

Senator

*Griffith Fish
Hillborn*

1 INTRODUCED BY *Emer* *Water* *Prognostich* *Swanson* *Smith*

2 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO
3 ALLOW RESTAURANTS TO SERVE BEER AND WINE; PROHIBITING A RESTAURANT BEER AND WINE
4 LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR LIQUOR LICENSE; EXEMPTING
5 RESTAURANT BEER AND WINE LICENSES FROM THE QUOTA SYSTEM; PROVIDING THAT RESTAURANT
6 BEER AND WINE LICENSES ARE NONTRANSFERABLE; PROHIBITING GAMING AND GAMBLING IN
7 CONJUNCTION WITH A LICENSE, OTHER THAN AN ALL-BEVERAGES LICENSE, TO SELL ALCOHOLIC
8 BEVERAGES FOR CONSUMPTION ON PREMISES NOT ORIGINALLY LICENSED PRIOR TO THE EFFECTIVE
9 DATE OF THIS ACT; AND AMENDING SECTIONS 23-5-306, 23-5-502, 23-5-603, AND 23-5-611, MCA.
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BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

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

restaurant beer and wine license whenever:

- (a) the applicant is otherwise qualified to possess a beer and wine license;
- (b) the applicant operates a restaurant at the location where the restaurant beer and wine license will be used or satisfies the department:
 - (i) that the applicant intends to open a restaurant that will meet the requirements of subsection (2) and intends to operate the restaurant so that at least 75% of the restaurant's gross income during its first year of operation is expected to be the result of the sale of food; and
 - (ii) that the restaurant beer and wine license will be used in conjunction with that restaurant;
- (c) the applicant understands that this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or operate any gambling machines and that if any gaming or gambling activity or machine exists at the location where the restaurant beer and wine license will be used, the activity must be discontinued or the machines must be removed before the restaurant beer and wine license takes effect;
- (d) the owner of an existing all-beverages, beer, wine, or beer and wine license agrees to sell any existing license before the restaurant beer and wine license takes effect; and

1 (e) the applicant does not hold any other retail license for the sale of beer, wine, or any other
2 alcoholic beverages.

3 (2) For purposes of this section, "restaurant" means a public eating place where individually priced
4 meals are prepared and served for on-premises consumption. At least 75% of the restaurant's annual gross
5 income from the operation must be from the sale of food and not from the sale of alcoholic beverages. The
6 restaurant must have a dining room, a kitchen, and the number and kinds of employees necessary for the
7 preparation, cooking, and serving of meals in order to satisfy the department that the space is intended for
8 use as a full-service restaurant.

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

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

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

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

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

20
21 **NEW SECTION. Section 2. Appropriate alcoholic beverage license for gaming or gambling.** (1)
22 Gaming or gambling may be conducted on premises with retail all-beverages licenses issued under 16-4-201
23 but may not be conducted on premises that are originally licensed after [the effective date of this act] under
24 any other provision of law to sell alcoholic beverages for consumption on the premises. The transfer or
25 renewal of a license in conformance with the provisions of this title does not constitute the new issuance
26 of a license, and premises operating under a license originally issued prior to [the effective date of this act]
27 may, subject to the provisions of Title 23, chapter 5, have gaming or gambling conducted on the premises.

28 (2) All licenses to sell alcoholic beverages for consumption on the premises, other than
29 all-beverages licenses issued under 16-4-201, that are issued after [the effective date of this act] must have
30 a conspicuous notice that the license may not be used for premises where gaming or gambling is

1 conducted.

2

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

4 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has
5 been granted an operator's license under 23-5-177 and a who holds an appropriate license to sell alcoholic
6 beverages for consumption on the premises as provided in [section 2] may be granted an annual permit for
7 the placement of live card game tables.

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

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

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

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

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

15 (A) the person has continuously operated a live card game table on the premises since January 15,
16 1989; and

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

19 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed
20 operator's premises may not be prorated and must be:

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

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

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

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

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

2 **"23-5-502. Sports pools and sports tab games authorized -- tax.** (1) Conducting or participating
3 in sports pools and sports tab games as defined and governed in this part is lawful, except that:

4 (a) sports tab games may ~~only~~ be conducted only on premises appropriately licensed to sell
5 alcoholic beverages for consumption on the premises as provided in [section 2]; and

6 (b) only a licensee of premises that are located in an incorporated city or town with a population
7 of less than 100 or located outside the boundaries of an incorporated city or town and that are
8 appropriately licensed to sell alcoholic beverages for consumption on the premises under [section 2] may
9 conduct a race between animals and conduct one or more sports pools on the race. The race may be
10 conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of
11 interior areas of the establishment where food and beverages are usually stored, prepared, or served.

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

19
20 **Section 5.** Section 23-5-603, MCA, is amended to read:

21 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator
22 may make available for public play only the number of approved video gambling machines specifically
23 authorized by this part.

24 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw
25 poker machines. Only the number of approved machines for which permits have been granted under
26 23-5-612 may be made available for play by the public on the premises of a licensed operator. The
27 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced
28 while it is being repaired with a video gambling machine that is approved under the permit provisions of
29 this part. A fee may not be charged for the replacement machine.

30 (3) Machines on premises appropriately licensed to sell alcoholic beverages for on-premises

1 consumption as provided in [section 2] must be placed:

2 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or
3 consumed; and

4 (b) within control of the operator for the purpose of preventing access to the machines by persons
5 under 18 years of age."

6

7 **Section 6.** Section 23-5-611, MCA, is amended to read:

8 "**23-5-611. Machine permit qualifications -- limitations.** (1) (a) A person who has been granted an
9 operator's license under 23-5-177 and ~~a~~ who holds an appropriate license to sell alcoholic beverages for
10 consumption on the premises as provided in [section 2] may be granted a permit for the placement of video
11 gambling machines ~~in his~~ on the person's premises.

12 (b) If video keno or bingo gambling machines were legally operated on a premises on January 15,
13 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the
14 premises or operated for the principal purpose of gaming and there is an operator's license for the premises
15 under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated
16 on the premises on that date may be granted to the person who held the permit for such machines on those
17 premises on that date.

18 (c) A person who legally operated an establishment on January 15, 1989, for the principal purpose
19 of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the
20 placement of bingo and keno machines ~~in his~~ on the person's premises.

21 (2) An applicant for a permit shall disclose on the application form to the department any
22 information required by the department consistent with the provisions of 23-5-176.

23 (3) A licensee may not have on the premises or make available for play on the premises more than
24 20 machines of any combination."

25

26 **NEW SECTION. Section 7. Codification instruction.** [Sections 1 and 2] are intended to be codified
27 as an integral part of Title 16, and the provisions of Title 16 apply to [sections 1 and 2].

28

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0354, as introduced

DESCRIPTION OF PROPOSED LEGISLATION:

An act establishing a restaurant beer and wine license to allow restaurants to serve beer and wine; prohibiting a restaurant beer and wine licensee from holding any other type of beer, wine, or liquor license; exempting restaurant beer and wine licenses from the quota system; providing that restaurant beer and wine licenses are nontransferable; prohibiting gaming and gambling in conjunction with a license, other than an all-beverages license, to sell alcoholic beverages for consumption on premises not originally licensed prior to the effective date of this act.

ASSUMPTIONS:

Department of Revenue:

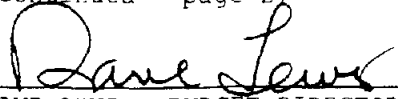
The revenue impact of this bill stems from the fees that will be paid under the issuance of new restaurant beer and wine licenses. There are two components to the estimate of new restaurant beer and wine licenses. The first component consists of those establishments that own an existing beer license in an area where the quota for these licenses is currently met. Some of these licenses will be sold with the seller subsequently purchasing a new restaurant beer and wine license. The second component consists of those restaurants that currently have no liquor license of any kind that will acquire a new restaurant beer and wine license.

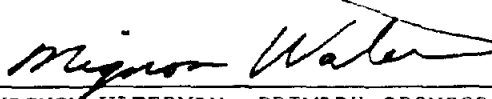
1. This act is effective October 1, 1997.
2. Currently, there are 200 existing beer licenses subject to quota at locations that do not offer gambling; of these, 190 can be sold as private property. Of these 190, only 126 are in areas where the beer and wine license quota has been met, making them marketable licenses.
3. In 1991, the Supreme Court ruled that 52 fraternal and veteran all-beverages licenses (all located in areas where the all-beverages license quota had been met) could be sold as quota licenses, and replaced with special fraternal licenses. In the ensuing time period, 16 (31%) of these licenses have been sold.
4. Based on historical experience with respect to the selling of fraternal and veteran all-beverage licenses, it is assumed that 31% of the existing available beer licenses will be sold over a 5-year period. This results in 39 licenses being sold over a five-year period, or 8 licenses per year, beginning in FY98.
5. Based on a study of restaurants currently having no liquor license of any kind that are located in areas where the current law beer license quota has been met, it is assumed that 209 restaurants will purchase a new restaurant beer and wine license over the next three fiscal years, for an average of 70 new licenses per year, beginning with FY98.
6. The initial application fee is \$1,000 for each new restaurant beer and wine license, with subsequent year licensing fees of \$300 per year.
7. The additional licenses issued under this bill will require additional licensing activity in the Liquor Division of the DOR. This additional activity will be absorbed by current funding and FTE. However, this additional activity also will result in a delaying of current licensing and other activity. This delay in performing current services is equivalent to the work that could be carried out by 0.50 licensing specialist FTE.

Department of Justice:

1. Eight current quota licenses would be sold in each year of the biennium. The average cost of each investigation will be \$400. The costs include staff time, travel and access to multi-jurisdictional criminal history data bases.
2. Seventy (70) new restaurant licenses will be purchased in each year of the biennium. The average cost of each investigation will be \$100. These investigations are not as in-depth as as the quota license investigations.

(Continued - page 2)

 2-20-97
DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

 2-21-97
MIGNON WATERMAN, PRIMARY SPONSOR DATE
SB

Fiscal Note for SB0354, as introduced

SB 354

ASSUMPTIONS:

Department of Justice: (Continued)

3. The cost of such investigations will be borne by the applicant. However, the Division spending authority must be authorized by the legislature.
4. The Division has determined that the additional workload resulting from the additional license applications will create approximately a 25% increase in license investigation activity, which is not quite sufficient to require a full-time position in addition to current staff. The actual number of licenses will be monitored during the biennium.
5. Expenditures will rise by the cost of investigating 78 new license applications in each year of the biennium (8*400 + 70*100).
6. Revenue will increase by the investigation fees paid by the license applicants. The net impact will be zero.

FISCAL IMPACT:

Department of Revenue:

Expenditures:

See assumption #7, above.

Revenues:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Licensing Fees (01)	\$78,000	\$101,400

Department of Justice:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Operating Expenditures (02)	\$10,200	\$10,200

Revenues:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
State Special Revenue (02)	\$10,200	\$10,200

Net Impact:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
State Special - Gambling (02)	\$0	\$0

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Licensing fee revenue (01) is projected to increase by \$124,800 in FY2000; by \$78,200 in FY2001; and by \$80,600 in FY2002.

1 SENATE BILL NO. 354

2 INTRODUCED BY WATERMAN, MARSHALL, ECK, HIBBARD, EWER, MESAROS, GROSFIELD, TASH,
3 HALLIGAN, BOHLINGER, BARTLETT, SANDS, SWYSGOOD, SWANSON, BARNHART, SMITH,
4 SIMPKINS, AHNER, M. TAYLOR, BURNETT, WYATT, L. TAYLOR, ROSE, SCHMIDT, J. JOHNSON,
5 CRIPPEN, TOEWS, CAREY, COBB, REHBEIN, REAM, STOVALL, JABS, MILLS, R. JOHNSON, SHEA,
6 ELLINGSON, FOSTER, BECK, DEPRATU, GRIMES

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO
9 ALLOW RESTAURANTS TO SERVE BEER AND WINE TO PATRONS WHO PURCHASE FOOD; PROHIBITING
10 A RESTAURANT BEER AND WINE LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR
11 LIQUOR LICENSE; ~~EXEMPTING~~ BASING THE ISSUANCE OF RESTAURANT BEER AND WINE LICENSES
12 FROM ON THE QUOTA SYSTEM; LIMITING THE NUMBER OF LICENSES THAT MAY BE ISSUED TO
13 RESTAURANTS WITH A SEATING CAPACITY OF 101 PERSONS OR MORE; PROVIDING THAT CERTAIN
14 LICENSES BE ISSUED BY LOTTERY; PROVIDING THAT RESTAURANT BEER AND WINE LICENSES ARE
15 ~~NONTRANSFERABLE~~ TRANSFERABLE UNDER CERTAIN CONDITIONS; PROHIBITING GAMING AND
16 GAMBLING IN CONJUNCTION WITH A LICENSE, OTHER THAN AN ALL-BEVERAGES LICENSE, TO SELL
17 ALCOHOLIC BEVERAGES FOR CONSUMPTION ON PREMISES NOT ORIGINALLY LICENSED PRIOR TO THE
18 EFFECTIVE DATE OF SECTION 6 OF THIS ACT; AND AMENDING SECTIONS 16-4-105, 16-4-111,
19 23-5-306, 23-5-502, 23-5-603, AND 23-5-611, MCA; AND PROVIDING EFFECTIVE DATES."

