

HOUSE BILL NO. 78

INTRODUCED BY SIMPKINS

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3
4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS
5 GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON
6 RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; RESTRICTING A
7 DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY TO THE TRANSFER OF A LICENSE TO AN
8 AREA OUTSIDE OF THE QUOTA AREA IN WHICH THE LICENSE WAS ISSUED; REVISING LICENSE
9 APPLICATION PROCEDURES AND THE PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL
10 APPROVAL OF A LICENSE; PROVIDING ADDITIONAL GROUNDS FOR DENYING A LICENSE; AMENDING
11 SECTIONS 16-4-105, 16-4-203, 16-4-207, 16-4-402, 16-4-404, AND 16-4-405, MCA; AND PROVIDING
12 AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

13

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

15

16 **Section 1.** Section 16-4-105, MCA, is amended to read:17 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption.**

18 (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in
19 accordance with the provisions of this code and the rules of the department, may be issued to any person,
20 firm, or corporation that is approved by the department as a fit and proper person, firm, or corporation to
21 sell beer, except that:

22 (a) the number of retail beer licenses that the department may issue for premises situated within
23 incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the
24 cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

25 (i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the
26 corporate limits of the towns, not more than one retail beer license, ~~which may not be used in conjunction~~
27 ~~with a retail all beverages license;~~

28 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000
29 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer
30 license for every 500 inhabitants, ~~which may not be used in conjunction with retail all beverages licenses;~~

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1 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
2 corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail
3 beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail
4 beer license for every additional 2,000 inhabitants, ~~which may not be used in conjunction with retail~~
5 ~~all beverages licenses;~~

6 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
7 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
8 governs the number of retail beer licenses that may be issued for use within the cities and towns and within
9 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
10 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
11 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
12 from their respective corporate limits must be determined on the basis of the combined populations of both
13 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
14 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
15 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

16 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110
17 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in
18 violation of the limitations;

19 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
20 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal
21 military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a
22 lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in
23 existence for a period of 5 years or more prior to January 1, 1949;

24 (e) the number of retail beer licenses that the department may issue for use at premises situated
25 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
26 from the corporate limits or for use at premises situated within any unincorporated area must be determined
27 by the department in its discretion, ~~except that a retail beer license may not be issued for any premises so~~
28 ~~situated unless the department determines that the issuance of the license is required by public convenience~~
29 ~~and necessity.~~

30 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to

1 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
 2 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
 3 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
 4 A person holding a ~~beer and wine~~ beer and wine license may sell wine for consumption on or off the
 5 premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine
 6 amendment license."

7

8 **Section 2.** Section 16-4-203, MCA, is amended to read:

9 "**16-4-203. Determination of public convenience and necessity.** An original license issued pursuant
 10 to ~~16-4-104, 16-4-201, or 16-4-202~~ or 16-4-208 or the transfer ~~of location~~ of a license to a location
 11 outside of the quota area in which the license was issued may be approved only if the department has
 12 determined, ~~upon~~ after a public hearing held pursuant to the Montana Administrative Procedure Act, that
 13 the issuance or transfer of the license is justified by public convenience and necessity. If there is no
 14 opposition to the application for issuance or transfer of the license, a hearing is not required. An applicant
 15 is entitled to a hearing prior to the denial of a request for the issuance or transfer of a license."

16

17 **Section 3.** Section 16-4-207, MCA, is amended to read:

18 "**16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application
 19 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer a retail
 20 license, the department shall review the application for completeness and to determine whether the
 21 applicant, the existing premises, or the proposed premises to be licensed ~~meets~~ meet criteria provided by
 22 law. The department may make one request for additional information necessary to complete the
 23 application. The application is considered complete when the applicant furnishes the information requested
 24 by the department. ~~The~~ When the application is complete, the department shall request that the
 25 department of justice investigate the application as provided in 16-4-402. ~~If after the investigation the~~
 26 ~~department does not discover a basis to deny the application~~ Within 60 days after the department requests
 27 the investigation by the department of justice, the department shall ~~promptly~~ publish in a newspaper of
 28 general circulation in the city, town, or county from which the application comes a notice that the applicant
 29 has made application for a retail license and that protests against the issuance of a license to the applicant
 30 by a person who has extended credit to the transferor or residents of the county from which the application

1 comes or adjoining Montana counties may be mailed to a named administrator in the department of revenue
2 within 10 days after the final notice is published. Notice of application for a new license must be published
3 once a week for 4 consecutive weeks. Notice of application for transfer of a license must be published once
4 a week for 2 consecutive weeks. Notice may be substantially in the following form:

5 NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

6 Notice is given that on the day of, 19.., one (name of applicant) filed an application for a
7 retail all-beverages license with the Montana department of revenue, to be used at (describe location of
8 premises where beverages are to be sold). A person who has extended credit to the transferor and residents
9 of counties may protest against the issuance of the license. Protests may be mailed to, department
10 of revenue, Helena, Montana, on or before the day of, 19...

11 Dated Signed
12
13 ADMINISTRATOR

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

16 (3) If the administrator receives no written protests, the department may issue or transfer the
17 license without holding a public hearing. If written protests by a person who has extended credit to the
18 transferor or residents of the county from which the application comes or adjoining Montana counties
19 against the issuance or transfer of the license are received, the department shall hold a public hearing."

20
21 Section 4. Section 16-4-402, MCA, is amended to read:

22 "16-4-402. Application -- investigation. (1) Prior to the issuance of a license under this chapter,
23 the applicant shall file with the department an application in writing, signed by the applicant and containing
24 information and statements relative to the applicant and the premises where the alcoholic beverage is to
25 be sold as required by the department. The application must be verified by the affidavit of the person
26 making it before a person authorized to administer oaths.

27 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
28 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the
29 department of justice make a thorough investigation of all matters relating to the application. Based on the
30 results of the investigation, the department shall determine whether:

- 1 (i) the applicant is qualified to receive a license;
- 2 (ii) the applicant's premises are suitable for the carrying on of the business; and
- 3 (iii) the requirements of this code and the rules promulgated by the department are met and
- 4 complied with.

5 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or

6 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a

7 special permit provided in 16-4-301.

8 (c) The department of justice investigation and the department's determination under this

9 subsection (2) must be completed within 90 days of the request from the department to the department

10 of justice. The time period in this subsection (2)(c) may be extended for up to 45 days if information

11 requested within 75 days by either department has not been received by the 75th day. The basis for the

12 extension of time must be documented.

13 (3) Upon proof that an applicant made a false statement in any part of the original application, in

14 any part of an annual renewal application, or in any hearing conducted pursuant to an application, the

15 application for the license may be denied, and if issued, the license may be revoked.

16 (4) ~~If, within 30 days of receiving the completed application, the department finds no basis for~~

17 ~~denying the application, the department shall proceed to publish the notice of the application as required~~

18 ~~by 16-4-207. Upon completion of the investigation and determination provided for in subsection (2), the~~

19 department shall issue a conditional approval letter if the department has not received information that

20 would cause the department to deny the issuance or transfer of the license. The conditional approval letter

21 must state the reasons upon which the future denial of the issuance or transfer of the license may be

22 based. The reasons for denial of the issuance or transfer of a license after the issuance of the conditional

23 approval letter are:

24 (a) there is false or erroneous information in the application;

25 (b) the premises are not approved by local building, health, or fire officials; or

26 (c) physical changes to the premises if not known prior to the issuance of the conditional approval

27 letter would have constituted grounds for the denial of the application or the issuance of the conditional

28 approval letter."

29

30 **Section 5.** Section 16-4-404, MCA, is amended to read:

1 **"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license may
2 not be issued until on or after the date set in the notice for hearing protests. The department shall approve
3 or deny the issuance or transfer of a license or issue a conditional approval letter within 7 days after the
4 date set for notice and hearing and, if required, after notification from local building, health, and fire officials
5 has been received by the department.

6 (2) Every license issued under this code must state the name of the person to whom it is issued,
7 the location, by street and number or other appropriate specific description of location if no street address
8 exists, of the premises where the business is to be carried on under the license, and other information that
9 the department considers necessary. If the licensee is a partnership or if more than one person has an
10 interest in the business operated under the license, the names of all persons in the partnership or interested
11 in the business must appear on the license. Every license must be posted in a conspicuous place on the
12 premises in which the business authorized under the license is conducted, and the license must be exhibited
13 upon request to any authorized representative of the department or the department of justice or to any
14 peace officer of the state of Montana.

15 (3) A license issued under the provisions of this code is a privilege personal to the licensee named
16 in the license and is valid until the expiration of the license unless sooner revoked or suspended.

17 (4) A license may be transferred to the executor or administrator of the estate of a deceased
18 licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under
19 a license. The license may descend or be disposed of with the licensed business under appropriate probate
20 proceedings.

21 (5) (a) A licensee may apply to the department for a transfer of the license to different premises
22 within the quota area if:

- 23 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;
24 (ii) the lease of the licensed premises has expired;
25 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the
26 landlord; or
27 (iv) the licensee has proposed removal of the license to premises that are as substantially suited for
28 the retail alcoholic beverages business as the premises proposed to be vacated.

29 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases
30 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the

1 licensee applying for the transfer ~~and is justified by public convenience and necessity~~. The department may
 2 not allow a transfer to different premises where the sanitary, health, and service facilities are less
 3 satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to
 4 be made.

5 (6) Upon a bona fide sale of the business operated under a license, the license may be transferred
 6 to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by
 7 the department. A licensee or transferee or proposed transferee who operates or attempts to operate under
 8 a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the
 9 license in writing, is considered to be operating without a license, and the license affected may be revoked
 10 or suspended by the department. The department may, within its discretion, permit a qualified purchaser
 11 to operate the business to be transferred pending final approval if there has not been a change in location
 12 and the application for transfer has been filed with the department.

