for committing a felony offense; or

3 (c) is receiving a substantial amount of financing for the proposed operation from an unsuitable
4 source. A lender or other source of money or credit that the department finds to meet the provisions of
5 subsection (2)(a) may be considered an unsuitable source.

6 (3) The provisions of 37-1-203 and 37-1-205 do not apply to licensing determinations made under
7 this section.

8 (4)(a) The department may deny a license or permit to an applicant who has falsified a license or
9 permit application. If the falsification is determined after the license or permit has been issued, the
10 department may revoke the license or permit.

11 (b) The department may not issue a permit or license for premises licensed for restaurant sale of
12 beer and wine under [section 1]."

13
14 **Section 3.** Section 23-5-306, MCA, is amended to read:

15 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has
16 been granted an operator's license under 23-5-177 and a license to sell alcoholic beverages for
17 consumption on the premises, except a license under [section 1], may be granted an annual permit for the
18 placement of live card game tables.

19 (b) The department may issue an annual permit for the placement of live card game tables to a
20 person operating a premises not licensed to sell alcoholic beverages for consumption on the premises if:

21 (i) one or more live card game tables were legally operated on the premises on January 15, 1989;

22 (ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other
23 consumable product;

24 (iii) the person has been granted an operator's license under 23-5-177; and

25 (iv) at the time of application for the permit:

26 (A) the person has continuously operated a live card game table on the premises since January 15,
27 1989; and

28 (B) the natural person or persons who own the business operated on the premises are the same
29 as on January 15, 1989.

30 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed

1 operator's premises may not be prorated and must be:

2 (a) \$250 for the first table; and

3 (b) \$500 for each additional table.

4 (3) The department shall retain for administrative purposes \$100 of the fee collected under this
5 part for each live card game table.

6 (4) The department shall forward on a quarterly basis the remaining balance of the fee collected
7 under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or
8 town in which the live card game table is located for deposit to the county or municipal treasury. A county
9 is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and
10 towns within the county. The local government portion of this fee is statutorily appropriated to the
11 department, as provided in 17-7-502, for deposit to the county or municipal treasury."
12

13 **Section 4.** Section 23-5-502, MCA, is amended to read:

14 **"23-5-502. Sports pools and sports tab games authorized -- tax.** (1) Conducting or participating
15 in sports pools and sports tab games as defined and governed in this part is lawful, except that:

16 (a) sports tab games may ~~only~~ be conducted only on premises licensed to sell alcoholic beverages
17 for consumption on the premises under provisions of law other than [section 1]; and

18 (b) only a licensee of premises that are located in an incorporated city or town with a population
19 of less than 100 or located outside the boundaries of an incorporated city or town and that are licensed
20 to sell alcoholic beverages for consumption on the premises may conduct a race between animals and
21 conduct one or more sports pools on the race. The race may be conducted only if it is between pigs,
22 gerbils, or hamsters and is conducted on the premises but outside of interior areas of the establishment
23 where food and beverages are usually stored, prepared, or served.

24 (2) A manufacturer licensed under 23-5-115 who sells sports tabs to a licensed operator for use
25 in a sports tab game shall collect from the operator, at the time of sale, a tax of \$1 for each 100 sports
26 tabs sold and, within 15 days after the end of each calendar quarter, submit to the department any forms
27 required by the department and the proceeds of the collected tax. The manufacturer shall keep a record of
28 taxes collected as required by department rule. The records must be made available for inspection by the
29 department upon request of the department. The department shall retain the proceeds of the tax to
30 administer this part."

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for HB0495, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a restaurant beer and wine license to allow restaurants to serve beer and wine; prohibiting gaming and gambling in conjunction with a restaurant beer and wine license.

ASSUMPTIONS:

1. In FY96, there will be approximately 200 new applications for a restaurant beer and wine license. In addition, 100 current holders of other liquor licenses will convert to the new license. The old licenses will be sold creating 100 liquor and 100 gambling licenses. In all, 500 license applications will require investigations by the Department of Justice (DOJ).
2. The license investigation for the 200 restaurant licenses will require a criminal history background investigations, premise inspections, and periodic reviews of receipts to make certain 75% of the restaurant licensees gross revenue is from food sales.
3. In succeeding years the availability of the new restaurant license will increase the number of license transfers by 25% of the total of the new licenses issued (100 x 25% = 25). Thus, 25% turnover rate is assumed.
5. The average gambling license application fee that will be received on the new gambling license applications will be \$400.
6. The additional workload will require 2.00 FTE (Investigator - grade 16; Admin. Support - grade 8). Operating expenses of \$17,100 in FY96 and \$15,100 in FY97 are also needed. In FY96, equipment costs for the investigator position (including a car, computer and special communication equipment) totals \$24,500, and the administrative support position needs \$3,200 for computer hardware and software.
7. Investigation expenses are allocated 79% to the gambling state special and 21% to the liquor proprietary.
8. Revenue projections for the liquor proprietary fund are \$300,000 in FY96 ((200+100) x \$1,000) and \$90,000 in FY97 ((200+100) x \$300 renewal). Projections for the gambling special revenue are \$40,000 in FY96 (\$400 x 100) and \$10,000 in FY97 (\$40,000 x 25%).

FISCAL IMPACT:

Expenditures:

Department of Justice:	<u>FY96</u>	<u>FY97</u>
	<u>Difference</u>	<u>Difference</u>
FTE	2.00	2.00
Personal services	57,000	57,200
Operating expenses	17,100	15,100
Equipment	27,700	0
Total	101,800	72,300

Funding:

State special revenue (02)	80,400	57,100
Proprietary (06)	21,400	15,200
Total	101,800	72,300

(continued)

Dave Lewis 2-15-95
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Royal Johnson
 ROYAL JOHNSON, PRIMARY SPONSOR DATE

Fiscal Note for HB0495, as introduced

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Fiscal Note Request, HB0495, as introduced

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REVENUES:

	<u>FY96</u> <u>Difference</u>	<u>FY97</u> <u>Difference</u>
Fees - state special (02)	40,000	10,000
Fees - proprietary (06)	<u>300,000</u>	<u>90,000</u>
Total	340,000	100,000

NET IMPACT:

Gambling state special (02)	(40,400)	(47,100)
Liquor proprietary (06)	<u>278,600</u>	<u>74,800</u>
Total	238,200	27,700