20
21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

22
23 NEW SECTION. Section 1. Restaurant beer and wine license. (1) The department shall issue a
24 restaurant beer and wine license TO AN APPLICANT whenever THE DEPARTMENT DETERMINES THAT THE
25 APPLICANT, IN ADDITION TO SATISFYING THE REQUIREMENTS OF THIS SECTION, MEETS THE
26 FOLLOWING QUALIFICATIONS AND CONDITIONS:

27 (a) ~~the applicant is otherwise qualified to possess a beer and wine license~~ IN THE CASE OF AN
28 INDIVIDUAL APPLICANT:

29 (I) THE APPLICANT'S PAST RECORD AND PRESENT STATUS AS A PURVEYOR OF ALCOHOLIC
30 BEVERAGES AND AS A BUSINESS PERSON AND CITIZEN DEMONSTRATE THAT THE APPLICANT IS

1 LIKELY TO OPERATE THE ESTABLISHMENT IN COMPLIANCE WITH ALL APPLICABLE LAWS OF THE
 2 STATE AND LOCAL GOVERNMENTS; AND

3 (II) THE APPLICANT IS NOT UNDER 19 YEARS OF AGE;

4 (B) IN THE CASE OF A CORPORATE APPLICANT:

5 (I) IN THE CASE OF A CORPORATION LISTED ON A NATIONAL STOCK EXCHANGE, THE
 6 CORPORATE OFFICERS AND THE BOARD OF DIRECTORS MUST MEET THE REQUIREMENTS OF
 7 SUBSECTION (1)(A);

8 (II) IN THE CASE OF A CORPORATION NOT LISTED ON A NATIONAL STOCK EXCHANGE, EACH
 9 OWNER OF 10% OR MORE OF THE OUTSTANDING STOCK MUST MEET THE REQUIREMENTS FOR AN
 10 INDIVIDUAL LISTED IN SUBSECTION (1)(A); AND

11 (III) THE CORPORATION IS AUTHORIZED TO DO BUSINESS IN MONTANA;

12 (C) IN THE CASE OF ANY OTHER BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO
 13 PARTNERSHIPS INCLUDING LIMITED LIABILITY PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED
 14 LIABILITY COMPANIES, BUT NOT INCLUDING ANY FORM OF A TRUST;

15 (I) IF THE APPLICANT CONSISTS OF MORE THAN ONE INDIVIDUAL, ALL INDIVIDUALS MUST
 16 MEET THE REQUIREMENTS OF SUBSECTION (1)(A); AND

17 (II) IF THE APPLICANT CONSISTS OF MORE THAN ONE CORPORATION, ALL CORPORATIONS
 18 LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE REQUIREMENTS OF SUBSECTION (1)(B)(I)
 19 AND CORPORATIONS NOT LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE
 20 REQUIREMENTS OF SUBSECTION (1)(B)(III);

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

23 (i) that the applicant intends to open a restaurant that will meet the requirements of subsection
 24 ~~(2)(6)~~ and intends to operate the restaurant so that at least 75% of the restaurant's gross income during
 25 its first year of operation is expected to be the result of the sale of food; ~~and~~

26 (ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, THAT
 27 THE RESTAURANT WILL SERVE ONLY BEER AND WINE TO A PATRON WHO ORDERS FOOD, AND THAT
 28 BEER AND WINE PURCHASES WILL BE STATED ON THE FOOD BILL; AND

29 (III) THAT THE RESTAURANT WILL SERVE BEER AND WINE FROM A SERVICE BAR, AS SERVICE
 30 BAR IS DEFINED BY THE DEPARTMENT BY RULE;

1 ~~(e)~~(E) the applicant understands AND ACKNOWLEDGES IN WRITING ON THE APPLICATION that
 2 this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or
 3 operate any gambling machines and that if any gaming or gambling activity or machine exists at the location
 4 where the restaurant beer and wine license will be used, the activity must be discontinued or the machines
 5 must be removed before the restaurant beer and wine license takes effect; AND

6 ~~(d) the owner of an existing all beverages, beer, wine, or beer and wine license agrees to sell any~~
 7 ~~existing license before the restaurant beer and wine license takes effect; and~~

8 ~~(e)~~(F) ~~the applicant does not hold any other retail license for the sale of beer, wine, or any other~~
 9 ~~alcoholic beverages~~ THE APPLICANT STATES THE PLANNED SEATING CAPACITY OF THE RESTAURANT,
 10 IF IT IS TO BE BUILT, OR THE CURRENT SEATING CAPACITY IF THE RESTAURANT IS OPERATING.

11 (2) A RESTAURANT THAT HAS AN EXISTING RETAIL LICENSE FOR THE SALE OF BEER, WINE,
 12 OR ANY OTHER ALCOHOLIC BEVERAGE MAY NOT BE CONSIDERED FOR A RESTAURANT BEER AND
 13 WINE LICENSE AT THE SAME LOCATION.

14 (3) (A) A COMPLETED APPLICATION FOR A LICENSE UNDER THIS SECTION AND THE
 15 APPROPRIATE APPLICATION FEE, AS PROVIDED IN SUBSECTION (11), MUST BE SUBMITTED TO THE
 16 DEPARTMENT. THE DEPARTMENT SHALL REQUEST THAT THE DEPARTMENT OF JUSTICE MAKE AN
 17 INVESTIGATION OF ALL THE ITEMS RELATING TO THE APPLICATION AS DESCRIBED IN SUBSECTIONS
 18 (3)(A)(I) THROUGH (3)(A)(IV). BASED ON THE RESULTS OF THE INVESTIGATION OR IN EXERCISING ITS
 19 SOUND DISCRETION, THE DEPARTMENT SHALL DETERMINE WHETHER:

20 (I) THE APPLICANT IS QUALIFIED TO RECEIVE A LICENSE;

21 (II) THE APPLICANT'S PREMISES ARE SUITABLE FOR THE CARRYING ON OF THE BUSINESS;

22 (III) THE REQUIREMENTS OF THIS CODE AND THE RULES PROMULGATED BY THE DEPARTMENT
 23 ARE MET AND COMPLIED WITH; AND

24 (IV) THE SEATING CAPACITY AS STATED ON THE APPLICATION IS CORRECT.

25 (B) THE DEPARTMENT MAY RETAIN 20% OF THE APPLICATION FEE COLLECTED UNDER
 26 SUBSECTION (10) TO DEFRAY THE COSTS OF THE DEPARTMENT AND DEPARTMENT OF JUSTICE
 27 ASSOCIATED WITH INVESTIGATING AND PROCESSING APPLICATIONS.

28 (4) AN APPLICATION FOR A BEER AND WINE LICENSE SUBMITTED UNDER THIS SECTION IS
 29 SUBJECT TO THE PROVISIONS OF 16-4-203, 16-4-207, AND 16-4-405.

30 (5) IF A PREMISES PROPOSED FOR LICENSING UNDER THIS SECTION IS A NEW OR REMODELED

1 STRUCTURE, THEN THE DEPARTMENT MAY ISSUE A CONDITIONAL LICENSE PRIOR TO COMPLETION
 2 OF THE PREMISES BASED ON REASONABLE EVIDENCE, INCLUDING A STATEMENT FROM THE
 3 APPLICANT'S ARCHITECT OR CONTRACTOR CONFIRMING THAT THE SEATING CAPACITY STATED ON
 4 THE APPLICATION IS CORRECT, THAT THE PREMISES WILL BE SUITABLE FOR THE CARRYING ON OF
 5 BUSINESS AS A BONA FIDE RESTAURANT, AS DEFINED IN SUBSECTION (6).

6 ~~(2)~~(6) For purposes of this section, "restaurant" means a public eating place where individually
 7 priced meals are prepared and served for on-premises consumption. At least 75 % of the restaurant's annual
 8 gross income from the operation must be from the sale of food and not from the sale of alcoholic
 9 beverages. EACH YEAR AFTER A LICENSE IS ISSUED, THE APPLICANT SHALL FILE WITH THE
 10 DEPARTMENT A STATEMENT, IN A FORM APPROVED BY THE DEPARTMENT, ATTESTING THAT AT
 11 LEAST 75% OF THE GROSS INCOME OF THE RESTAURANT DURING THE PRIOR YEAR RESULTED FROM
 12 THE SALE OF FOOD. The restaurant must have a dining room, a kitchen, and the number and kinds of
 13 employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department
 14 that the space is intended for use as a full-service restaurant. A FULL-SERVICE RESTAURANT IS A
 15 RESTAURANT THAT PROVIDES AN EVENING DINNER MENU.

16 ~~(3)~~(7) (A) (I) A SUBJECT TO THE CONDITIONS OF SUBSECTION (7)(A)(II), A restaurant beer and
 17 wine license is not transferable and may not be sold by a licensee MAY BE TRANSFERRED, UPON
 18 APPROVAL BY THE DEPARTMENT, FROM THE ORIGINAL APPLICANT TO A NEW OWNER OF THE
 19 RESTAURANT IF THERE IS NO CHANGE OF LOCATION, AND THE ORIGINAL OWNER MAY TRANSFER
 20 LOCATION AFTER THE LICENSE IS ISSUED BY THE DEPARTMENT TO A NEW LOCATION, UPON
 21 APPROVAL BY THE DEPARTMENT.

22 (II) A NEW OWNER MAY NOT TRANSFER THE LICENSE TO A NEW LOCATION FOR A PERIOD OF
 23 1 YEAR FOLLOWING THE TRANSFER OF THE LICENSE TO THE NEW OWNER.

24 (B) A LICENSE ISSUED UNDER THIS SECTION MAY BE JOINTLY OWNED, AND THE LICENSE MAY
 25 PASS TO THE SURVIVING JOINT TENANT UPON THE DEATH OF THE OTHER TENANT. HOWEVER, THE
 26 LICENSE MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR ENTITY BY OPERATION OF THE
 27 LAWS OF INHERITANCE OR SUCCESSION OR ANY OTHER LAWS ALLOWING THE TRANSFER OF
 28 PROPERTY UPON THE DEATH OF THE OWNER IN THIS STATE OR IN ANOTHER STATE.

29 (C) AN ESTATE MAY, UPON THE SALE OF A RESTAURANT THAT IS PROPERTY OF THE ESTATE
 30 AND WITH THE APPROVAL OF THE DEPARTMENT, TRANSFER A RESTAURANT BEER AND WINE LICENSE

1 TO A NEW OWNER.

2 ~~(4)(8) (A) The department shall issue a restaurant beer and wine license to a qualified applicant~~
3 ~~regardless of the number of beer and wine licenses already issued within a beer license quota area in which~~
4 ~~the restaurant is located;~~

5 (I) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,000
6 PERSONS OR FEWER, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
7 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
8 THAN 60% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
9 PURSUANT TO 16-4-105;

10 (II) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,001 TO
11 60,000 PERSONS, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
12 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
13 THAN 50% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
14 PURSUANT TO 16-4-105;

15 (III) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 60,001
16 PERSONS OR MORE, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
17 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
18 THAN 40% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
19 PURSUANT TO 16-4-105; AND

20 (IV) FOR A RESTAURANT LOCATED IN A QUOTA AREA THAT IS ALSO A RESORT COMMUNITY,
21 AS THE RESORT COMMUNITY IS DESIGNATED BY THE DEPARTMENT OF COMMERCE UNDER
22 7-6-4461(5), IF THE NUMBER OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THE QUOTA AREA
23 THAT IS ALSO A RESORT COMMUNITY IS EQUAL TO OR LESS THAN 100% OF THE NUMBER OF BEER
24 LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA PURSUANT TO 16-4-105.

25 (B) IN DETERMINING THE NUMBER OF RESTAURANT BEER AND WINE LICENSES THAT MAY BE
26 ISSUED UNDER THIS SUBSECTION (8) BASED ON THE PERCENTAGE AMOUNTS DESCRIBED IN
27 SUBSECTIONS (8)(A)(I) THROUGH (8)(A)(III), THE DEPARTMENT SHALL ROUND TO THE NEARER WHOLE
28 NUMBER.

29 (C) IF THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE IN A QUOTA AREA, THEN
30 THE LICENSE MUST BE AWARDED BY LOTTERY AS PROVIDED IN SUBSECTION (9).

1 (9) (A) WHEN A RESTAURANT BEER AND WINE LICENSE BECOMES AVAILABLE BY THE INITIAL
 2 ISSUANCE OF LICENSES UNDER THIS SECTION OR AS THE RESULT OF AN INCREASE IN THE
 3 POPULATION IN THE QUOTA AREA, THE NONRENEWAL OF RESTAURANT BEER AND WINE LICENSE,
 4 OR THE LAPSE OR REVOCATION OF THE LICENSE BY THE DEPARTMENT, THEN THE DEPARTMENT
 5 SHALL ADVERTISE THE AVAILABILITY OF THE LICENSE IN THE QUOTA AREA FOR WHICH IT IS
 6 AVAILABLE. IF THERE ARE MORE APPLICANTS THAN NUMBER OF LICENSES AVAILABLE, THE LICENSE
 7 MUST BE AWARDED TO AN APPLICANT BY A LOTTERY.