13 (7) Except as provided in 16-4-204 and subsections (2) through (6) ~~and 16-4-204~~ of this section,
 14 a license may not be transferred or sold or used for any place of business not described in the license. A
 15 license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon
 16 application to and approval of the department, must be endorsed on the license. Beer or wine sold to a
 17 licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a
 18 subsequent licensee has the obligation to pay for the beer or wine."
 19

20 **Section 6.** Section 16-4-405, MCA, is amended to read:

21 "**16-4-405. Denial of license.** (1) The department may deny the issuance of a retail alcoholic
 22 beverages license if it determines that the premises proposed for licensing are off regular police beats and
 23 cannot be properly policed by local authorities.

24 (2) A retail license may not be issued by the department for a premises situated within a zone of
 25 a city or town where the sale of alcoholic beverages is prohibited by ordinance, a certified copy of which
 26 has been filed with the department.

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

29 (a) the welfare of the people residing in the vicinity of the premises for which the license is desired
 30 will be adversely and seriously affected;

1 (b) if required, there is not a public convenience and necessity justification;

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

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

6 ~~(e)~~ the purposes of this code will not be carried out by the issuance of the license."
7

8 NEW SECTION. Section 7. Applicability. [This act] applies to applications for the issuance or
9 transfer of a license received on or after [the effective date of this act].

10

11 NEW SECTION. Section 8. Effective date. [This act] is effective July 1, 1997.

12

-END-

HOUSE BILL NO. 78

INTRODUCED BY SIMPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; ~~RESTRICTING~~ REVISING THE CONDITIONS UNDER WHICH A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY TO THE TRANSFER OF A LICENSE ~~TO AN AREA OUTSIDE OF THE QUOTA AREA IN WHICH THE LICENSE WAS ISSUED~~ IS REQUIRED; REVISING LICENSE APPLICATION PROCEDURES AND THE PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING ADDITIONAL GROUNDS FOR DENYING A LICENSE; AMENDING SECTIONS 16-4-105, 16-4-115, 16-4-203, 16-4-207, 16-4-402, 16-4-404, AND 16-4-405, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses -- wine license amendments ~~—off premises consumption.~~

(1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license, ~~which may not be used in conjunction with a retail all beverages license;~~

1 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000
2 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer
3 license for every 500 inhabitants, ~~which may not be used in conjunction with retail all beverages licenses;~~

4 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
5 corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail
6 beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail
7 beer license for every additional 2,000 inhabitants, ~~which may not be used in conjunction with retail~~
8 ~~all beverages licenses;~~

9 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
10 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
11 governs the number of retail beer licenses that may be issued for use within the cities and towns and within
12 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
13 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
14 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
15 from their respective corporate limits must be determined on the basis of the combined populations of both
16 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
17 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
18 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

19 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110
20 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in
21 violation of the limitations;

22 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
23 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal
24 military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a
25 lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in
26 existence for a period of 5 years or more prior to January 1, 1949;

27 (e) the number of retail beer licenses that the department may issue for use at premises situated
28 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
29 from the corporate limits or for use at premises situated within any unincorporated area must be determined
30 by the department in its discretion, except that a retail beer license may not be issued for any premises so

1 situated unless the department determines that the issuance of the license is required by public convenience
2 and necessity pursuant to 16-4-203.

3 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
4 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
5 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
6 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
7 A person holding a ~~beer and wine~~ beer and wine license may sell wine for consumption on or off the
8 premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine
9 amendment license."
10

11 **Section 2.** Section 16-4-115, MCA, is amended to read:

12 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
13 or table wine, or both, in the original packages for off-premises consumption may be issued only to a
14 person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or
15 corporation qualified to sell beer or table wine, or both, and whose premises proposed for licensing are
16 operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that
17 the department may issue is not limited by the provisions of 16-4-105 but must be determined by the
18 department in the exercise of its sound discretion, and the department may in the exercise of its sound
19 discretion grant or deny an application for any ~~such~~ license or suspend or revoke any license for cause.

20 (2) Upon receipt of a completed application for a license under this section, accompanied by the
21 necessary license fee as provided in 16-4-501, the department shall request that the department of justice
22 make a thorough investigation of all matters relating to the application.

23 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
24 subsection (1), 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; and

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

29 ~~(3)~~(4) License applications submitted under this section are not subject to the provisions of
30 16-4-203 and 16-4-207.

1 ~~(4)~~(5) If the premises proposed for licensing under this section are a new or remodeled structure,
2 the department may issue a conditional license prior to completion of the premises upon reasonable
3 evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or
4 a drugstore licensed as a pharmacy."

5
6 **Section 3.** Section 16-4-203, MCA, is amended to read:

7 "**16-4-203. Determination of public convenience and necessity.** (1) An original license issued
8 pursuant to 16-4-104, 16-4-201, ~~or 16-4-202, or 16-4-208~~ or the transfer of location of a an on-premises
9 retail license may be approved ~~only if the department has determined, upon a hearing held pursuant to the~~
10 ~~Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public~~
11 ~~convenience and necessity. If there is no opposition to the application for issuance or transfer of the~~
12 ~~license, a hearing is not required~~ if the department does not receive the minimum number of protests
13 required for a public convenience and necessity determination pursuant to 16-4-207, in which case the
14 application must be regarded as a prima facie showing of public convenience and necessity and no further
15 determination of public convenience and necessity is allowed.

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

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

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

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

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

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

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

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

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

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

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

21 (b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in
22 a business licensed to sell alcoholic beverages at retail for on-premises consumption and does not include
23 any other activity that may be carried on or is supplemental to the sale of alcoholic beverages at retail for
24 on-premises consumption such as the sale of prepared food for on-premises consumption or licensed
25 gaming.

26 (c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local
27 government or an appointed subsidiary of a local government that were publicly considered within the year
28 preceding the date of the hearing, are presently being considered, or may reasonably be expected to be
29 considered or adopted within 1 year after the date of the hearing."

30

1 is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street
 2 address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures
 3 of persons opposing the approval of an application may not be considered as a protest. Protests may be
 4 mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

5 Dated

Signed

6
 7 ADMINISTRATOR

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

10 (3) (a) If the administrator receives no written protests, the department may ~~issue or transfer the~~
 11 license approve the application without holding a public hearing.

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

14 (c) If the department receives sufficient written protests ~~by a person who has extended credit to~~
 15 ~~the transferor or residents of the county from which the application comes or adjoining Montana counties~~
 16 that satisfy the requirements in subsection (1) against the ~~issuance or transfer of the license are received,~~
 17 approval of the application, the department shall hold a public hearing as provided in subsection (4).

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

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

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

7

8 **Section 5.** Section 16-4-402, MCA, is amended to read:

9 **"16-4-402. Application -- investigation.** (1) Prior to the issuance of a license under this chapter,
10 the applicant shall file with the department an application in writing, signed by the applicant and containing
11 information and statements relative to the applicant and the premises where the alcoholic beverage is to
12 be sold as required by the department. The application must be verified by the affidavit of the person
13 making it before a person authorized to administer oaths.

14 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
15 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the
16 department of justice make a thorough investigation of all matters relating to the application. Based on the
17 results of the investigation or on other information, the department shall determine whether:

18 (i) the applicant is qualified to receive a license;

19 (ii) the applicant's premises are suitable for the carrying on of the business; and

20 (iii) the requirements of this code and the rules promulgated by the department are met and
21 complied with.

22 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or
23 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a
24 special permit provided in 16-4-301.

25 (c) For an original license application and an application for transfer of location of a license, the
26 department of justice's investigation and the department's determination under this subsection (2) must
27 be completed within 90 days of the request from the department to the department of justice. If information
28 is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until
29 the requested information is received by the requesting department. The basis for the tolling of the deadline
30 must be documented.

1 (3) Upon proof that an applicant made a false statement in any part of the original application, in
 2 any part of an annual renewal application, or in any hearing conducted pursuant to an application, the
 3 application for the license may be denied, and if issued, the license may be revoked.

4 (4) ~~If, within 30 days of receiving the completed application, the department finds no basis for~~
 5 ~~denying the application, the department shall proceed to publish the notice of the application as required~~
 6 ~~by 16-4-207. The department shall issue a conditional approval letter upon the last occurrence of either:~~

7 (a) completion of the investigation and determination provided for in subsection (2) if the
 8 department has not received information that would cause the department to deny the application; or

9 (b) a final agency decision that either denies or dismisses a protest against the approval of an
 10 application pursuant to 16-4-207.

11 (5) The conditional approval letter must state the reasons upon which the future denial of the
 12 application may be based. The reasons for denial of the application after the issuance of the conditional
 13 approval letter are as follows:

14 (a) there is false or erroneous information in the application;

15 (b) the premises are not approved by local building, health, or fire officials;

16 (c) there are physical changes to the premises that if known prior to the issuance of the conditional
 17 approval letter would have constituted grounds for the denial of the application or denial of the issuance
 18 of the conditional approval; or

19 (d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the
 20 department's final agency decision provided for in subsection (4)."

21
 22 **Section 6.** Section 16-4-404, MCA, is amended to read:

23 **"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license may
 24 not be issued until on or after the date set in the notice for hearing protests.