8 (B) ANY APPLICANT WHO OPERATES A RESTAURANT THAT MEETS THE QUALIFICATIONS OF
 9 SUBSECTION (6) FOR AT LEAST 12 MONTHS PRIOR TO THE FILING OF AN APPLICATION MUST BE
 10 GIVEN A PREFERENCE.

11 (C) THE DEPARTMENT SHALL NUMERICALLY RANK ALL APPLICANTS IN THE LOTTERY. ONLY
 12 THE SUCCESSFUL APPLICANTS WILL BE REQUIRED TO SUBMIT A COMPLETED APPLICATION AND THE
 13 REQUIRED FEE. AN APPLICANT'S RANKING MAY NOT BE SOLD OR TRANSFERRED TO ANOTHER
 14 PERSON OR ENTITY. THE PREFERENCE AND AN APPLICANT'S RANKING APPLY ONLY TO THE
 15 INTENDED LICENSE ADVERTISED BY THE DEPARTMENT OR TO THE NUMBER OF LICENSES DETERMINED
 16 UNDER SUBSECTION (8) WHEN THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE. THE
 17 APPLICANT'S QUALIFICATIONS FOR ANY OTHER RESTAURANT BEER AND WINE LICENSE AWARDED
 18 BY LOTTERY MUST BE DETERMINED AT THE TIME OF THE LOTTERY.

19 ~~(5)~~(10) Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
 20 consumption.

21 ~~(6)~~(11) An application for a restaurant beer and wine license must be accompanied by a fee of
 22 ~~\$1,000~~ ACCORDING TO THE FOLLOWING SCHEDULE:

23 (A) \$5,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 60 PERSONS OR LESS;

24 (B) \$10,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 61 TO 100 PERSONS;

25 OR

26 (C) \$20,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 101 PERSONS OR
 27 MORE.

28 (12) The annual fee for a restaurant beer and wine license is ~~\$300~~ \$400.

29 (13) IF A RESTAURANT INCREASES THE STATED SEATING CAPACITY OF THE LICENSED
 30 RESTAURANT OR IF THE DEPARTMENT DETERMINES THAT AN APPLICANT HAS INCREASED THE

1 STATED SEATING CAPACITY OF THE LICENSED RESTAURANT, THEN THE APPLICANT SHALL PAY TO
 2 THE DEPARTMENT THE DIFFERENCE BETWEEN THE APPLICATION FEE PAID AT THE TIME OF FILING THE
 3 ORIGINAL APPLICATION AND THE APPLICABLE APPLICATION FEE FOR THE ADDITIONAL SEATING.

4 (14) THE NUMBER OF BEER AND WINE LICENSES ISSUED TO RESTAURANTS WITH A STATED
 5 SEATING CAPACITY OF 101 PERSONS OR MORE MAY NOT EXCEED 25% OF THE TOTAL LICENSES
 6 ISSUED.

7 ~~(7)(15)~~ Possession of a restaurant beer and wine license is not a qualification for licensure of any
 8 gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant
 9 with a restaurant beer and wine license.

10
 11 ~~NEW SECTION. Section 2. Appropriate alcoholic beverage license for gaming or gambling. (1)~~
 12 ~~Gaming or gambling may be conducted on premises with retail all beverages licenses issued under 16-4-201~~
 13 ~~but may not be conducted on premises that are originally licensed after [the effective date of this act] under~~
 14 ~~any other provision of law to sell alcoholic beverages for consumption on the premises. The transfer or~~
 15 ~~renewal of a license in conformance with the provisions of this title does not constitute the new issuance~~
 16 ~~of a license, and premises operating under a license originally issued prior to [the effective date of this act]~~
 17 ~~may, subject to the provisions of Title 23, chapter 5, have gaming or gambling conducted on the premises.~~

18 ~~(2) All licenses to sell alcoholic beverages for consumption on the premises, other than~~
 19 ~~all beverages licenses issued under 16-4-201, that are issued after [the effective date of this act] must have~~
 20 ~~a conspicuous notice that the license may not be used for premises where gaming or gambling is~~
 21 ~~conducted.~~

22
 23 NEW SECTION. SECTION 2. DENIAL OF RESTAURANT BEER AND WINE LICENSE. (1) A
 24 RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED BY THE DEPARTMENT FOR A PREMISES
 25 SITUATED WITHIN A ZONE OF A CITY, TOWN, OR COUNTY WHERE THE SALE OF ALCOHOLIC
 26 BEVERAGES IS PROHIBITED BY ORDINANCE, A CERTIFIED COPY OF WHICH HAS BEEN FILED WITH THE
 27 DEPARTMENT.

28 (2) A RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED OR RENEWED IF THE
 29 DEPARTMENT FINDS, SUBJECT TO THE OPPORTUNITY FOR A HEARING PURSUANT TO TITLE 2,
 30 CHAPTER 4, PART 6, THAT THE APPLICANT OR THE PREMISES PROPOSED FOR LICENSING FAIL TO

1 MEET THE ELIGIBILITY OR SUITABILITY CRITERIA PROVIDED BY LAW.

2
3 NEW SECTION. SECTION 3. SALE OF BEER AND WINE PROHIBITED DURING CERTAIN HOURS.
4 EXCEPT AS PROVIDED IN 16-3-305, RESTAURANTS LICENSED PURSUANT TO [SECTION 1] IN WHICH
5 BEER AND WINE ARE SOLD, OFFERED FOR SALE, OR GIVEN AWAY AT RETAIL MAY NOT SERVE BEER
6 AND WINE BETWEEN THE HOURS OF 11 P.M. AND 11 A.M. HOWEVER, IF AN INCORPORATED CITY
7 OR TOWN HAS BY ORDINANCE FURTHER RESTRICTED THE HOURS OF SALE OF BEER AND WINE, THEN
8 THE SALE OF BEER AND WINE IN RESTAURANTS LICENSED TO SELL BEER AND WINE, PURSUANT TO
9 [SECTION 1], IS PROHIBITED WITHIN THE LIMITS OF THE CITY OR TOWN DURING THE TIME THAT THE
10 SALE IS PROHIBITED BY THIS SECTION AND IN ADDITION TO THE HOURS THAT THE SALE IS
11 PROHIBITED BY ORDINANCE.

12
13 NEW SECTION. SECTION 4. RESTAURANT BEER AND WINE LICENSE -- PROHIBITED PRACTICES.
14 A RESTAURANT LICENSED FOR THE SALE OF BEER AND WINE PURSUANT TO [SECTION 1] MAY NOT
15 CONVEY TO ANY PERSON BY ANY MEANS THAT A PERSON MAY EITHER PURCHASE OR CONSUME
16 BEER OR WINE ON THE PREMISES WITHOUT BEING REQUIRED TO PURCHASE FOOD.

17
18 NEW SECTION. SECTION 5. APPROPRIATE ALCOHOLIC BEVERAGE LICENSE FOR CERTAIN
19 GAMBLING ACTIVITIES. (1) TO BE ELIGIBLE TO OFFER GAMBLING UNDER TITLE 23, CHAPTER 5, PART
20 3, 5, OR 6, AN APPLICANT SHALL OWN IN THE APPLICANT'S NAME:

21 (A) A RETAIL ALL-BEVERAGES LICENSE ISSUED UNDER 16-4-201; OR

22 (B) A LICENSE ISSUED PRIOR TO [THE EFFECTIVE DATE OF SECTION 6] UNDER 16-4-105,
23 AUTHORIZING THE SALE OF BEER AND WINE FOR CONSUMPTION ON THE LICENSED PREMISES.

24 (2) FOR PURPOSES OF THIS SECTION, A LICENSE ISSUED UNDER 16-4-105 PRIOR TO [THE
25 EFFECTIVE DATE OF SECTION 6] MAY BE TRANSFERRED TO A NEW OWNER OR TO A NEW LOCATION
26 OR TRANSFERRED TO A NEW OWNER AND LOCATION BY THE DEPARTMENT OF REVENUE PURSUANT
27 TO THE APPLICABLE PROVISIONS OF TITLE 16. THE OWNER OF THE LICENSE THAT HAS BEEN
28 TRANSFERRED MAY OFFER GAMBLING IF THE OWNER AND THE PREMISES QUALIFY UNDER TITLE 23,
29 CHAPTER 5, PART 3, 5, OR 6.

1 **SECTION 6. SECTION 16-4-105, MCA, IS AMENDED TO READ:**

2 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption**
3 **-- limitation on use of license -- exception.** (1) Except as otherwise provided by law, a license to sell beer
4 at retail or beer and wine at retail, in accordance with the provisions of this code and the rules of the
5 department, may be issued to any person, firm, or corporation that is approved by the department as a fit
6 and proper person, firm, or corporation to sell beer, except that:

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

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

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

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

21 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
22 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
23 governs the number of retail beer licenses that may be issued for use within the cities and towns and within
24 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
25 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
26 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
27 from their respective corporate limits must be determined on the basis of the combined populations of both
28 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
29 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
30 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

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

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

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

15 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
16 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
17 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
18 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
19 A Except for beer and wine licenses issued pursuant to [section 1], a person holding a beer-and-wine
20 license may sell wine for consumption on or off the premises. Nonretention of the beer license, for
21 whatever reason, means automatic loss of the wine amendment license.

22 (3) (a) Except as provided in subsection (3)(b), a license issued pursuant to this section after [the
23 effective date of this section] must have a conspicuous notice that the license may not be used for
24 premises where gambling is conducted.

25 (b) Subsection (3)(a) does not apply to licenses issued under this section if the department received
26 the application before [the effective date of this section]. For the purposes of this subsection (3)(b), the
27 application is received by the department before [the effective date of this section] if the application's mail
28 cover is postmarked by the United States postal service before [the effective date of this section] or if the
29 application was consigned to a private courier service for delivery to the department before [the effective
30 date of this section]. An applicant who consigns an application to a private courier shall provide to the

1 department, upon demand, documentary evidence satisfactory to the department that the application was
2 consigned to a private courier before [the effective date of this section]."

3

4 **SECTION 7. SECTION 16-4-111, MCA, IS AMENDED TO READ:**

5 "16-4-111. **Catering endorsement for beer and wine licensees.** (1) (a) A person who is engaged
6 primarily in the business of providing meals with table service and who is licensed to sell beer at retail or
7 beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be
8 granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to
9 persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and
10 wine for on-premises consumption. The beer ~~and~~ or wine must be consumed on the premises where the
11 event is held.

12 (b) A person who is licensed pursuant to [section 1] to sell beer at retail or beer and wine at retail
13 for on-premises consumption may, upon the approval of the liquor division, be granted a catering
14 endorsement to the license to allow the catering and sale of beer and wine to persons attending a special
15 event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal
16 in cost to 75% of the total gross revenue from the catering contract, for on-premises consumption. The
17 beer or wine must be consumed on the premises where the event is held.

18 (2) A written application for a catering endorsement and an annual fee of \$200 must be submitted
19 to the department for its approval.

20 (3) A licensee who holds a catering endorsement may not cater an event in which the licensee is
21 the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

22 (4) The licensee shall notify the local law enforcement agency that has jurisdiction over the
23 premises that the catered event is to be held. A fee of \$35 must accompany the notice.

24 (5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
25 provisions of 16-6-103.

26 (6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
27 provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises
28 sale of beer or beer and wine on premises where the event is to be held.

29 (7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at
30 a special event conducted on the premises of a county fairground or public sports arena authorizes the

1 licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as
2 well as from a booth, stand, or other fixed place on the premises."

3

4 **Section 8.** Section 23-5-306, MCA, is amended to read:

5 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has
6 been granted an operator's license under 23-5-177 and a who holds an appropriate license to sell alcoholic
7 beverages for consumption on the premises as provided in [section 2 5] may be granted an annual permit
8 for the placement of live card game tables.

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

- 11 (i) one or more live card game tables were legally operated on the premises on January 15, 1989;
- 12 (ii) the premises were licensed on January 15, 1989, to sell food, cigarettes, or any other
- 13 consumable product;
- 14 (iii) the person has been granted an operator's license under 23-5-177; and
- 15 (iv) at the time of application for the permit:

16 (A) the person has continuously operated a live card game table on the premises since January 15,
17 1989; and

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

20 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed
21 operator's premises may not be prorated and must be:

- 22 (a) \$250 for the first table; and
- 23 (b) \$500 for each additional table.

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

26 (4) The department shall forward on a quarterly basis the remaining balance of the fee collected
27 under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or
28 town in which the live card game table is located for deposit to the county or municipal treasury. A county
29 is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and
30 towns within the county. The local government portion of this fee is statutorily appropriated to the

1 department, as provided in 17-7-502, for deposit to the county or municipal treasury."

2
3 **Section 9.** Section 23-5-502, MCA, is amended to read:

4 **"23-5-502. Sports pools and sports tab games authorized -- tax.** (1) Conducting or participating
5 in sports pools and sports tab games as defined and governed in this part is lawful, except that:

6 (a) sports tab games may ~~only~~ be conducted only on premises appropriately licensed to sell
7 alcoholic beverages for consumption on the premises as provided in [section 2 5]; and

8 (b) only a licensee of premises that are located in an incorporated city or town with a population
9 of less than 100 or located outside the boundaries of an incorporated city or town and that are
10 appropriately licensed to sell alcoholic beverages for consumption on the premises under [section 2 5] may
11 conduct a race between animals and conduct one or more sports pools on the race. The race may be
12 conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of
13 interior areas of the establishment where food and beverages are usually stored, prepared, or served.

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

21
22 **Section 10.** Section 23-5-603, MCA, is amended to read:

23 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator
24 may make available for public play only the number of approved video gambling machines specifically
25 authorized by this part.

26 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw
27 poker machines. Only the number of approved machines for which permits have been granted under
28 23-5-612 may be made available for play by the public on the premises of a licensed operator. The
29 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced
30 while it is being repaired with a video gambling machine that is approved under the permit provisions of

1 this part. A fee may not be charged for the replacement machine.

2 (3) Machines on premises appropriately licensed to sell alcoholic beverages for on-premises
3 consumption as provided in [section 2 5] must be placed:

4 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or
5 consumed; and

6 (b) within control of the operator for the purpose of preventing access to the machines by persons
7 under 18 years of age."

8

9 **Section 11.** Section 23-5-611, MCA, is amended to read:

10 **"23-5-611. Machine permit qualifications -- limitations.** (1) (a) A person who has been granted an
11 operator's license under 23-5-177 and a who holds an appropriate license to sell alcoholic beverages for
12 consumption on the premises as provided in [section 2 5] may be granted a permit for the placement of
13 video gambling machines ~~in his~~ on the person's premises.

14 (b) If video keno or bingo gambling machines were legally operated on a premises on January 15,
15 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the
16 premises or operated for the principal purpose of gaming and there is an operator's license for the premises
17 under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated
18 on the premises on that date may be granted to the person who held the permit for such machines on those
19 premises on that date.

20 (c) A person who legally operated an establishment on January 15, 1989, for the principal purpose
21 of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the
22 placement of bingo and keno machines ~~in his~~ on the person's premises.

23 (2) An applicant for a permit shall disclose on the application form to the department any
24 information required by the department consistent with the provisions of 23-5-176.

25 (3) A licensee may not have on the premises or make available for play on the premises more than
26 20 machines of any combination."

27

28 **NEW SECTION. SECTION 12. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID**
29 **PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]**
30 **IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID**

1 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

2

3 NEW SECTION. Section 13. Codification instruction. (1) [Sections 1 and 2 THROUGH 4] are
4 intended to be codified as an integral part of Title 16, CHAPTER 4, PART 4, and the provisions of Title 16,
5 CHAPTER 4, PART 4, apply to [sections 1 and 2 THROUGH 4].

6 (2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 23, CHAPTER
7 5, PART 1, AND THE PROVISIONS OF TITLE 23, CHAPTER 5, PART 1, APPLY TO [SECTION 5].

8

9 NEW SECTION. SECTION 14. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION
10 (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 1997.

11 (2) [SECTION 6] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

12

-END-

STATE OF MONTANA - FISCAL NOTE
Fiscal Note for SB0354, 2nd reading

DESCRIPTION OF PROPOSED LEGISLATION:

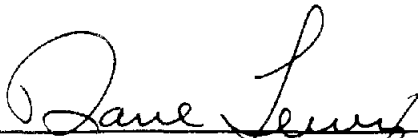
An act establishing a restaurant beer and wine license to allow restaurants to serve beer and wine to patrons who purchase food; prohibiting a restaurant beer and wine licensee from holding any other type of beer, wine, or liquor license; basing the issuance of restaurant beer and wine licenses on the quota system; limiting the number of licenses that may be issued to restaurants with a seating capacity of 101 persons or more; providing that certain licenses be issued by lottery; providing that restaurant beer and wine licenses are transferable under certain conditions; prohibiting gaming and gambling in conjunction with a license, other than an all-beverages license, to sell alcoholic beverages for consumption on premises not originally licensed prior to the effective date of section 6 of this act.

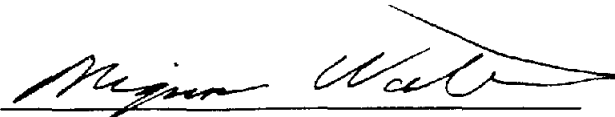
ASSUMPTIONS:

Department of Revenue:

1. This act is effective October 1, 1997.
2. A lottery to draw licenses will result in all licenses issued during the first year of the biennium (MDOR).
3. In each quota area, 25% of all licenses will be issued to restaurants with a seating capacity greater than 101 persons (MDOR).
4. In each quota area, 50% of all licenses will be issued to restaurants with a seating capacity between 61-100 persons (MDOR).
5. In each quota area, 25% of all licenses will be issued to restaurants with a seating capacity between 0-60 persons (MDOR).
6. The proposed legislation would cause 210 restaurant beer and wine licenses to be issued statewide (MDOR).
7. Restaurant beer and wine licenses will only be purchased in quota areas which have no more existing quota beer and wine licenses available (MDOR).
8. The average cost of a 4 week protest announcement is \$56. One protest notice for each license will be published (MDOR).
9. The average cost of a Notice of Availability is \$78, 70 notices will be published during FY98 (MDOR).
10. An additional 0.5 FTE licensing specialist (grade 10) will be required to accommodate the increased licensing work load.
11. Under the proposal, the Department of Revenue will be required to publish notices of availability and protest prior to licensing of a restaurant beer and wine license. The average cost of each availability notice is \$78, and each protest notice is \$56 for a FY98 total cost of \$17,220.
12. Twenty percent of the initial application fees will be deposited in a state special revenue account to defray administrative costs and must be appropriated (see technical note).

(Continued)


DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning 4.2.97


MIGNON WATERMAN, PRIMARY SPONSOR DATE
Fiscal Note for SB0354, 2nd reading. 4/2/97

SB 354-# 2

Department of Justice:

- 13. An additional 2 FTE (grade 14) in Department of Justice, Gambling Control Division will be necessary for licensing investigations. The FTE cost with benefits is \$63,670 (\$31,835 x 2 FTE).
- 14. Operating expenses for these employees is estimated at \$9,000 a year. Equipment expenses are estimated at \$13,200 in FY98 for leasing a car, and purchase of computers and office equipment. Equipment expense in FY99 is for the continued lease of car at cost of \$3,200 a year.
- 15. An additional cost for premise inspections will also be borne by the Division at an estimated travel cost of \$6,000 in FY98 and \$2,500 in FY99.

FISCAL IMPACT:

Expenditures:

	<u>FY98</u> <u>Difference</u>	<u>FY99</u> <u>Difference</u>
Department of Revenue:		
FTE	0.5	0.5
Personal Services	13,124	13,124
Operating Expenses	17,220	0
Equipment	<u>3,524</u>	<u>0</u>
Total	33,868	13,124
Funding:		
License Fee - Admin Acct (02)	33,868	13,124
Department of Justice:		
FTE	2.00	2.00
Personal Services	63,670	63,670
Operating Expenses	15,000	11,500
Equipment	<u>13,200</u>	<u>3,200</u>
Total	91,870	78,370
Funding:		
License Fee - Admin Acct (02)	91,870	78,370
<u>Revenues:</u>		
License fee - General Fund (01)	1,892,000	84,000
License Fee - Admin Acct (02)	<u>473,000</u>	<u>0</u>
Total	\$2,365,000	\$84,000
<u>Net Impact:</u>		
License fee - General Fund (01)	1,892,000	84,000
License Fee - Admin Acct (02)	347,262	(91,494)

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Additional Licensing fee revenue resulting from the proposed legislation is projected to be approximately \$84,000 per year.

TECHNICAL NOTE:

Section 1 (3) (B) allows DOR to retain 20% of the application fee collected under subsection (10) to defray administrative costs. Subsection (10) relates to the restriction for off-premise consumption. The correct reference should be either subsection (11) or (12). The fiscal note assumes the reference to subsection (11) was intended.

Appropriation authority for the administrative costs will be necessary. The language in the bill provides funding for the administrative costs, but not appropriation authority.

1 SENATE BILL NO. 354

2 INTRODUCED BY WATERMAN, MARSHALL, ECK, HIBBARD, EWER, MESAROS, GROSFIELD, TASH,
 3 HALLIGAN, BOHLINGER, BARTLETT, SANDS, SWYSGOOD, SWANSON, BARNHART, SMITH,
 4 SIMPKINS, AHNER, M. TAYLOR, BURNETT, WYATT, L. TAYLOR, ROSE, SCHMIDT, J. JOHNSON,
 5 CRIPPEN, TOEWS, CAREY, COBB, REHBEIN, REAM, STOVALL, JABS, MILLS, R. JOHNSON, SHEA,
 6 ELLINGSON, FOSTER, BECK, DEPRATU, GRIMES

7
 8 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO
 9 ALLOW RESTAURANTS TO SERVE BEER AND WINE TO PATRONS WHO PURCHASE FOOD; PROHIBITING
 10 A RESTAURANT BEER AND WINE LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR
 11 LIQUOR LICENSE; ~~EXEMPTING~~ BASING THE ISSUANCE OF RESTAURANT BEER AND WINE LICENSES
 12 FROM ON THE QUOTA SYSTEM; LIMITING THE NUMBER OF LICENSES THAT MAY BE ISSUED TO
 13 RESTAURANTS WITH A SEATING CAPACITY OF 101 PERSONS OR MORE; PROVIDING THAT CERTAIN
 14 LICENSES BE ISSUED BY LOTTERY; PROVIDING THAT RESTAURANT BEER AND WINE LICENSES ARE
 15 ~~NONTRANSFERABLE~~ TRANSFERABLE UNDER CERTAIN CONDITIONS; PROHIBITING GAMING AND
 16 GAMBLING IN CONJUNCTION WITH A LICENSE, OTHER THAN AN ALL-BEVERAGES LICENSE OR A BEER
 17 AND WINE LICENSE ISSUED OUTSIDE OF A CITY OR TOWN, TO SELL ALCOHOLIC BEVERAGES FOR
 18 CONSUMPTION ON PREMISES NOT ORIGINALLY LICENSED PRIOR TO THE EFFECTIVE DATE OF SECTION
 19 6 OF THIS ACT; AND AMENDING SECTIONS 16-4-105, 16-4-111, 23-5-306, 23-5-502, 23-5-603,
 20 AND 23-5-611, MCA; AND PROVIDING EFFECTIVE DATES."

21
 22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
 24 NEW SECTION. Section 1. Restaurant beer and wine license. (1) The department shall issue a
 25 restaurant beer and wine license TO AN APPLICANT whenever THE DEPARTMENT DETERMINES THAT THE
 26 APPLICANT, IN ADDITION TO SATISFYING THE REQUIREMENTS OF THIS SECTION, MEETS THE
 27 FOLLOWING QUALIFICATIONS AND CONDITIONS:

28 (a) ~~the applicant is otherwise qualified to possess a beer and wine license~~ IN THE CASE OF AN
 29 INDIVIDUAL APPLICANT:

30 (i) THE APPLICANT'S PAST RECORD AND PRESENT STATUS AS A PURVEYOR OF ALCOHOLIC

1 BEVERAGES AND AS A BUSINESS PERSON AND CITIZEN DEMONSTRATE THAT THE APPLICANT IS
 2 LIKELY TO OPERATE THE ESTABLISHMENT IN COMPLIANCE WITH ALL APPLICABLE LAWS OF THE
 3 STATE AND LOCAL GOVERNMENTS; AND

4 (II) THE APPLICANT IS NOT UNDER 19 YEARS OF AGE;

5 (B) IN THE CASE OF A CORPORATE APPLICANT:

6 (I) IN THE CASE OF A CORPORATION LISTED ON A NATIONAL STOCK EXCHANGE, THE
 7 CORPORATE OFFICERS AND THE BOARD OF DIRECTORS MUST MEET THE REQUIREMENTS OF
 8 SUBSECTION (1)(A);

9 (II) IN THE CASE OF A CORPORATION NOT LISTED ON A NATIONAL STOCK EXCHANGE, EACH
 10 OWNER OF 10% OR MORE OF THE OUTSTANDING STOCK MUST MEET THE REQUIREMENTS FOR AN
 11 INDIVIDUAL LISTED IN SUBSECTION (1)(A); AND

12 (III) THE CORPORATION IS AUTHORIZED TO DO BUSINESS IN MONTANA;

13 (C) IN THE CASE OF ANY OTHER BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO
 14 PARTNERSHIPS INCLUDING LIMITED LIABILITY PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED
 15 LIABILITY COMPANIES, BUT NOT INCLUDING ANY FORM OF A TRUST;

16 (I) IF THE APPLICANT CONSISTS OF MORE THAN ONE INDIVIDUAL, ALL INDIVIDUALS MUST
 17 MEET THE REQUIREMENTS OF SUBSECTION (1)(A); AND

18 (II) IF THE APPLICANT CONSISTS OF MORE THAN ONE CORPORATION, ALL CORPORATIONS
 19 LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE REQUIREMENTS OF SUBSECTION (1)(B)(I)
 20 AND CORPORATIONS NOT LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE
 21 REQUIREMENTS OF SUBSECTION (1)(B)(II);

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

24 (i) that the applicant intends to open a restaurant that will meet the requirements of subsection
 25 ~~(2)(6)~~ and intends to operate the restaurant so that at least 75% of the restaurant's gross income during
 26 its first year of operation is expected to be the result of the sale of food; and

27 (ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, THAT
 28 THE RESTAURANT WILL SERVE ONLY BEER AND WINE TO A PATRON WHO ORDERS FOOD, AND THAT
 29 BEER AND WINE PURCHASES WILL BE STATED ON THE FOOD BILL; AND

30 (III) THAT THE RESTAURANT WILL SERVE BEER AND WINE FROM A SERVICE BAR, AS SERVICE

1 BAR IS DEFINED BY THE DEPARTMENT BY RULE;

2 ~~(e)(E)~~ the applicant understands AND ACKNOWLEDGES IN WRITING ON THE APPLICATION that
 3 this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or
 4 operate any gambling machines and that if any gaming or gambling activity or machine exists at the location
 5 where the restaurant beer and wine license will be used, the activity must be discontinued or the machines
 6 must be removed before the restaurant beer and wine license takes effect; AND

7 ~~(d)~~ the owner of an existing all beverages, beer, wine, or beer and wine license agrees to call any
 8 existing license before the restaurant beer and wine license takes effect; and

9 ~~(e)(F)~~ the applicant does not hold any other retail license for the sale of beer, wine, or any other
 10 alcoholic beverages THE APPLICANT STATES THE PLANNED SEATING CAPACITY OF THE RESTAURANT,
 11 IF IT IS TO BE BUILT, OR THE CURRENT SEATING CAPACITY IF THE RESTAURANT IS OPERATING.