25 (2) Every license issued under this code must state the name of the person to whom it is issued,
 26 the location, by street and number or other appropriate specific description of location if no street address
 27 exists, of the premises where the business is to be carried on under the license, and other information the
 28 department considers necessary. If the licensee is a partnership or if more than one person has an interest
 29 in the business operated under the license, the names of all persons in the partnership or interested in the
 30 business must appear on the license. Every license must be posted in a conspicuous place on the premises

1 in which the business authorized under the license is conducted, and the license must be exhibited upon
2 request to any authorized representative of the department or the department of justice or to any peace
3 officer of the state of Montana.

4 (3) A license issued under the provisions of this code is a privilege personal to the licensee named
5 in the license and is valid until the expiration of the license unless sooner revoked or suspended.

6 (4) A license may be transferred to the executor or administrator of the estate of a deceased
7 licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under
8 a license. The license may descend or be disposed of with the licensed business under appropriate probate
9 proceedings.

10 (5) (a) A licensee may apply to the department for a transfer of the license to different premises
11 within the quota area if:

12 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

13 (ii) the lease of the licensed premises has expired;

14 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the
15 landlord; or

16 (iv) the licensee has proposed removal of the license to premises that are as substantially suited for
17 the retail alcoholic beverages business as the premises proposed to be vacated.

18 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases
19 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the
20 licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant
21 to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department
22 may not allow a transfer to different premises where the sanitary, health, and service facilities are less
23 satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to
24 be made.

25 (6) Upon a bona fide sale of the business operated under a license, the license may be transferred
26 to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by
27 the department. A licensee or transferee or proposed transferee who operates or attempts to operate under
28 a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the
29 license in writing, is considered to be operating without a license and the license affected may be revoked
30 or suspended by the department. The department may, within its discretion, permit a qualified purchaser

1 to operate the business to be transferred pending final approval if there has not been a change in location
2 and the application for transfer has been filed with the department.

3 (7) Except as provided in 16-4-204 and subsections (2) through (6) and 16-4-204 of this section,
4 a license may not be transferred or sold or used for any place of business not described in the license. A
5 license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon
6 application to and approval of the department, must be endorsed on the license. Beer or wine sold to a
7 licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a
8 subsequent licensee has the obligation to pay for the beer or wine."

9

10 **Section 7.** Section 16-4-405, MCA, is amended to read:

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

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

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

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

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

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

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

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

27

28 **NEW SECTION. Section 8. Applicability.** [This act] applies to applications for the issuance or
29 transfer of a license received on or after [the effective date of this act].

30

1 HOUSE BILL NO. 78

2 INTRODUCED BY SIMPKINS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS
5 GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON
6 RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; ~~RESTRICTING~~
7 REVISING THE CONDITIONS UNDER WHICH A DETERMINATION OF PUBLIC CONVENIENCE AND
8 NECESSITY TO THE TRANSFER OF A LICENSE ~~TO AN AREA OUTSIDE OF THE QUOTA AREA IN WHICH~~
9 ~~THE LICENSE WAS ISSUED~~ IS REQUIRED; REVISING LICENSE APPLICATION PROCEDURES AND THE
10 PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING
11 ADDITIONAL GROUNDS FOR DENYING A LICENSE; AMENDING SECTIONS 16-4-105, 16-4-115, 16-4-203,
12 16-4-207, 16-4-402, 16-4-404, AND 16-4-405, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN
13 APPLICABILITY DATE."

14

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

**THERE ARE NO CHANGES IN THIS BILL AND IT WILL NOT BE
REPRINTED. PLEASE REFER TO SECOND READING COPY
(YELLOW) FOR COMPLETE TEXT.**

HOUSE BILL NO. 78

INTRODUCED BY SIMPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; ~~RESTRICTING~~ REVISING THE CONDITIONS UNDER WHICH A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY TO THE TRANSFER OF A LICENSE ~~TO AN AREA OUTSIDE OF THE QUOTA AREA IN WHICH THE LICENSE WAS ISSUED~~ IS REQUIRED; REVISING LICENSE APPLICATION PROCEDURES AND THE PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING ADDITIONAL GROUNDS FOR DENYING A LICENSE; AMENDING SECTIONS 16-4-105, 16-4-115, 16-4-203, 16-4-207, 16-4-402, 16-4-404, AND 16-4-405, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 16-4-105, MCA, is amended to read:

"16-4-105. Limit on retail beer licenses -- wine license amendments -- ~~off-premises consumption.~~

(1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or corporation qualified to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license, ~~which may not be used in conjunction with a retail all-beverages license;~~

1 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000
2 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer
3 license for every 500 inhabitants, ~~which may not be used in conjunction with retail all-beverages licenses;~~

4 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
5 corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail
6 beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail
7 beer license for every additional 2,000 inhabitants, ~~which may not be used in conjunction with retail~~
8 ~~all-beverages licenses;~~

9 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
10 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
11 governs the number of retail beer licenses that may be issued for use within the cities and towns and within
12 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
13 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
14 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
15 from their respective corporate limits must be determined on the basis of the combined populations of both
16 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
17 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
18 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

19 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110
20 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in
21 violation of the limitations;

22 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
23 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal
24 military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a
25 lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in
26 existence for a period of 5 years or more prior to January 1, 1949;

27 (e) the number of retail beer licenses that the department may issue for use at premises situated
28 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
29 from the corporate limits or for use at premises situated within any unincorporated area must be determined
30 by the department in its discretion, except that a retail beer license may not be issued for any premises so

1 situated unless the department determines that the issuance of the license is required by public convenience
2 and necessity pursuant to 16-4-203.

3 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
4 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
5 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
6 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
7 A person holding a ~~beer and wine~~ beer and wine license may sell wine for consumption on or off the
8 premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine
9 amendment license."

10

11 **Section 2.** Section 16-4-115, MCA, is amended to read:

12 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
13 or table wine, or both, in the original packages for off-premises consumption may be issued only to a
14 person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or
15 corporation qualified to sell beer or table wine, or both, and whose premises proposed for licensing are
16 operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that
17 the department may issue is not limited by the provisions of 16-4-105 but must be determined by the
18 department in the exercise of its sound discretion, and the department may in the exercise of its sound
19 discretion grant or deny an application for any ~~such~~ license or suspend or revoke any license for cause.

20 (2) Upon receipt of a completed application for a license under this section, accompanied by the
21 necessary license fee as provided in 16-4-501, the department shall request that the department of justice
22 make a thorough investigation of all matters relating to the application.

23 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
24 subsection (1), 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; and

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

29 ~~(3)(4)~~ License applications submitted under this section are not subject to the provisions of
30 16-4-203 and 16-4-207.

1 ~~(4)~~(5) If the premises proposed for licensing under this section are a new or remodeled structure,
 2 the department may issue a conditional license prior to completion of the premises upon reasonable
 3 evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or
 4 a drugstore licensed as a pharmacy."

5

6 **Section 3.** Section 16-4-203, MCA, is amended to read:

7 "**16-4-203. Determination of public convenience and necessity.** (1) An original license issued
 8 pursuant to 16-4-104, 16-4-201, ~~or 16-4-202, or 16-4-208~~ or the transfer of location of a ~~an on-premises~~
 9 retail license may be approved only if the department has determined, upon a hearing held pursuant to the
 10 Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public
 11 convenience and necessity. If there is no opposition to the application for issuance or transfer of the
 12 license, a hearing is not required if the department does not receive the minimum number of protests
 13 required for a public convenience and necessity determination pursuant to 16-4-207, in which case the
 14 application must be regarded as a prima facie showing of public convenience and necessity and no further
 15 determination of public convenience and necessity is allowed.

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

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

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

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

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

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

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

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

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

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

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

21 (b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in
22 a business licensed to sell alcoholic beverages at retail for on-premises consumption and does not include
23 any other activity that may be carried on or is supplemental to the sale of alcoholic beverages at retail for
24 on-premises consumption such as the sale of prepared food for on-premises consumption or licensed
25 gaming.

26 (c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local
27 government or an appointed subsidiary of a local government that were publicly considered within the year
28 preceding the date of the hearing, are presently being considered, or may reasonably be expected to be
29 considered or adopted within 1 year after the date of the hearing."

30

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

2 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application

3 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the

4 location of a retail license, the department shall review the application for completeness and ~~to~~, based upon

5 review of the application and any other information supplied to the department, determine whether the

6 applicant or the premises to be licensed meets criteria provided by law. The department may make one

7 request for additional information necessary to complete the application. The application is considered

8 complete when the applicant furnishes the application information requested by the department. If the

9 applicant does not provide the additional application information within 60 days of the department’s

10 request, the department shall terminate the application and return it to the applicant with an explanation

11 of why the application was terminated. The terminated application is not a denial, and the premises

12 identified in the application is not subject to the provisions of 16-4-413. An applicant whose application

13 is terminated may subsequently submit a new application. ~~The~~ When the application is complete, the

14 department shall request that the department of justice investigate the application as provided in 16-4-402.

15 ~~If after the investigation~~ the department does not discover a basis to deny the application within 30 days

16 after the department requests the investigation by the department of justice, the department shall ~~promptly~~

17 publish in a newspaper of general circulation in the city, town, or county from which the application comes

18 a notice that the applicant has made application for a retail ~~license~~ on-premises license or a transfer of

19 location and that protests may be made against the ~~issuance of a license approval of the application to the~~

20 ~~applicant~~ by a person who has extended credit to the transferor or by residents of the county from which

21 the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in

22 the department of revenue within 10 days after the final notice is published. Notice of application for a new

23 license must be published once a week for 4 consecutive weeks. Notice of application for transfer of

24 ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may

25 be substantially in the following form:

26 NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

27 Notice is given that on the day of, 19.., one (name of applicant) filed an application for a

28 retail all-beverages license with the Montana department of revenue, to be used at (describe location of

29 premises where beverages are to be sold). A person who has extended credit to the transferor and residents

30 of counties may protest against the ~~issuance of the license~~ approval of the application. Each protestor



1 is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street
 2 address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures
 3 of persons opposing the approval of an application may not be considered as a protest. Protests may be
 4 mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

5 Dated Signed
 6
 7 ADMINISTRATOR

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

10 (3) (a) If the administrator receives no written protests, the department may ~~issue or transfer the~~
 11 ~~license~~ approve the application without holding a public hearing.