12 (2) A RESTAURANT THAT HAS AN EXISTING RETAIL LICENSE FOR THE SALE OF BEER, WINE,
 13 OR ANY OTHER ALCOHOLIC BEVERAGE MAY NOT BE CONSIDERED FOR A RESTAURANT BEER AND
 14 WINE LICENSE AT THE SAME LOCATION.

15 (3) (A) A COMPLETED APPLICATION FOR A LICENSE UNDER THIS SECTION AND THE
 16 APPROPRIATE APPLICATION FEE, AS PROVIDED IN SUBSECTION (11), MUST BE SUBMITTED TO THE
 17 DEPARTMENT. THE DEPARTMENT SHALL REQUEST THAT THE DEPARTMENT OF JUSTICE MAKE AN
 18 INVESTIGATION OF ALL THE ITEMS RELATING TO THE APPLICATION AS DESCRIBED IN SUBSECTIONS
 19 (3)(A)(I) THROUGH (3)(A)(IV). BASED ON THE RESULTS OF THE INVESTIGATION OR IN EXERCISING ITS
 20 SOUND DISCRETION, THE DEPARTMENT SHALL DETERMINE WHETHER:

21 (I) THE APPLICANT IS QUALIFIED TO RECEIVE A LICENSE;

22 (II) THE APPLICANT'S PREMISES ARE SUITABLE FOR THE CARRYING ON OF THE BUSINESS;

23 (III) THE REQUIREMENTS OF THIS CODE AND THE RULES PROMULGATED BY THE DEPARTMENT
 24 ARE MET AND COMPLIED WITH; AND

25 (IV) THE SEATING CAPACITY AS STATED ON THE APPLICATION IS CORRECT.

26 (B) THE DEPARTMENT MAY RETAIN 20% OF THE APPLICATION FEE COLLECTED UNDER
 27 SUBSECTION (10) TO DEFRAY THE COSTS OF THE DEPARTMENT AND DEPARTMENT OF JUSTICE
 28 ASSOCIATED WITH INVESTIGATING AND PROCESSING APPLICATIONS.

29 (4) AN APPLICATION FOR A BEER AND WINE LICENSE SUBMITTED UNDER THIS SECTION IS
 30 SUBJECT TO THE PROVISIONS OF 16-4-203, 16-4-207, AND 16-4-405.

1 (5) IF A PREMISES PROPOSED FOR LICENSING UNDER THIS SECTION IS A NEW OR REMODELED
2 STRUCTURE, THEN THE DEPARTMENT MAY ISSUE A CONDITIONAL LICENSE PRIOR TO COMPLETION
3 OF THE PREMISES BASED ON REASONABLE EVIDENCE, INCLUDING A STATEMENT FROM THE
4 APPLICANT'S ARCHITECT OR CONTRACTOR CONFIRMING THAT THE SEATING CAPACITY STATED ON
5 THE APPLICATION IS CORRECT, THAT THE PREMISES WILL BE SUITABLE FOR THE CARRYING ON OF
6 BUSINESS AS A BONA FIDE RESTAURANT, AS DEFINED IN SUBSECTION (6).

7 ~~(2)(6)~~ For purposes of this section, "restaurant" means a public eating place where individually
8 priced meals are prepared and served for on-premises consumption. At least 75% of the restaurant's annual
9 gross income from the operation must be from the sale of food and not from the sale of alcoholic
10 beverages. EACH YEAR AFTER A LICENSE IS ISSUED, THE APPLICANT SHALL FILE WITH THE
11 DEPARTMENT A STATEMENT, IN A FORM APPROVED BY THE DEPARTMENT, ATTESTING THAT AT
12 LEAST 75% OF THE GROSS INCOME OF THE RESTAURANT DURING THE PRIOR YEAR RESULTED FROM
13 THE SALE OF FOOD. The restaurant must have a dining room, a kitchen, and the number and kinds of
14 employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department
15 that the space is intended for use as a full-service restaurant. A FULL-SERVICE RESTAURANT IS A
16 RESTAURANT THAT PROVIDES AN EVENING DINNER MENU.

17 ~~(3)(7) (A) (I)~~ A SUBJECT TO THE CONDITIONS OF SUBSECTION (7)(A)(II), A restaurant beer and
18 wine license is not transferable and may not be sold by a licensee MAY BE TRANSFERRED, UPON
19 APPROVAL BY THE DEPARTMENT, FROM THE ORIGINAL APPLICANT TO A NEW OWNER OF THE
20 RESTAURANT IF THERE IS NO CHANGE OF LOCATION, AND THE ORIGINAL OWNER MAY TRANSFER
21 LOCATION AFTER THE LICENSE IS ISSUED BY THE DEPARTMENT TO A NEW LOCATION, UPON
22 APPROVAL BY THE DEPARTMENT.

23 (II) A NEW OWNER MAY NOT TRANSFER THE LICENSE TO A NEW LOCATION FOR A PERIOD OF
24 1 YEAR FOLLOWING THE TRANSFER OF THE LICENSE TO THE NEW OWNER.

25 (B) A LICENSE ISSUED UNDER THIS SECTION MAY BE JOINTLY OWNED, AND THE LICENSE MAY
26 PASS TO THE SURVIVING JOINT TENANT UPON THE DEATH OF THE OTHER TENANT. HOWEVER, THE
27 LICENSE MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR ENTITY BY OPERATION OF THE
28 LAWS OF INHERITANCE OR SUCCESSION OR ANY OTHER LAWS ALLOWING THE TRANSFER OF
29 PROPERTY UPON THE DEATH OF THE OWNER IN THIS STATE OR IN ANOTHER STATE.

30 (C) AN ESTATE MAY, UPON THE SALE OF A RESTAURANT THAT IS PROPERTY OF THE ESTATE

1 AND WITH THE APPROVAL OF THE DEPARTMENT, TRANSFER A RESTAURANT BEER AND WINE LICENSE
2 TO A NEW OWNER.

3 (4)(8) (A) The department shall issue a restaurant beer and wine license to a qualified applicant
4 regardless of the number of beer and wine licenses already issued within a beer license quota area in which
5 the restaurant is located;

6 (I) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,000
7 PERSONS OR FEWER, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
8 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
9 THAN 60% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
10 PURSUANT TO 16-4-105;

11 (II) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,001 TO
12 60,000 PERSONS, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
13 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
14 THAN 50% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
15 PURSUANT TO 16-4-105;

16 (III) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 60,001
17 PERSONS OR MORE, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
18 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
19 THAN 40% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
20 PURSUANT TO 16-4-105; AND

21 (IV) FOR A RESTAURANT LOCATED IN A QUOTA AREA THAT IS ALSO A RESORT COMMUNITY,
22 AS THE RESORT COMMUNITY IS DESIGNATED BY THE DEPARTMENT OF COMMERCE UNDER
23 7-6-4461(5), IF THE NUMBER OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THE QUOTA AREA
24 THAT IS ALSO A RESORT COMMUNITY IS EQUAL TO OR LESS THAN 100% OF THE NUMBER OF BEER
25 LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA PURSUANT TO 16-4-105.

26 (B) IN DETERMINING THE NUMBER OF RESTAURANT BEER AND WINE LICENSES THAT MAY BE
27 ISSUED UNDER THIS SUBSECTION (8) BASED ON THE PERCENTAGE AMOUNTS DESCRIBED IN
28 SUBSECTIONS (8)(A)(I) THROUGH (8)(A)(III), THE DEPARTMENT SHALL ROUND TO THE NEARER WHOLE
29 NUMBER.

30 (C) IF THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE IN A QUOTA AREA, THEN

1 THE LICENSE MUST BE AWARDED BY LOTTERY AS PROVIDED IN SUBSECTION (9).

2 (9) (A) WHEN A RESTAURANT BEER AND WINE LICENSE BECOMES AVAILABLE BY THE INITIAL
3 ISSUANCE OF LICENSES UNDER THIS SECTION OR AS THE RESULT OF AN INCREASE IN THE
4 POPULATION IN THE QUOTA AREA, THE NONRENEWAL OF RESTAURANT BEER AND WINE LICENSE,
5 OR THE LAPSE OR REVOCATION OF THE LICENSE BY THE DEPARTMENT, THEN THE DEPARTMENT
6 SHALL ADVERTISE THE AVAILABILITY OF THE LICENSE IN THE QUOTA AREA FOR WHICH IT IS
7 AVAILABLE. IF THERE ARE MORE APPLICANTS THAN NUMBER OF LICENSES AVAILABLE, THE LICENSE
8 MUST BE AWARDED TO AN APPLICANT BY A LOTTERY.

9 (B) ANY APPLICANT WHO OPERATES A RESTAURANT THAT MEETS THE QUALIFICATIONS OF
10 SUBSECTION (6) FOR AT LEAST 12 MONTHS PRIOR TO THE FILING OF AN APPLICATION MUST BE
11 GIVEN A PREFERENCE.

12 (C) THE DEPARTMENT SHALL NUMERICALLY RANK ALL APPLICANTS IN THE LOTTERY. ONLY
13 THE SUCCESSFUL APPLICANTS WILL BE REQUIRED TO SUBMIT A COMPLETED APPLICATION AND THE
14 REQUIRED FEE. AN APPLICANT'S RANKING MAY NOT BE SOLD OR TRANSFERRED TO ANOTHER
15 PERSON OR ENTITY. THE PREFERENCE AND AN APPLICANT'S RANKING APPLY ONLY TO THE
16 INTENDED LICENSE ADVERTISED BY THE DEPARTMENT OR TO THE NUMBER OF LICENSES DETERMINED
17 UNDER SUBSECTION (8) WHEN THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE. THE
18 APPLICANT'S QUALIFICATIONS FOR ANY OTHER RESTAURANT BEER AND WINE LICENSE AWARDED
19 BY LOTTERY MUST BE DETERMINED AT THE TIME OF THE LOTTERY.

20 ~~(6)(10)~~ Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
21 consumption.

22 ~~(6)(11)~~ An application for a restaurant beer and wine license must be accompanied by a fee of
23 ~~\$1,000~~ ACCORDING TO THE FOLLOWING SCHEDULE:

24 (A) \$5,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 60 PERSONS OR LESS;

25 (B) \$10,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 61 TO 100 PERSONS;

26 OR

27 (C) \$20,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 101 PERSONS OR
28 MORE.

29 (12) The annual fee for a restaurant beer and wine license is ~~\$300~~ \$400.

30 (13) IF A RESTAURANT INCREASES THE STATED SEATING CAPACITY OF THE LICENSED

1 RESTAURANT OR IF THE DEPARTMENT DETERMINES THAT AN APPLICANT HAS INCREASED THE
 2 STATED SEATING CAPACITY OF THE LICENSED RESTAURANT, THEN THE APPLICANT SHALL PAY TO
 3 THE DEPARTMENT THE DIFFERENCE BETWEEN THE APPLICATION FEE PAID AT THE TIME OF FILING THE
 4 ORIGINAL APPLICATION AND THE APPLICABLE APPLICATION FEE FOR THE ADDITIONAL SEATING.

5 (14) THE NUMBER OF BEER AND WINE LICENSES ISSUED TO RESTAURANTS WITH A STATED
 6 SEATING CAPACITY OF 101 PERSONS OR MORE MAY NOT EXCEED 25% OF THE TOTAL LICENSES
 7 ISSUED.

8 ~~(7)(15)~~ Possession of a restaurant beer and wine license is not a qualification for licensure of any
 9 gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant
 10 with a restaurant beer and wine license.