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

14 (c) If the department receives sufficient written protests by a person who has extended credit to
 15 the transferor or residents of the county from which the application comes or adjoining Montana counties
 16 that satisfy the requirements in subsection (1) against the issuance or transfer of the license are received,
 17 approval of the application, the department shall hold a public hearing as provided in subsection (4).

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

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

1 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an
2 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for
3 the proposed premises located within a quota area described in 16-4-201 must be equal to 50% OF the
4 quota for all-beverages licenses determined for that quota area according to 16-4-201(1),(2), and (5) but
5 in no case less than two. The minimum number of protests determined in this manner will apply only to
6 applications for either on-premises consumption beer or all-beverage licenses."

7
8 **Section 5.** Section 16-4-402, MCA, is amended to read:

9 **"16-4-402. Application -- investigation.** (1) Prior to the issuance of a license under this chapter,
10 the applicant shall file with the department an application in writing, signed by the applicant and containing
11 information and statements relative to the applicant and the premises where the alcoholic beverage is to
12 be sold as required by the department. The application must be verified by the affidavit of the person
13 making it before a person authorized to administer oaths.

14 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
15 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the
16 department of justice make a thorough investigation of all matters relating to the application. Based on the
17 results of the investigation or on other information, the department shall determine whether:

18 (i) the applicant is qualified to receive a license;

19 (ii) the applicant's premises are suitable for the carrying on of the business; and

20 (iii) the requirements of this code and the rules promulgated by the department are met and
21 complied with.

22 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or
23 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a
24 special permit provided in 16-4-301.

25 (c) For an original license application and an application for transfer of location of a license, the
26 department of justice's investigation and the department's determination under this subsection (2) must
27 be completed within 90 days of the request from the department to the department of justice. If information
28 is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until
29 the requested information is received by the requesting department. The basis for the tolling of the deadline
30 must be documented.

1 (3) Upon proof that an applicant made a false statement in any part of the original application, in
 2 any part of an annual renewal application, or in any hearing conducted pursuant to an application, the
 3 application for the license may be denied, and if issued, the license may be revoked.

4 (4) ~~If, within 30 days of receiving the completed application, the department finds no basis for~~
 5 ~~denying the application, the department shall proceed to publish the notice of the application as required~~
 6 ~~by 16-4-207. The department shall issue a conditional approval letter upon the last occurrence of either:~~

7 (a) completion of the investigation and determination provided for in subsection (2) if the
 8 department has not received information that would cause the department to deny the application; or

9 (b) a final agency decision that either denies or dismisses a protest against the approval of an
 10 application pursuant to 16-4-207.

11 (5) The conditional approval letter must state the reasons upon which the future denial of the
 12 application may be based. The reasons for denial of the application after the issuance of the conditional
 13 approval letter are as follows:

14 (a) there is false or erroneous information in the application;

15 (b) the premises are not approved by local building, health, or fire officials;

16 (c) there are physical changes to the premises that if known prior to the issuance of the conditional
 17 approval letter would have constituted grounds for the denial of the application or denial of the issuance
 18 of the conditional approval; or

19 (d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the
 20 department's final agency decision provided for in subsection (4)."

21

22 **Section 6.** Section 16-4-404, MCA, is amended to read:

23 **"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license may
 24 not be issued until on or after the date set in the notice for hearing protests.

25 (2) Every license issued under this code must state the name of the person to whom it is issued,
 26 the location, by street and number or other appropriate specific description of location if no street address
 27 exists, of the premises where the business is to be carried on under the license, and other information the
 28 department considers necessary. If the licensee is a partnership or if more than one person has an interest
 29 in the business operated under the license, the names of all persons in the partnership or interested in the
 30 business must appear on the license. Every license must be posted in a conspicuous place on the premises

1 in which the business authorized under the license is conducted, and the license must be exhibited upon
2 request to any authorized representative of the department or the department of justice or to any peace
3 officer of the state of Montana.

4 (3) A license issued under the provisions of this code is a privilege personal to the licensee named
5 in the license and is valid until the expiration of the license unless sooner revoked or suspended.

6 (4) A license may be transferred to the executor or administrator of the estate of a deceased
7 licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under
8 a license. The license may descend or be disposed of with the licensed business under appropriate probate
9 proceedings.

10 (5) (a) A licensee may apply to the department for a transfer of the license to different premises
11 within the quota area if:

12 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

13 (ii) the lease of the licensed premises has expired;

14 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the
15 landlord; or

16 (iv) the licensee has proposed removal of the license to premises that are as substantially suited for
17 the retail alcoholic beverages business as the premises proposed to be vacated.

18 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases
19 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the
20 licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant
21 to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department
22 may not allow a transfer to different premises where the sanitary, health, and service facilities are less
23 satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to
24 be made.

25 (6) Upon a bona fide sale of the business operated under a license, the license may be transferred
26 to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by
27 the department. A licensee or transferee or proposed transferee who operates or attempts to operate under
28 a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the
29 license in writing, is considered to be operating without a license and the license affected may be revoked
30 or suspended by the department. The department may, within its discretion, permit a qualified purchaser

1 to operate the business to be transferred pending final approval if there has not been a change in location
2 and the application for transfer has been filed with the department.

3 (7) Except as provided in 16-4-204 and subsections (2) through (6) ~~and 16-4-204 of this section~~,
4 a license may not be transferred or sold or used for any place of business not described in the license. A
5 license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon
6 application to and approval of the department, must be endorsed on the license. Beer or wine sold to a
7 licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a
8 subsequent licensee has the obligation to pay for the beer or wine."

9

10 **Section 7.** Section 16-4-405, MCA, is amended to read:

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

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

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

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

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

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

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

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

27

28 **NEW SECTION. Section 8. Applicability.** [This act] applies to applications for the issuance or
29 transfer of a license received on or after [the effective date of this act].

30

1 NEW SECTION. **Section 9. Effective date.** [This act] is effective July 1, 1997.

2 -END-

1 HOUSE BILL NO. 78

2 INTRODUCED BY SIMPKINS

3

4 A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS
 5 GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON
 6 RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; ~~RESTRICTING~~
 7 REVISING THE CONDITIONS UNDER WHICH A DETERMINATION OF PUBLIC CONVENIENCE AND
 8 NECESSITY TO THE TRANSFER OF A LICENSE ~~TO AN AREA OUTSIDE OF THE QUOTA AREA IN WHICH~~
 9 ~~THE LICENSE WAS ISSUED~~ IS REQUIRED; REVISING LICENSE APPLICATION PROCEDURES AND THE
 10 PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING
 11 ADDITIONAL GROUNDS FOR DENYING A LICENSE; REVISING SPECIAL PERMIT FEES; AMENDING
 12 SECTIONS 16-4-105, 16-4-115, 16-4-203, 16-4-207, 16-4-402, 16-4-404, ~~AND~~ 16-4-405, ~~AND~~ 16-4-501,
 13 MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

14

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

16

(Refer to Introduced Bill)

17

Strike everything after the enacting clause and insert:

18

19 **Section 1.** Section 16-4-105, MCA, is amended to read:20 **"16-4-105. Limit on retail beer licenses -- wine license amendments --~~off-premises consumption.~~**

21 (1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in
 22 accordance with the provisions of this code and the rules of the department, may be issued to any person,
 23 firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or corporation
 24 qualified to sell beer, except that:

25 (a) the number of retail beer licenses that the department may issue for premises situated within
 26 incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the
 27 cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

28 (i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the
 29 corporate limits of the towns, not more than one retail beer license, ~~which may not be used in conjunction~~
 30 ~~with a retail all-beverages license;~~

1 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000
2 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer
3 license for every 500 inhabitants, ~~which may not be used in conjunction with retail all beverages licenses;~~

4 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
5 corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail
6 beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail
7 beer license for every additional 2,000 inhabitants, ~~which may not be used in conjunction with retail~~
8 ~~all beverages licenses;~~

9 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
10 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
11 governs the number of retail beer licenses that may be issued for use within the cities and towns and within
12 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
13 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
14 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
15 from their respective corporate limits must be determined on the basis of the combined populations of both
16 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
17 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
18 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

19 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110
20 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in
21 violation of the limitations;

22 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
23 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal
24 military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a
25 lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in
26 existence for a period of 5 years or more prior to January 1, 1949;

27 (e) the number of retail beer licenses that the department may issue for use at premises situated
28 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
29 from the corporate limits or for use at premises situated within any unincorporated area must be determined
30 by the department in its discretion, except that a retail beer license may not be issued for any premises so

1 situated unless the department determines that the issuance of the license is required by public convenience
2 and necessity pursuant to 16-4-203.

3 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
4 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
5 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
6 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
7 A person holding a ~~beer and wine~~ beer and wine license may sell wine for consumption on or off the
8 premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine
9 amendment license."

10

11 **Section 2.** Section 16-4-115, MCA, is amended to read:

12 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
13 or table wine, or both, in the original packages for off-premises consumption may be issued only to a
14 person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or
15 corporation qualified to sell beer or table wine, or both, and whose premises proposed for licensing are
16 operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that
17 the department may issue is not limited by the provisions of 16-4-105 but must be determined by the
18 department in the exercise of its sound discretion, and the department may in the exercise of its sound
19 discretion grant or deny an application for any ~~such~~ license or suspend or revoke any license for cause.

20 (2) Upon receipt of a completed application for a license under this section, accompanied by the
21 necessary license fee as provided in 16-4-501, the department shall request that the department of justice
22 make a thorough investigation of all matters relating to the application.

23 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
24 subsection (1), 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; and

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

29 ~~(3)~~(4) License applications submitted under this section are not subject to the provisions of
30 16-4-203 and 16-4-207.

1 ~~(4)~~(5) If the premises proposed for licensing under this section are a new or remodeled structure,
 2 the department may issue a conditional license prior to completion of the premises upon reasonable
 3 evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or
 4 a drugstore licensed as a pharmacy."

5
 6 **Section 3.** Section 16-4-203, MCA, is amended to read:

7 "**16-4-203. Determination of public convenience and necessity.** (1) An original license issued
 8 pursuant to 16-4-104, 16-4-201, ~~or 16-4-202, or 16-4-208~~ or the transfer of location of a ~~an on-premises~~
 9 retail license may be approved ~~only if the department has determined, upon a hearing held pursuant to the~~
 10 Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public
 11 convenience and necessity. ~~If there is no opposition to the application for issuance or transfer of the~~
 12 license, a hearing is not required if the department does not receive the minimum number of protests
 13 required for a public convenience and necessity determination pursuant to 16-4-207, in which case the
 14 application must be regarded as a prima facie showing of public convenience and necessity and no further
 15 determination of public convenience and necessity is allowed.

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

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

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

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

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

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

6 (V) THE APPROVAL OF THE APPLICATION WILL NOT HAVE AN ADVERSE IMPACT ON THE AREA
7 TO BE SERVED;

8 (VI) THE APPROVAL OF THE APPLICATION WILL NOT HAVE A NEGATIVE IMPACT ON EXISTING
9 LICENSEES.

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

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

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

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

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

25 (b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in
26 a business licensed to sell alcoholic beverages at retail for on-premises consumption and does not include
27 any other activity that may be carried on or is supplemental to the sale of alcoholic beverages at retail for
28 on-premises consumption such as the sale of prepared food for on-premises consumption or licensed
29 gaming.

30 (c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local

1 government or an appointed subsidiary of a local government that were publicly considered within the year
 2 preceding the date of the hearing, OR are presently being considered, or may reasonably be expected to
 3 be considered or adopted within 1 year after the date of the hearing."

4

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

6 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application
 7 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the
 8 location of a retail license, the department shall review the application for completeness and ~~to~~ based upon
 9 review of the application and any other information supplied to the department, determine whether the
 10 applicant or the premises to be licensed meets criteria provided by law. The department may make one
 11 request for additional information necessary to complete the application. The application is considered
 12 complete when the applicant furnishes the application information requested by the department. If the
 13 applicant does not provide the additional application information within 60 days of the department's
 14 request, the department shall terminate the application and return it to the applicant with an explanation
 15 of why the application was terminated. The terminated application is not a denial, and the premises
 16 identified in the application is not subject to the provisions of 16-4-413. An applicant whose application
 17 is terminated may subsequently submit a new application. The When the application is complete, the
 18 department shall request that the department of justice investigate the application as provided in 16-4-402.
 19 ~~If after the investigation~~ the department does not discover a basis to deny the application within 30 days
 20 after the department requests the investigation by the department of justice, the department shall promptly
 21 publish in a newspaper of general circulation in the city, town, or county from which the application comes
 22 a notice that the applicant has made application for a retail ~~license~~ on-premises license or a transfer of
 23 location and that protests may be made against the ~~issuance of a license~~ approval of the application to the
 24 ~~applicant~~ by a person who has extended credit to the transferor or by residents of the county from which
 25 the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in
 26 the department of revenue within 10 days after the final notice is published. Notice of application for a new
 27 license must be published once a week for 4 consecutive weeks. Notice of application for transfer of
 28 ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may
 29 be substantially in the following form:

30

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

1 Notice is given that on the day of, 19.., one (name of applicant) filed an application for a
 2 retail all-beverages license with the Montana department of revenue, to be used at (describe location of
 3 premises where beverages are to be sold). A person who has extended credit to the transferor and residents
 4 of counties may protest against the ~~issuance of the license~~ approval of the application. Each protestor
 5 is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street
 6 address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures
 7 of persons opposing the approval of an application may not be considered as a protest. Protests may be
 8 mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

9 Dated Signed
 10
 11 ADMINISTRATOR

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

14 (3) (a) If the administrator receives no written protests, the department may ~~issue or transfer the~~
 15 ~~license~~ approve the application without holding a public hearing.

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

18 (c) If the department receives sufficient written protests ~~by a person who has extended credit to~~
 19 ~~the transferor or residents of the county from which the application comes or adjoining Montana counties~~
 20 that satisfy the requirements in subsection (1) against the issuance or transfer of the license are received,
 21 approval of the application, the department shall hold a public hearing as provided in subsection (4).

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

28 (b) If the department receives the number of protests required for a public convenience and
 29 necessity determination as specified in subsection (4)(c) and the application is for an original license or for
 30 a transfer of location, the department shall schedule a public hearing to be held in the county of the

1 proposed location of the license to determine whether the protest presents sufficient cause to deny the
2 application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial
3 of an application provided for in 16-4-405 including public convenience and necessity. The hearing must
4 be governed by the provisions of Title 2, chapter 4, part 6.

5 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an
6 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for
7 the proposed premises located within a quota area described in 16-4-201 must be equal to 50% 25% OF
8 the quota for all-beverages licenses determined for that quota area according to 16-4-201(1),(2), and (5)
9 but in no case less than two. The minimum number of protests determined in this manner will apply only
10 to applications for either on-premises consumption beer or all-beverage licenses."

11

12 **Section 5.** Section 16-4-402, MCA, is amended to read:

13 **"16-4-402. Application -- investigation.** (1) Prior to the issuance of a license under this chapter,
14 the applicant shall file with the department an application in writing, signed by the applicant and containing
15 information and statements relative to the applicant and the premises where the alcoholic beverage is to
16 be sold as required by the department. The application must be verified by the affidavit of the person
17 making it before a person authorized to administer oaths.

18 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
19 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the
20 department of justice make a thorough investigation of all matters relating to the application. Based on the
21 results of the investigation or on other information, the department shall determine whether:

22 (i) the applicant is qualified to receive a license;

23 (ii) the applicant's premises are suitable for the carrying on of the business; and

24 (iii) the requirements of this code and the rules promulgated by the department are met and
25 complied with.

26 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or
27 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a
28 special permit provided in 16-4-301.

29 (c) For an original license application and an application for transfer of location of a license, the
30 department of justice's investigation and the department's determination under this subsection (2) must

1 be completed within 90 days of the request from the department to the department of justice. If information
2 is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until
3 the requested information is received by the requesting department. The basis for the tolling of the deadline
4 must be documented.

5 (3) Upon proof that an applicant made a false statement in any part of the original application, in
6 any part of an annual renewal application, or in any hearing conducted pursuant to an application, the
7 application for the license may be denied, and if issued, the license may be revoked.

8 ~~(4) If, within 30 days of receiving the completed application, the department finds no basis for~~
9 ~~denying the application, the department shall proceed to publish the notice of the application as required~~
10 ~~by 16-4-207. The department shall issue a conditional approval letter upon the last occurrence of either:~~

11 (a) completion of the investigation and determination provided for in subsection (2) if the
12 department has not received information that would cause the department to deny the application; or

13 (b) a final agency decision that either denies or dismisses a protest against the approval of an
14 application pursuant to 16-4-207.

15 (5) The conditional approval letter must state the reasons upon which the future denial of the
16 application may be based. The reasons for denial of the application after the issuance of the conditional
17 approval letter are as follows:

18 (a) there is false or erroneous information in the application;

19 (b) the premises are not approved by local building, health, or fire officials;

20 (c) there are physical changes to the premises that if known prior to the issuance of the conditional
21 approval letter would have constituted grounds for the denial of the application or denial of the issuance
22 of the conditional approval; or

23 (d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the
24 department's final agency decision provided for in subsection (4)."

25

26 **Section 6.** Section 16-4-404, MCA, is amended to read:

27 **"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license may
28 not be issued until on or after the date set in the notice for hearing protests.

29 (2) Every license issued under this code must state the name of the person to whom it is issued,
30 the location, by street and number or other appropriate specific description of location if no street address

1 exists, of the premises where the business is to be carried on under the license, and other information the
2 department considers necessary. If the licensee is a partnership or if more than one person has an interest
3 in the business operated under the license, the names of all persons in the partnership or interested in the
4 business must appear on the license. Every license must be posted in a conspicuous place on the premises
5 in which the business authorized under the license is conducted, and the license must be exhibited upon
6 request to any authorized representative of the department or the department of justice or to any peace
7 officer of the state of Montana.

8 (3) A license issued under the provisions of this code is a privilege personal to the licensee named
9 in the license and is valid until the expiration of the license unless sooner revoked or suspended.

10 (4) A license may be transferred to the executor or administrator of the estate of a deceased
11 licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under
12 a license. The license may descend or be disposed of with the licensed business under appropriate probate
13 proceedings.