11
 12 ~~**NEW SECTION. Section 2. Appropriate alcoholic beverage license for gaming or gambling.** (1)~~
 13 ~~Gaming or gambling may be conducted on premises with retail all-beverages licenses issued under 16-4-201~~
 14 ~~but may not be conducted on premises that are originally licensed after [the effective date of this act] under~~
 15 ~~any other provision of law to sell alcoholic beverages for consumption on the premises. The transfer or~~
 16 ~~renewal of a license in conformance with the provisions of this title does not constitute the new issuance~~
 17 ~~of a license, and premises operating under a license originally issued prior to [the effective date of this act]~~
 18 ~~may, subject to the provisions of Title 23, chapter 5, have gaming or gambling conducted on the premises.~~

19 ~~(2) All licenses to sell alcoholic beverages for consumption on the premises, other than~~
 20 ~~all beverages licenses issued under 16-4-201, that are issued after [the effective date of this act] must have~~
 21 ~~a conspicuous notice that the license may not be used for premises where gaming or gambling is~~
 22 ~~conducted.~~

23
 24 **NEW SECTION. SECTION 2. DENIAL OF RESTAURANT BEER AND WINE LICENSE.** (1) A
 25 RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED BY THE DEPARTMENT FOR A PREMISES
 26 SITUATED WITHIN A ZONE OF A CITY, TOWN, OR COUNTY WHERE THE SALE OF ALCOHOLIC
 27 BEVERAGES IS PROHIBITED BY ORDINANCE, A CERTIFIED COPY OF WHICH HAS BEEN FILED WITH THE
 28 DEPARTMENT.

29 (2) A RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED OR RENEWED IF THE
 30 DEPARTMENT FINDS, SUBJECT TO THE OPPORTUNITY FOR A HEARING PURSUANT TO TITLE 2,

1 CHAPTER 4, PART 6, THAT THE APPLICANT OR THE PREMISES PROPOSED FOR LICENSING FAIL TO
 2 MEET THE ELIGIBILITY OR SUITABILITY CRITERIA PROVIDED BY LAW.

3

4 NEW SECTION. SECTION 3. SALE OF BEER AND WINE PROHIBITED DURING CERTAIN HOURS.
 5 EXCEPT AS PROVIDED IN 16-3-305, RESTAURANTS LICENSED PURSUANT TO [SECTION 1] IN WHICH
 6 BEER AND WINE ARE SOLD, OFFERED FOR SALE, OR GIVEN AWAY AT RETAIL MAY NOT SERVE BEER
 7 AND WINE BETWEEN THE HOURS OF 11 P.M. AND 11 A.M. HOWEVER, IF AN INCORPORATED CITY
 8 OR TOWN HAS BY ORDINANCE FURTHER RESTRICTED THE HOURS OF SALE OF BEER AND WINE, THEN
 9 THE SALE OF BEER AND WINE IN RESTAURANTS LICENSED TO SELL BEER AND WINE, PURSUANT TO
 10 [SECTION 1], IS PROHIBITED WITHIN THE LIMITS OF THE CITY OR TOWN DURING THE TIME THAT THE
 11 SALE IS PROHIBITED BY THIS SECTION AND IN ADDITION TO THE HOURS THAT THE SALE IS
 12 PROHIBITED BY ORDINANCE.

13

14 NEW SECTION. SECTION 4. RESTAURANT BEER AND WINE LICENSE -- PROHIBITED PRACTICES.
 15 A RESTAURANT LICENSED FOR THE SALE OF BEER AND WINE PURSUANT TO [SECTION 1] MAY NOT
 16 CONVEY TO ANY PERSON BY ANY MEANS THAT A PERSON MAY EITHER PURCHASE OR CONSUME
 17 BEER OR WINE ON THE PREMISES WITHOUT BEING REQUIRED TO PURCHASE FOOD.

18

19 NEW SECTION. SECTION 5. APPROPRIATE ALCOHOLIC BEVERAGE LICENSE FOR CERTAIN
 20 GAMBLING ACTIVITIES. (1) TO BE ELIGIBLE TO OFFER GAMBLING UNDER TITLE 23, CHAPTER 5, PART
 21 3, 5, OR 6, AN APPLICANT SHALL OWN IN THE APPLICANT'S NAME:

22

(A) A RETAIL ALL-BEVERAGES LICENSE ISSUED UNDER 16-4-201; OR

23

(B) EXCEPT AS PROVIDED IN SUBSECTION (1)(C), A LICENSE ISSUED PRIOR TO [THE EFFECTIVE
 24 DATE OF SECTION 6 THIS ACT] UNDER 16-4-105, AUTHORIZING THE SALE OF BEER AND WINE FOR
 25 CONSUMPTION ON THE LICENSED PREMISES; OR

26

(C) A BEER AND WINE LICENSE ISSUED IN AN AREA OUTSIDE OF AN INCORPORATED CITY OR
 27 TOWN AS PROVIDED IN 16-4-105(1)(E). THE OWNER OF THE LICENSE WHOSE PREMISES ARE SITUATED
 28 OUTSIDE OF AN INCORPORATED CITY OR TOWN MAY OFFER GAMBLING, REGARDLESS OF WHEN THE
 29 LICENSE WAS ISSUED, IF THE OWNER AND PREMISES QUALIFY UNDER TITLE 23, CHAPTER 5, PART
 30 3, 5, OR 6.

1 (2) FOR PURPOSES OF THIS SECTION SUBSECTION (1)(B), A LICENSE ISSUED UNDER 16-4-105
 2 PRIOR TO [THE EFFECTIVE DATE OF SECTION 6 THIS ACT] MAY BE TRANSFERRED TO A NEW OWNER
 3 OR TO A NEW LOCATION OR TRANSFERRED TO A NEW OWNER AND LOCATION BY THE DEPARTMENT
 4 OF REVENUE PURSUANT TO THE APPLICABLE PROVISIONS OF TITLE 16. THE OWNER OF THE LICENSE
 5 THAT HAS BEEN TRANSFERRED MAY OFFER GAMBLING IF THE OWNER AND THE PREMISES QUALIFY
 6 UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.

7
 8 SECTION 6. SECTION 16-4-105, MCA, IS AMENDED TO READ:

9 "16-4-105. **Limit on retail beer licenses -- wine license amendments -- off-premises consumption**
 10 **-- limitation on use of license -- ~~exception~~ EXCEPTIONS.** (1) Except as otherwise provided by law, a license
 11 to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules
 12 of the department, may be issued to any person, firm, or corporation that is approved by the department
 13 as a fit and proper person, firm, or corporation to sell beer, except that:

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

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

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

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

28 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
 29 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
 30 governs the number of retail beer licenses that may be issued for use within the cities and towns and within

1 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
2 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
3 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
4 from their respective corporate limits must be determined on the basis of the combined populations of both
5 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
6 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
7 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

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

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

16 (e) the number of retail beer licenses that the department may issue for use at premises situated
17 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
18 from the corporate limits or for use at premises situated within any unincorporated area must be determined
19 by the department in its discretion, except that a retail beer license may not be issued for any premises so
20 situated unless the department determines that the issuance of the license is required by public convenience
21 and necessity. SUBSECTION (3) DOES NOT APPLY TO LICENSES ISSUED UNDER THIS SUBSECTION
22 (1)(E). THE OWNER OF THE LICENSE WHOSE PREMISES ARE SITUATED OUTSIDE OF AN INCORPORATED
23 CITY OR TOWN MAY OFFER GAMBLING, REGARDLESS OF WHEN THE LICENSE WAS ISSUED, IF THE
24 OWNER AND PREMISES QUALIFY UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.

25 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
26 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
27 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
28 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
29 A Except for beer and wine licenses issued pursuant to [section 1], a person holding a beer-and-wine
30 license may sell wine for consumption on or off the premises. Nonretention of the beer license, for

1 whatever reason, means automatic loss of the wine amendment license.

2 (3) (a) Except as provided in subsection SUBSECTIONS (1)(E) AND (3)(b), a license issued pursuant
 3 to this section after [the effective date of this section ACT] must have a conspicuous notice that the license
 4 may not be used for premises where gambling is conducted.

5 (b) Subsection (3)(a) does not apply to licenses issued under this section if the department received
 6 the application before [the effective date of this section ACT]. For the purposes of this subsection (3)(b),
 7 the application is received by the department before [the effective date of this section ACT] if the
 8 application's mail cover is postmarked by the United States postal service before [the effective date of this
 9 section ACT] or if the application was consigned to a private courier service for delivery to the department
 10 before [the effective date of this section ACT]. An applicant who consigns an application to a private
 11 courier shall provide to the department, upon demand, documentary evidence satisfactory to the
 12 department that the application was consigned to a private courier before [the effective date of this section
 13 ACT]."

14
 15 **SECTION 7. SECTION 16-4-111, MCA, IS AMENDED TO READ:**

16 **"16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged**
 17 **primarily in the business of providing meals with table service and who is licensed to sell beer at retail or**
 18 **beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be**
 19 **granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to**
 20 **persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and**
 21 **wine for on-premises consumption. The beer ~~and~~ or wine must be consumed on the premises where the**
 22 **event is held.**

23 **(b) A person who is licensed pursuant to [section 1] to sell beer at retail or beer and wine at retail**
 24 **for on-premises consumption may, upon the approval of the liquor division, be granted a catering**
 25 **endorsement to the license to allow the catering and sale of beer and wine to persons attending a special**
 26 **event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal**
 27 **in cost to 75% of the total gross revenue from the catering contract, for on-premises consumption. The**
 28 **beer or wine must be consumed on the premises where the event is held.**

29 **(2) A written application for a catering endorsement and an annual fee of \$200 must be submitted**
 30 **to the department for its approval.**

1 (3) A licensee who holds a catering endorsement may not cater an event in which the licensee is
2 the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

3 (4) The licensee shall notify the local law enforcement agency that has jurisdiction over the
4 premises that the catered event is to be held. A fee of \$35 must accompany the notice.

5 (5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
6 provisions of 16-6-103.

7 (6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
8 provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises
9 sale of beer or beer and wine on premises where the event is to be held.

10 (7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at
11 a special event conducted on the premises of a county fairground or public sports arena authorizes the
12 licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as
13 well as from a booth, stand, or other fixed place on the premises."
14

15 **Section 8.** Section 23-5-306, MCA, is amended to read:

16 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has
17 been granted an operator's license under 23-5-177 and a who holds an appropriate license to sell alcoholic
18 beverages for consumption on the premises as provided in [section 2 5] may be granted an annual permit
19 for the placement of live card game tables.

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

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

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

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

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

27 (A) the person has continuously operated a live card game table on the premises since January 15,
28 1989; and

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

1 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed
2 operator's premises may not be prorated and must be:

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

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

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

7 (4) The department shall forward on a quarterly basis the remaining balance of the fee collected
8 under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or
9 town in which the live card game table is located for deposit to the county or municipal treasury. A county
10 is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and
11 towns within the county. The local government portion of this fee is statutorily appropriated to the
12 department, as provided in 17-7-502, for deposit to the county or municipal treasury."
13

14 **Section 9.** Section 23-5-502, MCA, is amended to read:

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

17 (a) sports tab games may ~~only~~ be conducted only on premises appropriately licensed to sell
18 alcoholic beverages for consumption on the premises as provided in [section 2 5]; and

19 (b) only a licensee of premises that are located in an incorporated city or town with a population
20 of less than 100 or located outside the boundaries of an incorporated city or town and that are
21 appropriately licensed to sell alcoholic beverages for consumption on the premises under [section 2 5] may
22 conduct a race between animals and conduct one or more sports pools on the race. The race may be
23 conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of
24 interior areas of the establishment where food and beverages are usually stored, prepared, or served.

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

1 administer this part."

2

3 **Section 10.** Section 23-5-603, MCA, is amended to read:

4 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator
5 may make available for public play only the number of approved video gambling machines specifically
6 authorized by this part.

7 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw
8 poker machines. Only the number of approved machines for which permits have been granted under
9 23-5-612 may be made available for play by the public on the premises of a licensed operator. The
10 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced
11 while it is being repaired with a video gambling machine that is approved under the permit provisions of
12 this part. A fee may not be charged for the replacement machine.

13 (3) Machines on premises appropriately licensed to sell alcoholic beverages for on-premises
14 consumption as provided in [section 2 5] must be placed:

15 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or
16 consumed; and

17 (b) within control of the operator for the purpose of preventing access to the machines by persons
18 under 18 years of age."

19

20 **Section 11.** Section 23-5-611, MCA, is amended to read:

21 **"23-5-611. Machine permit qualifications -- limitations.** (1) (a) A person who has been granted an
22 operator's license under 23-5-177 and ~~a~~ who holds an appropriate license to sell alcoholic beverages for
23 consumption on the premises as provided in [section 2 5] may be granted a permit for the placement of
24 video gambling machines ~~in his~~ on the person's premises.

25 (b) If video keno or bingo gambling machines were legally operated on a premises on January 15,
26 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the
27 premises or operated for the principal purpose of gaming and there is an operator's license for the premises
28 under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated
29 on the premises on that date may be granted to the person who held the permit for such machines on those
30 premises on that date.

1 (c) A person who legally operated an establishment on January 15, 1989, for the principal purpose
 2 of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the
 3 placement of bingo and keno machines ~~in his~~ on the person's premises.

4 (2) An applicant for a permit shall disclose on the application form to the department any
 5 information required by the department consistent with the provisions of 23-5-176.

6 (3) A licensee may not have on the premises or make available for play on the premises more than
 7 20 machines of any combination."
 8

9 NEW SECTION. SECTION 12. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
 10 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
 11 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
 12 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.
 13

14 NEW SECTION. Section 13. Codification instruction. (1) [Sections 1 and 2 THROUGH 4] are
 15 intended to be codified as an integral part of Title 16, CHAPTER 4, PART 4, and the provisions of Title 16,
 16 CHAPTER 4, PART 4, apply to [sections 1 and 2 THROUGH 4].

17 (2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 23, CHAPTER
 18 5, PART 1, AND THE PROVISIONS OF TITLE 23, CHAPTER 5, PART 1, APPLY TO [SECTION 5].
 19

20 NEW SECTION. SECTION 14. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION
 21 (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 1997.

22 (2) [SECTION 6] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.
 23

-END-

SENATE BILL NO. 354

INTRODUCED BY WATERMAN, MARSHALL, ECK, HIBBARD, EWER, MESAROS, GROSFIELD, TASH,
 HALLIGAN, BOHLINGER, BARTLETT, SANDS, SWYSGOOD, SWANSON, BARNHART, SMITH,
 SIMPKINS, AHNER, M. TAYLOR, BURNETT, WYATT, L. TAYLOR, ROSE, SCHMIDT, J. JOHNSON,
 CRIPPEN, TOEWS, CAREY, COBB, REHBEIN, REAM, STOVALL, JABS, MILLER, R. JOHNSON, SHEA,
 ELLINGSON, FOSTER, BECK, DEPRATU, GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO
 ALLOW RESTAURANTS TO SERVE BEER AND WINE TO PATRONS WHO PURCHASE FOOD; PROHIBITING
 A RESTAURANT BEER AND WINE LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR
 LIQUOR LICENSE; ~~EXEMPTING~~ BASING THE ISSUANCE OF RESTAURANT BEER AND WINE LICENSES
~~FROM~~ ON THE QUOTA SYSTEM; LIMITING THE NUMBER OF LICENSES THAT MAY BE ISSUED TO
RESTAURANTS WITH A SEATING CAPACITY OF 101 PERSONS OR MORE; PROVIDING THAT CERTAIN
LICENSES BE ISSUED BY LOTTERY; PROVIDING THAT RESTAURANT BEER AND WINE LICENSES ARE
~~NONTRANSFERABLE~~ TRANSFERABLE UNDER CERTAIN CONDITIONS; PROHIBITING GAMING AND
 GAMBLING IN CONJUNCTION WITH A LICENSE, OTHER THAN AN ALL-BEVERAGES LICENSE OR A BEER
AND WINE LICENSE ISSUED OUTSIDE OF A CITY OR TOWN, TO SELL ALCOHOLIC BEVERAGES FOR
 CONSUMPTION ON PREMISES NOT ORIGINALLY LICENSED PRIOR TO THE EFFECTIVE DATE OF SECTION
6 OF THIS ACT; ~~AND~~ AND AMENDING SECTIONS 16-4-105, 16-4-111, 23-5-306, 23-5-502, 23-5-603,
 AND 23-5-611, MCA; ~~AND PROVIDING EFFECTIVE DATES.~~"

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

NEW SECTION. Section 1. Restaurant beer and wine license. (1) The department shall issue a
 restaurant beer and wine license TO AN APPLICANT whenever THE DEPARTMENT DETERMINES THAT THE
APPLICANT, IN ADDITION TO SATISFYING THE REQUIREMENTS OF THIS SECTION, MEETS THE
FOLLOWING QUALIFICATIONS AND CONDITIONS:

(a) ~~the applicant is otherwise qualified to possess a beer and wine license~~ IN THE CASE OF AN
INDIVIDUAL APPLICANT:

(I) THE APPLICANT'S PAST RECORD AND PRESENT STATUS AS A PURVEYOR OF ALCOHOLIC

1 BEVERAGES AND AS A BUSINESS PERSON AND CITIZEN DEMONSTRATE THAT THE APPLICANT IS
 2 LIKELY TO OPERATE THE ESTABLISHMENT IN COMPLIANCE WITH ALL APPLICABLE LAWS OF THE
 3 STATE AND LOCAL GOVERNMENTS; AND

4 (II) THE APPLICANT IS NOT UNDER 19 YEARS OF AGE;

5 (B) IN THE CASE OF A CORPORATE APPLICANT:

6 (I) IN THE CASE OF A CORPORATION LISTED ON A NATIONAL STOCK EXCHANGE, THE
 7 CORPORATE OFFICERS AND THE BOARD OF DIRECTORS MUST MEET THE REQUIREMENTS OF
 8 SUBSECTION (1)(A);

9 (II) IN THE CASE OF A CORPORATION NOT LISTED ON A NATIONAL STOCK EXCHANGE, EACH
 10 OWNER OF 10% OR MORE OF THE OUTSTANDING STOCK MUST MEET THE REQUIREMENTS FOR AN
 11 INDIVIDUAL LISTED IN SUBSECTION (1)(A); AND

12 (III) THE CORPORATION IS AUTHORIZED TO DO BUSINESS IN MONTANA;

13 (C) IN THE CASE OF ANY OTHER BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO
 14 PARTNERSHIPS INCLUDING LIMITED LIABILITY PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED
 15 LIABILITY COMPANIES, BUT NOT INCLUDING ANY FORM OF A TRUST;

16 (I) IF THE APPLICANT CONSISTS OF MORE THAN ONE INDIVIDUAL, ALL INDIVIDUALS MUST
 17 MEET THE REQUIREMENTS OF SUBSECTION (1)(A); AND

18 (II) IF THE APPLICANT CONSISTS OF MORE THAN ONE CORPORATION, ALL CORPORATIONS
 19 LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE REQUIREMENTS OF SUBSECTION (1)(B)(I)
 20 AND CORPORATIONS NOT LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE
 21 REQUIREMENTS OF SUBSECTION (1)(B)(II);

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

24 (i) that the applicant intends to open a restaurant that will meet the requirements of subsection
 25 ~~(2)(6)~~ and intends to operate the restaurant so that at least 75% of the restaurant's gross income during
 26 its first year of operation is expected to be the result of the sale of food; and

27 (ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, THAT
 28 THE RESTAURANT WILL SERVE ONLY BEER AND WINE TO A PATRON WHO ORDERS FOOD, AND THAT
 29 BEER AND WINE PURCHASES WILL BE STATED ON THE FOOD BILL; AND

30 (III) THAT THE RESTAURANT WILL SERVE BEER AND WINE FROM A SERVICE BAR, AS SERVICE

1 BAR IS DEFINED BY THE DEPARTMENT BY RULE;

2 ~~(e)(E)~~ the applicant understands AND ACKNOWLEDGES IN WRITING ON THE APPLICATION that
 3 this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or
 4 operate any gambling machines and that if any gaming or gambling activity or machine exists at the location
 5 where the restaurant beer and wine license will be used, the activity must be discontinued or the machines
 6 must be removed before the restaurant beer and wine license takes effect; AND

7 ~~(d) the owner of an existing all beverages, beer, wine, or beer and wine license agrees to sell any~~
 8 ~~existing license before the restaurant beer and wine license takes effect; and~~

9 ~~(e)(F) the applicant does not hold any other retail license for the sale of beer, wine, or any other~~
 10 ~~alcoholic beverages~~ THE APPLICANT STATES THE PLANNED SEATING CAPACITY OF THE RESTAURANT,
 11 IF IT IS TO BE BUILT, OR THE CURRENT SEATING CAPACITY IF THE RESTAURANT IS OPERATING.

12 (2) A RESTAURANT THAT HAS AN EXISTING RETAIL LICENSE FOR THE SALE OF BEER, WINE,
 13 OR ANY OTHER ALCOHOLIC BEVERAGE MAY NOT BE CONSIDERED FOR A RESTAURANT BEER AND
 14 WINE LICENSE AT THE SAME LOCATION.

15 (3) (A). A COMPLETED APPLICATION FOR A LICENSE UNDER THIS SECTION AND THE
 16 APPROPRIATE APPLICATION FEE, AS PROVIDED IN SUBSECTION (11), MUST BE SUBMITTED TO THE
 17 DEPARTMENT. THE DEPARTMENT SHALL REQUEST THAT THE DEPARTMENT OF JUSTICE MAKE AN
 18 INVESTIGATION OF ALL THE ITEMS RELATING TO THE APPLICATION AS DESCRIBED IN SUBSECTIONS
 19 (3)(A)(I) THROUGH (3)(A)(IV). BASED ON THE RESULTS OF THE INVESTIGATION OR IN EXERCISING ITS
 20 SOUND DISCRETION, THE DEPARTMENT SHALL DETERMINE WHETHER:

21 (I) THE APPLICANT IS QUALIFIED TO RECEIVE A LICENSE;

22 (II) THE APPLICANT'S PREMISES ARE SUITABLE FOR THE CARRYING ON OF THE BUSINESS;

23 (III) THE REQUIREMENTS OF THIS CODE AND THE RULES PROMULGATED BY THE DEPARTMENT
 24 ARE MET AND COMPLIED WITH; AND

25 (IV) THE SEATING CAPACITY AS STATED ON THE APPLICATION IS CORRECT.

26 (B) THE DEPARTMENT MAY RETAIN 20% OF THE APPLICATION FEE COLLECTED UNDER
 27 SUBSECTION (10) TO DEFRAY THE COSTS OF THE DEPARTMENT AND DEPARTMENT OF JUSTICE
 28 ASSOCIATED WITH INVESTIGATING AND PROCESSING APPLICATIONS.

29 (4) AN APPLICATION FOR A BEER AND WINE LICENSE SUBMITTED UNDER THIS SECTION IS
 30 SUBJECT TO THE PROVISIONS OF 16-4-203, 16-4-207, AND 16-4-405.

1 (5) IF A PREMISES PROPOSED FOR LICENSING UNDER THIS SECTION IS A NEW OR REMODELED
2 STRUCTURE, THEN THE DEPARTMENT MAY ISSUE A CONDITIONAL LICENSE PRIOR TO COMPLETION
3 OF THE PREMISES BASED ON REASONABLE EVIDENCE, INCLUDING A STATEMENT FROM THE
4 APPLICANT'S ARCHITECT OR CONTRACTOR CONFIRMING THAT THE SEATING CAPACITY STATED ON
5 THE APPLICATION IS CORRECT, THAT THE PREMISES WILL BE SUITABLE FOR THE CARRYING ON OF
6 BUSINESS AS A BONA FIDE RESTAURANT, AS DEFINED IN SUBSECTION (6).

7 ~~(2)(6)~~ For purposes of this section, "restaurant" means a public eating place where individually
8 priced meals are prepared and served for on-premises consumption. At least 75% of the restaurant's annual
9 gross income from the operation must be from the sale of food and not from the sale of alcoholic
10 beverages. EACH YEAR AFTER A LICENSE IS ISSUED, THE APPLICANT SHALL FILE WITH THE
11 DEPARTMENT A STATEMENT, IN A FORM APPROVED BY THE DEPARTMENT, ATTESTING THAT AT
12 LEAST 75% OF THE GROSS INCOME OF THE RESTAURANT DURING THE PRIOR YEAR RESULTED FROM
13 THE SALE OF FOOD. The restaurant must have a dining room, a kitchen, and the number and kinds of
14 employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department
15 that the space is intended for use as a full-service restaurant. A FULL-SERVICE RESTAURANT IS A
16 RESTAURANT THAT PROVIDES AN EVENING DINNER MENU.

17 ~~(3)(7) (A) (I)~~ A SUBJECT TO THE CONDITIONS OF SUBSECTION (7)(A)(II), A restaurant beer and
18 wine license is not transferable and may not be sold by a licensee MAY BE TRANSFERRED, UPON
19 APPROVAL BY THE DEPARTMENT, FROM THE ORIGINAL APPLICANT TO A NEW OWNER OF THE
20 RESTAURANT IF THERE IS NO CHANGE OF LOCATION, AND THE ORIGINAL OWNER MAY TRANSFER
21 LOCATION AFTER THE LICENSE IS ISSUED BY THE DEPARTMENT TO A NEW LOCATION, UPON
22 APPROVAL BY THE DEPARTMENT.

23 (II) A NEW OWNER MAY NOT TRANSFER THE LICENSE TO A NEW LOCATION FOR A PERIOD OF
24 1 YEAR FOLLOWING THE TRANSFER OF THE LICENSE TO THE NEW OWNER.

25 (B) A LICENSE ISSUED UNDER THIS SECTION MAY BE JOINTLY OWNED, AND THE LICENSE MAY
26 PASS TO THE SURVIVING JOINT TENANT UPON THE DEATH OF THE OTHER TENANT. HOWEVER, THE
27 LICENSE MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR ENTITY BY OPERATION OF THE
28 LAWS OF INHERITANCE OR SUCCESSION OR ANY OTHER LAWS ALLOWING THE TRANSFER OF
29 PROPERTY UPON THE DEATH OF THE OWNER IN THIS STATE OR IN ANOTHER STATE.