14 (5) (a) A licensee may apply to the department for a transfer of the license to different premises
15 within the quota area if:

16 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;

17 (ii) the lease of the licensed premises has expired;

18 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the
19 landlord; or

20 (iv) the licensee has proposed removal of the license to premises that are as substantially suited for
21 the retail alcoholic beverages business as the premises proposed to be vacated.

22 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases
23 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the
24 licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant
25 to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department
26 may not allow a transfer to different premises where the sanitary, health, and service facilities are less
27 satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to
28 be made.

29 (6) Upon a bona fide sale of the business operated under a license, the license may be transferred
30 to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by

1 the department. A licensee or transferee or proposed transferee who operates or attempts to operate under
 2 a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the
 3 license in writing, is considered to be operating without a license and the license affected may be revoked
 4 or suspended by the department. The department may, within its discretion, permit a qualified purchaser
 5 to operate the business to be transferred pending final approval if there has not been a change in location
 6 and the application for transfer has been filed with the department.

7 (7) Except as provided in 16-4-204 and subsections (2) through (6) ~~and 16-4-204~~ of this section,
 8 a license may not be transferred or sold or used for any place of business not described in the license. A
 9 license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon
 10 application to and approval of the department, must be endorsed on the license. Beer or wine sold to a
 11 licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a
 12 subsequent licensee has the obligation to pay for the beer or wine."

13

14 **Section 7.** Section 16-4-405, MCA, is amended to read:

15 **"16-4-405. Denial of license.** (1) The department may deny the issuance of a retail alcoholic
 16 beverages license if it determines that the premises proposed for licensing are off regular police beats and
 17 cannot be properly policed by local authorities.

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

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

23 (a) the welfare of the people residing in the vicinity of the premises for which the license is desired
 24 will be adversely and seriously affected;

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

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

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

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

1 **SECTION 8. SECTION 16-4-501, MCA, IS AMENDED TO READ:**

2 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table
3 wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee
4 as follows:

5 (a) each brewer and each beer importer, wherever located, whose product is sold or offered for
6 sale within the state, \$500; for each storage depot, \$400;

7 (b) each beer wholesaler, \$400; each table wine distributor, \$400; each subwarehouse, \$400;

8 (c) each beer retailer, \$200;

9 (d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer
10 license; for a license to sell table wine at retail for off-premises consumption only, either alone or in
11 conjunction with beer, \$200;

12 (e) any unit of a nationally chartered veterans' organization, \$50.

13 (2) The permit fee under 16-4-301(1) is computed at the rate of ~~\$15~~ \$10 a day for each day beer
14 and table wine are sold at those events lasting 2 or more days, ~~but in no case shall the fee be less than \$30~~
15 may not exceed \$300 for a series of scheduled sporting events.

16 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the
17 sale of all alcoholic beverages.

18 (4) Passenger carrier licenses ~~shall~~ must be issued upon payment by the applicant of an annual
19 license fee in the sum of \$300.

20 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment
21 to a beer-only license pursuant to 16-4-105, is \$200.

22 (6) The annual fee for resort retail all-beverages licenses within a given resort area ~~shall be~~ is
23 \$2,000 for each license.

24 (7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

25 (a) except as provided in this section, for each license outside of incorporated cities and
26 incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000,
27 \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

28 (b) except as provided in this section, for each license in incorporated cities with a population of
29 more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line
30 from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a

1 unit of a nationally chartered veterans' organization and \$500 for all other licensees;

2 (c) except as provided in this section, for each license in incorporated cities with a population of
3 more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line
4 from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a
5 unit of a nationally chartered veterans' organization and \$650 for all other licensees;

6 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance
7 of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to
8 the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800
9 for all other licensees;

10 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated
11 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
12 boundary of the city or town; and where the premises of the applicant to be licensed are situated within
13 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different
14 populations, the license fee chargeable by the larger incorporated city or incorporated town applies and
15 must be paid by the applicant. When the premises of the applicant to be licensed are situated within an
16 incorporated town or incorporated city and any portion of the incorporated town or incorporated city is
17 without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city
18 applies and must be paid by the applicant.

19 (f) an applicant for the issuance of an original license to be located in areas described in subsection
20 (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's
21 ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of
22 \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal
23 of a license issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

24 (8) The fee for one all-beverage license to a public airport is \$800. This license is nontransferable.

25 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under
26 16-4-303 is \$250.

27 (10) The license fees provided in this section are exclusive of and in addition to other license fees
28 chargeable in Montana for the sale of alcoholic beverages.

29 (11) In addition to other license fees, the department of revenue may require a licensee to pay a
30 late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license

1 fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1
2 of the renewal year.

3 (12) All license and permit fees collected under this section must be deposited as provided in
4 16-2-108."

5

6 NEW SECTION. **Section 9. Applicability.** [This act] applies to applications for the issuance or
7 transfer of a license received on or after [the effective date of this act].

8

9 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 1997.

10

-END-



FREE CONFERENCE COMMITTEE

on House Bill 78

Report No. 1, April 14, 1997

Page 1 of 1

Mr. Speaker and Mr. President:

We, your Free Conference Committee met and considered **House Bill 78** (reference copy -- salmon) and recommend that **House Bill 78** be amended as follows:

1. Page 5, line 5.

Strike: ".i."

Insert: "."

2. Page 5, lines 6 through 9.

Strike: subsections (V) and (VI) in their entirety

3. Page 11, line 23.

Following: "residing"

Insert: "or of retail licensees located"

And this FREE Conference Committee report be adopted.

For the House:

For the Senate:

Lisk Simpkins

Representative Simpkins, Chair

John Hertel

Senator Hertel, Chair

J. Tropila

Representative Tropila

Leon Grosfield

Senator Grosfield

Jack M. Wells

Representative Wells

Bill Wilson

Senator Wilson

ADOPT

REJECT

Yes 10-0

FCCR#1
HB 78
AC HB 78-1

791235CC.Hgd

HOUSE BILL NO. 78

INTRODUCED BY SIMPKINS

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING AND CLARIFYING THE LAWS GOVERNING LIQUOR LICENSES AND LICENSE ADMINISTRATION; REMOVING THE RESTRICTION ON RETAIL BEER LICENSES USED IN CONJUNCTION WITH ALL-BEVERAGES LICENSES; ~~RESTRICTING~~ REVISING THE CONDITIONS UNDER WHICH A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY TO THE TRANSFER OF A LICENSE ~~TO AN AREA OUTSIDE OF THE QUOTA AREA IN WHICH THE LICENSE WAS ISSUED IS REQUIRED~~; REVISING LICENSE APPLICATION PROCEDURES AND THE PROCESSING OF APPLICATIONS; PROVIDING FOR CONDITIONAL APPROVAL OF A LICENSE; PROVIDING ADDITIONAL GROUNDS FOR DENYING A LICENSE; REVISING SPECIAL PERMIT FEES; AMENDING SECTIONS 16-4-105, 16-4-115, 16-4-203, 16-4-207, 16-4-402, 16-4-404, ~~AND 16-4-405, AND 16-4-501~~, MCA; AND PROVIDING AN EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

(Refer to Introduced Bill)

Strike everything after the enacting clause and insert:

Section 1. Section 16-4-105, MCA, is amended to read:**"16-4-105. Limit on retail beer licenses -- wine license amendments -- ~~off-premises consumption.~~**

(1) Except as otherwise provided by law, a license to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation that is approved by the department as a ~~fit and proper~~ qualified person, firm, or corporation to sell beer, except that:

(a) the number of retail beer licenses that the department may issue for premises situated within incorporated cities and incorporated towns and within a distance of 5 miles from the corporate limits of the cities and towns must be determined on the basis of population prescribed in 16-4-502 as follows:

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate limits of the towns, not more than one retail beer license, ~~which may not be used in conjunction with a retail all-beverages license;~~

1 (ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000
2 inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer
3 license for every 500 inhabitants, ~~which may not be used in conjunction with retail all-beverages licenses;~~

4 (iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the
5 corporate limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail
6 beer licenses for the next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail
7 beer license for every additional 2,000 inhabitants, ~~which may not be used in conjunction with retail~~
8 ~~all-beverages licenses;~~

9 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
10 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
11 governs the number of retail beer licenses that may be issued for use within the cities and towns and within
12 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
13 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
14 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
15 from their respective corporate limits must be determined on the basis of the combined populations of both
16 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
17 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
18 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

19 (c) retail beer licenses of issue on March 7, 1947, and retail beer licenses issued under 16-4-110
20 that are in excess of the limitations in this section are renewable, but new licenses may not be issued in
21 violation of the limitations;

22 (d) the limitations do not prevent the issuance of a nontransferable and nonassignable retail beer
23 license to an enlisted persons', noncommissioned officers', or officers' club located on a state or federal
24 military reservation on May 13, 1985, or to a post of a nationally chartered veterans' organization or a
25 lodge of a recognized national fraternal organization if the veterans' or fraternal organization has been in
26 existence for a period of 5 years or more prior to January 1, 1949;

27 (e) the number of retail beer licenses that the department may issue for use at premises situated
28 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
29 from the corporate limits or for use at premises situated within any unincorporated area must be determined
30 by the department in its discretion, except that a retail beer license may not be issued for any premises so

1 situated unless the department determines that the issuance of the license is required by public convenience
2 and necessity pursuant to 16-4-203.

3 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
4 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
5 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
6 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
7 A person holding a ~~beer and wine~~ beer and wine license may sell wine for consumption on or off the
8 premises. Nonretention of the beer license, for whatever reason, means automatic loss of the wine
9 amendment license."

10

11 **Section 2.** Section 16-4-115, MCA, is amended to read:

12 **"16-4-115. Beer and wine licenses for off-premises consumption.** (1) A retail license to sell beer
13 or table wine, or both, in the original packages for off-premises consumption may be issued only to a
14 person, firm, or corporation that is approved by the department as a ~~fit and proper~~ person, firm, or
15 corporation qualified to sell beer or table wine, or both, and whose premises proposed for licensing are
16 operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of licenses that
17 the department may issue is not limited by the provisions of 16-4-105 but must be determined by the
18 department in the exercise of its sound discretion, and the department may in the exercise of its sound
19 discretion grant or deny an application for any ~~such~~ license or suspend or revoke any license for cause.

20 (2) Upon receipt of a completed application for a license under this section, accompanied by the
21 necessary license fee as provided in 16-4-501, the department shall request that the department of justice
22 make a thorough investigation of all matters relating to the application.

23 (3) Based on the results of the investigation or in exercising its sound discretion as provided in
24 subsection (1), 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; and
- 27 (c) the requirements of this code and the rules promulgated by the department are met and
28 complied with.

29 ~~(3)~~(4) License applications submitted under this section are not subject to the provisions of
30 16-4-203 and 16-4-207.

1 ~~(4)~~(5) If the premises proposed for licensing under this section are a new or remodeled structure,
 2 the department may issue a conditional license prior to completion of the premises upon reasonable
 3 evidence that the premises will be suitable for the carrying on of business as a bona fide grocery store or
 4 a drugstore licensed as a pharmacy."

5

6 **Section 3.** Section 16-4-203, MCA, is amended to read:

7 "**16-4-203. Determination of public convenience and necessity.** (1) An original license issued
 8 pursuant to 16-4-104, 16-4-201, or 16-4-202, or 16-4-208 or the transfer of location of a an on-premises
 9 retail license may be approved only if the department has determined, upon a hearing held pursuant to the
 10 Montana Administrative Procedure Act, that the issuance or transfer of the license is justified by public
 11 convenience and necessity. If there is no opposition to the application for issuance or transfer of the
 12 license, a hearing is not required if the department does not receive the minimum number of protests
 13 required for a public convenience and necessity determination pursuant to 16-4-207, in which case the
 14 application must be regarded as a prima facie showing of public convenience and necessity and no further
 15 determination of public convenience and necessity is allowed.

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

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

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

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

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

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

6 ~~(V) THE APPROVAL OF THE APPLICATION WILL NOT HAVE AN ADVERSE IMPACT ON THE AREA~~
7 ~~TO BE SERVED;~~

8 ~~(VI) THE APPROVAL OF THE APPLICATION WILL NOT HAVE A NEGATIVE IMPACT ON EXISTING~~
9 ~~LICENSEES.~~

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

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

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

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

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

25 (b) "Licensed activity" means the purchase of alcoholic beverages for on-premises consumption in
26 a business licensed to sell alcoholic beverages at retail for on-premises consumption and does not include
27 any other activity that may be carried on or is supplemental to the sale of alcoholic beverages at retail for
28 on-premises consumption such as the sale of prepared food for on-premises consumption or licensed
29 gaming.

30 (c) "Pending planning, annexation, and zoning ordinances" means the ordinances of a local

1 government or an appointed subsidiary of a local government that were publicly considered within the year
 2 preceding the date of the hearing, OR are presently being considered, or may reasonably be expected to
 3 be considered or adopted within 1 year after the date of the hearing."

4

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

6 **"16-4-207. Notice of application -- investigation -- publication -- protest.** (1) When an application
 7 has been filed with the department for a license to sell alcoholic beverages at retail or to transfer the
 8 location of a retail license, the department shall review the application for completeness and ~~to~~, based upon
 9 review of the application and any other information supplied to the department, determine whether the
 10 applicant or the premises to be licensed meets criteria provided by law. The department may make one
 11 request for additional information necessary to complete the application. The application is considered
 12 complete when the applicant furnishes the application information requested by the department. If the
 13 applicant does not provide the additional application information within 60 days of the department's
 14 request, the department shall terminate the application and return it to the applicant with an explanation
 15 of why the application was terminated. The terminated application is not a denial, and the premises
 16 identified in the application is not subject to the provisions of 16-4-413. An applicant whose application
 17 is terminated may subsequently submit a new application. The When the application is complete, the
 18 department shall request that the department of justice investigate the application as provided in 16-4-402.
 19 ~~If after the investigation~~ the department does not discover a basis to deny the application within 30 days
 20 after the department requests the investigation by the department of justice, the department shall ~~promptly~~
 21 publish in a newspaper of general circulation in the city, town, or county from which the application comes
 22 a notice that the applicant has made application for a retail ~~license~~ on-premises license or a transfer of
 23 location and that protests may be made against the ~~issuance of a license~~ approval of the application to the
 24 ~~applicant~~ by a person who has extended credit to the transferor or by residents of the county from which
 25 the application comes or adjoining Montana counties. Protests may be mailed to a named administrator in
 26 the department of revenue within 10 days after the final notice is published. Notice of application for a new
 27 license must be published once a week for 4 consecutive weeks. Notice of application for transfer of
 28 ownership or location of a license must be published once a week for 2 consecutive weeks. Notice may
 29 be substantially in the following form:

30

NOTICE OF APPLICATION FOR RETAIL ALL-BEVERAGES LICENSE

1 Notice is given that on the day of, 19..., one (name of applicant) filed an application for a
 2 retail all-beverages license with the Montana department of revenue, to be used at (describe location of
 3 premises where beverages are to be sold). A person who has extended credit to the transferor and residents
 4 of counties may protest against the ~~issuance of the license~~ approval of the application. Each protestor
 5 is required to mail a letter that contains in legible print the protestor's full name, mailing address, and street
 6 address. Each letter must be signed by the protestor. A protest petition bearing the names and signatures
 7 of persons opposing the approval of an application may not be considered as a protest. Protests may be
 8 mailed to, department of revenue, Helena, Montana, on or before the day of, 19...

9 Dated Signed
 10
 11 ADMINISTRATOR

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

14 (3) (a) If the administrator receives no written protests, the department may ~~issue or transfer the~~
 15 ~~license~~ approve the application without holding a public hearing.

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

18 (c) If the department receives sufficient written protests by a person who has extended credit to
 19 the transferor or residents of the county from which the application comes or adjoining Montana counties
 20 that satisfy the requirements in subsection (1) against the ~~issuance or transfer of the license~~ ~~are received,~~
 21 approval of the application, the department shall hold a public hearing as provided in subsection (4).

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

28 (b) If the department receives the number of protests required for a public convenience and
 29 necessity determination as specified in subsection (4)(c) and the application is for an original license or for
 30 a transfer of location, the department shall schedule a public hearing to be held in the county of the

1 proposed location of the license to determine whether the protest presents sufficient cause to deny the
 2 application based on the qualifications of the applicant as provided in 16-4-401 or on the grounds for denial
 3 of an application provided for in 16-4-405 including public convenience and necessity. The hearing must
 4 be governed by the provisions of Title 2, chapter 4, part 6.

5 (c) The minimum number of protests necessary to initiate a public hearing to determine whether an
 6 application satisfies the requirements for public convenience and necessity, as specified in 16-4-203, for
 7 the proposed premises located within a quota area described in 16-4-201 must be equal to 50% 25% OF
 8 the quota for all-beverages licenses determined for that quota area according to 16-4-201(1),(2), and (5)
 9 but in no case less than two. The minimum number of protests determined in this manner will apply only
 10 to applications for either on-premises consumption beer or all-beverages licenses."

11

12 **Section 5.** Section 16-4-402, MCA, is amended to read:

13 **"16-4-402. Application -- investigation.** (1) Prior to the issuance of a license under this chapter,
 14 the applicant shall file with the department an application in writing, signed by the applicant and containing
 15 information and statements relative to the applicant and the premises where the alcoholic beverage is to
 16 be sold as required by the department. The application must be verified by the affidavit of the person
 17 making it before a person authorized to administer oaths.

18 (2) (a) Upon receipt of a completed application for a license under this code, accompanied by the
 19 necessary license fee or letter of credit as provided in 16-4-501(7)(f), the department shall request that the
 20 department of justice make a thorough investigation of all matters relating to the application. Based on the
 21 results of the investigation or on other information, the department shall determine whether:

22 (i) the applicant is qualified to receive a license;

23 (ii) the applicant's premises are suitable for the carrying on of the business; and

24 (iii) the requirements of this code and the rules promulgated by the department are met and
 25 complied with.

26 (b) This subsection (2) does not apply to a catering endorsement provided in 16-4-111 or
 27 16-4-204(2), a retail beer and wine license for off-premises consumption as provided in 16-4-115, or a
 28 special permit provided in 16-4-301.

29 (c) For an original license application and an application for transfer of location of a license, the
 30 department of justice's investigation and the department's determination under this subsection (2) must

1 be completed within 90 days of the request from the department to the department of justice. If information
 2 is requested from the applicant by either department, the time period in this subsection (2)(c) is tolled until
 3 the requested information is received by the requesting department. The basis for the tolling of the deadline
 4 must be documented.

5 (3) Upon proof that an applicant made a false statement in any part of the original application, in
 6 any part of an annual renewal application, or in any hearing conducted pursuant to an application, the
 7 application for the license may be denied, and if issued, the license may be revoked.

8 ~~(4) If, within 30 days of receiving the completed application, the department finds no basis for~~
 9 ~~denying the application, the department shall proceed to publish the notice of the application as required~~
 10 ~~by 16-4-207. The department shall issue a conditional approval letter upon the last occurrence of either:~~

11 (a) completion of the investigation and determination provided for in subsection (2) if the
 12 department has not received information that would cause the department to deny the application; or

13 (b) a final agency decision that either denies or dismisses a protest against the approval of an
 14 application pursuant to 16-4-207.

15 (5) The conditional approval letter must state the reasons upon which the future denial of the
 16 application may be based. The reasons for denial of the application after the issuance of the conditional
 17 approval letter are as follows:

18 (a) there is false or erroneous information in the application;

19 (b) the premises are not approved by local building, health, or fire officials;

20 (c) there are physical changes to the premises that if known prior to the issuance of the conditional
 21 approval letter would have constituted grounds for the denial of the application or denial of the issuance
 22 of the conditional approval; or

23 (d) a final decision by a court exercising jurisdiction over the matter either reverses or remands the
 24 department's final agency decision provided for in subsection (4)."

25

26 **Section 6.** Section 16-4-404, MCA, is amended to read:

27 **"16-4-404. Protest period -- contents of license -- posting -- privilege -- transfer.** (1) A license may
 28 not be issued until on or after the date set in the notice for hearing protests.

29 (2) Every license issued under this code must state the name of the person to whom it is issued,
 30 the location, by street and number or other appropriate specific description of location if no street address

1 exists, of the premises where the business is to be carried on under the license, and other information the
 2 department considers necessary. If the licensee is a partnership or if more than one person has an interest
 3 in the business operated under the license, the names of all persons in the partnership or interested in the
 4 business must appear on the license. Every license must be posted in a conspicuous place on the premises
 5 in which the business authorized under the license is conducted, and the license must be exhibited upon
 6 request to any authorized representative of the department or the department of justice or to any peace
 7 officer of the state of Montana.

8 (3) A license issued under the provisions of this code is a privilege personal to the licensee named
 9 in the license and is valid until the expiration of the license unless sooner revoked or suspended.

10 (4) A license may be transferred to the executor or administrator of the estate of a deceased
 11 licensee when the estate consists in whole or in part of the business of selling alcoholic beverages under
 12 a license. The license may descend or be disposed of with the licensed business under appropriate probate
 13 proceedings.

14 (5) (a) A licensee may apply to the department for a transfer of the license to different premises
 15 within the quota area if:

- 16 (i) there has been major loss or damage to the licensed premises by unforeseen natural causes;
- 17 (ii) the lease of the licensed premises has expired;
- 18 (iii) in case of rented licensed premises, there has been an eviction or increase of rent by the
 19 landlord; or
- 20 (iv) the licensee has proposed removal of the license to premises that are as substantially suited for
 21 the retail alcoholic beverages business as the premises proposed to be vacated.

22 (b) The department may, after notice and opportunity for protest, permit a transfer in the cases
 23 specified in subsection (5)(a) if it appears to the department that a transfer is required to do justice to the
 24 licensee applying for the transfer and the transfer is justified by public convenience and necessity, pursuant
 25 to 16-4-203, unless a public convenience and necessity hearing is required by 16-4-207. The department
 26 may not allow a transfer to different premises where the sanitary, health, and service facilities are less
 27 satisfactory than facilities that exist or had existed at the premises from which the transfer is proposed to
 28 be made.

29 (6) Upon a bona fide sale of the business operated under a license, the license may be transferred
 30 to a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by

1 the department. A licensee or transferee or proposed transferee who operates or attempts to operate under
 2 a supposedly transferred license prior to the approval of the transfer by the department, endorsed upon the
 3 license in writing, is considered to be operating without a license and the license affected may be revoked
 4 or suspended by the department. The department may, within its discretion, permit a qualified purchaser
 5 to operate the business to be transferred pending final approval if there has not been a change in location
 6 and the application for transfer has been filed with the department.

7 (7) Except as provided in 16-4-204 and subsections (2) through (6) and 16-4-204 of this section,
 8 a license may not be transferred or sold or used for any place of business not described in the license. A
 9 license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon
 10 application to and approval of the department, must be endorsed on the license. Beer or wine sold to a
 11 licensee on credit pursuant to 16-3-243 or 16-3-406 does not create a lien upon a license, but a
 12 subsequent licensee has the obligation to pay for the beer or wine."
 13

14 **Section 7.** Section 16-4-405, MCA, is amended to read:

15 "**16-4-405. Denial of license.** (1) The department may deny the issuance of a retail alcoholic
 16 beverages license if it determines that the premises proposed for licensing are off regular police beats and
 17 cannot be properly policed by local authorities.

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

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

23 (a) the welfare of the people residing OR OF RETAIL LICENSEES LOCATED in the vicinity of the
 24 premises for which the license is desired will be adversely and seriously affected;

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

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

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

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

1 **SECTION 8. SECTION 16-4-501, MCA, IS AMENDED TO READ:**

2 **"16-4-501. License and permit fees.** (1) Each beer licensee licensed to sell either beer or table
3 wine only, or both beer and table wine, under the provisions of this code, shall pay an annual license fee
4 as follows:

5 (a) each brewer and each beer importer, wherever located, whose product is sold or offered for
6 sale within the state, \$500; for each storage depot, \$400;

7 (b) each beer wholesaler, \$400; each table wine distributor, \$400; each subwarehouse, \$400;

8 (c) each beer retailer, \$200;

9 (d) for a license to sell beer at retail for off-premises consumption only, the same as a retail beer
10 license; for a license to sell table wine at retail for off-premises consumption only, either alone or in
11 conjunction with beer, \$200;

12 (e) any unit of a nationally chartered veterans' organization, \$50.

13 (2) The permit fee under 16-4-301(1) is computed at the rate of ~~\$15~~ \$10 a day for each day beer
14 and table wine are sold at those events lasting 2 or more days, ~~but in no case shall the fee be less than \$30~~
15 may not exceed \$300 for a series of scheduled sporting events.

16 (3) The permit fee under 16-4-301(2) is \$10 for the sale of beer and table wine only or \$20 for the
17 sale of all alcoholic beverages.

18 (4) Passenger carrier licenses ~~shall~~ must be issued upon payment by the applicant of an annual
19 license fee in the sum of \$300.

20 (5) The annual license fee for a license to sell wine on the premises, when issued as an amendment
21 to a beer-only license pursuant to 16-4-105, is \$200.

22 (6) The annual fee for resort retail all-beverages licenses within a given resort area ~~shall be~~ is
23 \$2,000 for each license.

24 (7) Each licensee licensed under the quotas of 16-4-201 shall pay an annual license fee as follows:

25 (a) except as provided in this section, for each license outside of incorporated cities and
26 incorporated towns or in incorporated cities and incorporated towns with a population of less than 2,000,
27 \$250 for a unit of a nationally chartered veterans' organization and \$400 for all other licensees;

28 (b) except as provided in this section, for each license in incorporated cities with a population of
29 more than 2,000 and less than 5,000 or within a distance of 5 miles thereof, measured in a straight line
30 from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$350 for a

1 unit of a nationally chartered veterans' organization and \$500 for all other licensees;

2 (c) except as provided in this section, for each license in incorporated cities with a population of
3 more than 5,000 and less than 10,000 or within a distance of 5 miles thereof, measured in a straight line
4 from the nearest entrance of the premises to be licensed to the nearest boundary of the city, \$500 for a
5 unit of a nationally chartered veterans' organization and \$650 for all other licensees;

6 (d) for each license in incorporated cities with a population of 10,000 or more or within a distance
7 of 5 miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to
8 the nearest boundary of the city, \$650 for a unit of a nationally chartered veterans' organization and \$800
9 for all other licensees;

10 (e) the distance of 5 miles from the corporate limits of any incorporated cities and incorporated
11 towns is measured in a straight line from the nearest entrance of the premises to be licensed to the nearest
12 boundary of the city or town; and where the premises of the applicant to be licensed are situated within
13 5 miles of the corporate boundaries of two or more incorporated cities or incorporated towns of different
14 populations, the license fee chargeable by the larger incorporated city or incorporated town applies and
15 must be paid by the applicant. When the premises of the applicant to be licensed are situated within an
16 incorporated town or incorporated city and any portion of the incorporated town or incorporated city is
17 without a 5-mile limit, the license fee chargeable by the smaller incorporated town or incorporated city
18 applies and must be paid by the applicant.

19 (f) an applicant for the issuance of an original license to be located in areas described in subsection
20 (7)(d) shall provide an irrevocable letter of credit from a financial institution that guarantees that applicant's
21 ability to pay a \$20,000 license fee. A successful applicant shall pay a one-time original license fee of
22 \$20,000 for a license issued. The one-time license fee of \$20,000 may not apply to any transfer or renewal
23 of a license issued prior to July 1, 1974. All licenses, however, are subject to the annual renewal fee.

24 (8) The fee for one all-beverage license to a public airport is \$800. This license is nontransferable.

25 (9) The annual fee for a special beer and table wine license for a nonprofit arts organization under
26 16-4-303 is \$250.

27 (10) The license fees provided in this section are exclusive of and in addition to other license fees
28 chargeable in Montana for the sale of alcoholic beverages.

29 (11) In addition to other license fees, the department of revenue may require a licensee to pay a
30 late fee of 33 1/3% of any license fee delinquent on July 1 of the renewal year, 66 2/3% of any license

1 fee delinquent on August 1 of the renewal year, and 100% of any license fee delinquent on September 1
2 of the renewal year.

3 (12) All license and permit fees collected under this section must be deposited as provided in
4 16-2-108."

5

6 NEW SECTION. **Section 9. Applicability.** [This act] applies to applications for the issuance or
7 transfer of a license received on or after [the effective date of this act].

8

9 NEW SECTION. **Section 10. Effective date.** [This act] is effective July 1, 1997.

10

-END-