30 (C) AN ESTATE MAY, UPON THE SALE OF A RESTAURANT THAT IS PROPERTY OF THE ESTATE

1 AND WITH THE APPROVAL OF THE DEPARTMENT, TRANSFER A RESTAURANT BEER AND WINE LICENSE
2 TO A NEW OWNER.

3 ~~(4)(8) (A) The department shall issue a restaurant beer and wine license to a qualified applicant~~
4 ~~regardless of the number of beer and wine licenses already issued within a beer license quota area in which~~
5 ~~the restaurant is located;~~

6 (I) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,000
7 PERSONS OR FEWER, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
8 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
9 THAN 60% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
10 PURSUANT TO 16-4-105;

11 (II) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,001 TO
12 60,000 PERSONS, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
13 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
14 THAN 50% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
15 PURSUANT TO 16-4-105;

16 (III) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 60,001
17 PERSONS OR MORE, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
18 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
19 THAN 40% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
20 PURSUANT TO 16-4-105; AND

21 (IV) FOR A RESTAURANT LOCATED IN A QUOTA AREA THAT IS ALSO A RESORT COMMUNITY,
22 AS THE RESORT COMMUNITY IS DESIGNATED BY THE DEPARTMENT OF COMMERCE UNDER
23 7-6-4461(5), IF THE NUMBER OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THE QUOTA AREA
24 THAT IS ALSO A RESORT COMMUNITY IS EQUAL TO OR LESS THAN 100% OF THE NUMBER OF BEER
25 LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA PURSUANT TO 16-4-105.

26 (B) IN DETERMINING THE NUMBER OF RESTAURANT BEER AND WINE LICENSES THAT MAY BE
27 ISSUED UNDER THIS SUBSECTION (8) BASED ON THE PERCENTAGE AMOUNTS DESCRIBED IN
28 SUBSECTIONS (8)(A)(I) THROUGH (8)(A)(III), THE DEPARTMENT SHALL ROUND TO THE NEARER WHOLE
29 NUMBER.

30 (C) IF THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE IN A QUOTA AREA, THEN

1 THE LICENSE MUST BE AWARDED BY LOTTERY AS PROVIDED IN SUBSECTION (9).

2 (9) (A) WHEN A RESTAURANT BEER AND WINE LICENSE BECOMES AVAILABLE BY THE INITIAL
3 ISSUANCE OF LICENSES UNDER THIS SECTION OR AS THE RESULT OF AN INCREASE IN THE
4 POPULATION IN THE QUOTA AREA, THE NONRENEWAL OF RESTAURANT BEER AND WINE LICENSE,
5 OR THE LAPSE OR REVOCATION OF THE LICENSE BY THE DEPARTMENT, THEN THE DEPARTMENT
6 SHALL ADVERTISE THE AVAILABILITY OF THE LICENSE IN THE QUOTA AREA FOR WHICH IT IS
7 AVAILABLE. IF THERE ARE MORE APPLICANTS THAN NUMBER OF LICENSES AVAILABLE, THE LICENSE
8 MUST BE AWARDED TO AN APPLICANT BY A LOTTERY.

9 (B) ANY APPLICANT WHO OPERATES A RESTAURANT THAT MEETS THE QUALIFICATIONS OF
10 SUBSECTION (6) FOR AT LEAST 12 MONTHS PRIOR TO THE FILING OF AN APPLICATION MUST BE
11 GIVEN A PREFERENCE.

12 (C) THE DEPARTMENT SHALL NUMERICALLY RANK ALL APPLICANTS IN THE LOTTERY. ONLY
13 THE SUCCESSFUL APPLICANTS WILL BE REQUIRED TO SUBMIT A COMPLETED APPLICATION AND THE
14 REQUIRED FEE. AN APPLICANT'S RANKING MAY NOT BE SOLD OR TRANSFERRED TO ANOTHER
15 PERSON OR ENTITY. THE PREFERENCE AND AN APPLICANT'S RANKING APPLY ONLY TO THE
16 INTENDED LICENSE ADVERTISED BY THE DEPARTMENT OR TO THE NUMBER OF LICENSES DETERMINED
17 UNDER SUBSECTION (8) WHEN THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE. THE
18 APPLICANT'S QUALIFICATIONS FOR ANY OTHER RESTAURANT BEER AND WINE LICENSE AWARDED
19 BY LOTTERY MUST BE DETERMINED AT THE TIME OF THE LOTTERY.

20 ~~(6)(10)~~ Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
21 consumption.

22 ~~(6)(11)~~ An application for a restaurant beer and wine license must be accompanied by a fee of
23 ~~\$1,000~~ ACCORDING TO THE FOLLOWING SCHEDULE:

24 (A) \$5,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 60 PERSONS OR LESS;

25 (B) \$10,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 61 TO 100 PERSONS;

26 OR

27 (C) \$20,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 101 PERSONS OR
28 MORE.

29 (12) The annual fee for a restaurant beer and wine license is ~~\$300~~ \$400.

30 (13) IF A RESTAURANT INCREASES THE STATED SEATING CAPACITY OF THE LICENSED

1 RESTAURANT OR IF THE DEPARTMENT DETERMINES THAT AN APPLICANT HAS INCREASED THE
 2 STATED SEATING CAPACITY OF THE LICENSED RESTAURANT, THEN THE APPLICANT SHALL PAY TO
 3 THE DEPARTMENT THE DIFFERENCE BETWEEN THE APPLICATION FEE PAID AT THE TIME OF FILING THE
 4 ORIGINAL APPLICATION AND THE APPLICABLE APPLICATION FEE FOR THE ADDITIONAL SEATING.

5 (14) THE NUMBER OF BEER AND WINE LICENSES ISSUED TO RESTAURANTS WITH A STATED
 6 SEATING CAPACITY OF 101 PERSONS OR MORE MAY NOT EXCEED 25% OF THE TOTAL LICENSES
 7 ISSUED.

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

11
 12 ~~NEW SECTION. Section 2. Appropriate alcoholic beverage license for gaming or gambling.~~ (1)
 13 ~~Gaming or gambling may be conducted on premises with retail all beverages licenses issued under 16-4-201~~
 14 ~~but may not be conducted on premises that are originally licensed after [the effective date of this act] under~~
 15 ~~any other provision of law to sell alcoholic beverages for consumption on the premises. The transfer or~~
 16 ~~renewal of a license in conformance with the provisions of this title does not constitute the new issuance~~
 17 ~~of a license, and premises operating under a license originally issued prior to [the effective date of this act]~~
 18 ~~may, subject to the provisions of Title 23, chapter 5, have gaming or gambling conducted on the premises.~~

19 ~~(2) All licenses to sell alcoholic beverages for consumption on the premises, other than~~
 20 ~~all beverages licenses issued under 16-4-201, that are issued after [the effective date of this act] must have~~
 21 ~~a conspicuous notice that the license may not be used for premises where gaming or gambling is~~
 22 ~~conducted.~~

23
 24 NEW SECTION. SECTION 2. DENIAL OF RESTAURANT BEER AND WINE LICENSE. (1) A
 25 RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED BY THE DEPARTMENT FOR A PREMISES
 26 SITUATED WITHIN A ZONE OF A CITY, TOWN, OR COUNTY WHERE THE SALE OF ALCOHOLIC
 27 BEVERAGES IS PROHIBITED BY ORDINANCE, A CERTIFIED COPY OF WHICH HAS BEEN FILED WITH THE
 28 DEPARTMENT.

29 (2) A RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED OR RENEWED IF THE
 30 DEPARTMENT FINDS, SUBJECT TO THE OPPORTUNITY FOR A HEARING PURSUANT TO TITLE 2,

1 CHAPTER 4, PART 6, THAT THE APPLICANT OR THE PREMISES PROPOSED FOR LICENSING FAIL TO
 2 MEET THE ELIGIBILITY OR SUITABILITY CRITERIA PROVIDED BY LAW.

3
 4 NEW SECTION. SECTION 3. SALE OF BEER AND WINE PROHIBITED DURING CERTAIN HOURS.
 5 EXCEPT AS PROVIDED IN 16-3-305, RESTAURANTS LICENSED PURSUANT TO [SECTION 1] IN WHICH
 6 BEER AND WINE ARE SOLD, OFFERED FOR SALE, OR GIVEN AWAY AT RETAIL MAY NOT SERVE BEER
 7 AND WINE BETWEEN THE HOURS OF 11 P.M. AND 11 A.M. HOWEVER, IF AN INCORPORATED CITY
 8 OR TOWN HAS BY ORDINANCE FURTHER RESTRICTED THE HOURS OF SALE OF BEER AND WINE, THEN
 9 THE SALE OF BEER AND WINE IN RESTAURANTS LICENSED TO SELL BEER AND WINE, PURSUANT TO
 10 [SECTION 1], IS PROHIBITED WITHIN THE LIMITS OF THE CITY OR TOWN DURING THE TIME THAT THE
 11 SALE IS PROHIBITED BY THIS SECTION AND IN ADDITION TO THE HOURS THAT THE SALE IS
 12 PROHIBITED BY ORDINANCE.

13
 14 NEW SECTION. SECTION 4. RESTAURANT BEER AND WINE LICENSE -- PROHIBITED PRACTICES.
 15 A RESTAURANT LICENSED FOR THE SALE OF BEER AND WINE PURSUANT TO [SECTION 1] MAY NOT
 16 CONVEY TO ANY PERSON BY ANY MEANS THAT A PERSON MAY EITHER PURCHASE OR CONSUME
 17 BEER OR WINE ON THE PREMISES WITHOUT BEING REQUIRED TO PURCHASE FOOD.

18
 19 NEW SECTION. SECTION 5. APPROPRIATE ALCOHOLIC BEVERAGE LICENSE FOR CERTAIN
 20 GAMBLING ACTIVITIES. (1) TO BE ELIGIBLE TO OFFER GAMBLING UNDER TITLE 23, CHAPTER 5, PART
 21 3, 5, OR 6, AN APPLICANT SHALL OWN IN THE APPLICANT'S NAME:

22 (A) A RETAIL ALL-BEVERAGES LICENSE ISSUED UNDER 16-4-201; OR

23 (B) EXCEPT AS PROVIDED IN SUBSECTION (1)(C), A LICENSE ISSUED PRIOR TO [THE EFFECTIVE
 24 DATE OF SECTION 6 THIS ACT] UNDER 16-4-105, AUTHORIZING THE SALE OF BEER AND WINE FOR
 25 CONSUMPTION ON THE LICENSED PREMISES; OR

26 (C) A BEER AND WINE LICENSE ISSUED IN AN AREA OUTSIDE OF AN INCORPORATED CITY OR
 27 TOWN AS PROVIDED IN 16-4-105(1)(E). THE OWNER OF THE LICENSE WHOSE PREMISES ARE SITUATED
 28 OUTSIDE OF AN INCORPORATED CITY OR TOWN MAY OFFER GAMBLING, REGARDLESS OF WHEN THE
 29 LICENSE WAS ISSUED, IF THE OWNER AND PREMISES QUALIFY UNDER TITLE 23, CHAPTER 5, PART
 30 3, 5, OR 6.

1 (2) FOR PURPOSES OF THIS SECTION SUBSECTION (1)(B), A LICENSE ISSUED UNDER 16-4-105
 2 PRIOR TO [THE EFFECTIVE DATE OF SECTION 6 THIS ACT] MAY BE TRANSFERRED TO A NEW OWNER
 3 OR TO A NEW LOCATION OR TRANSFERRED TO A NEW OWNER AND LOCATION BY THE DEPARTMENT
 4 OF REVENUE PURSUANT TO THE APPLICABLE PROVISIONS OF TITLE 16. THE OWNER OF THE LICENSE
 5 THAT HAS BEEN TRANSFERRED MAY OFFER GAMBLING IF THE OWNER AND THE PREMISES QUALIFY
 6 UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.

7
 8 **SECTION 6. SECTION 16-4-105, MCA, IS AMENDED TO READ:**

9 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption**
 10 **-- limitation on use of license -- ~~exception~~ EXCEPTIONS.** (1) Except as otherwise provided by law, a license
 11 to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules
 12 of the department, may be issued to any person, firm, or corporation that is approved by the department
 13 as a fit and proper person, firm, or corporation to sell beer, except that:

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

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

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

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

28 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
 29 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
 30 governs the number of retail beer licenses that may be issued for use within the cities and towns and within

1 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
 2 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
 3 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
 4 from their respective corporate limits must be determined on the basis of the combined populations of both
 5 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
 6 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
 7 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

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

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

16 (e) the number of retail beer licenses that the department may issue for use at premises situated
 17 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
 18 from the corporate limits or for use at premises situated within any unincorporated area must be determined
 19 by the department in its discretion, except that a retail beer license may not be issued for any premises so
 20 situated unless the department determines that the issuance of the license is required by public convenience
 21 and necessity. SUBSECTION (3) DOES NOT APPLY TO LICENSES ISSUED UNDER THIS SUBSECTION
 22 (1)(E). THE OWNER OF THE LICENSE WHOSE PREMISES ARE SITUATED OUTSIDE OF AN INCORPORATED
 23 CITY OR TOWN MAY OFFER GAMBLING, REGARDLESS OF WHEN THE LICENSE WAS ISSUED, IF THE
 24 OWNER AND PREMISES QUALIFY UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.

25 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
 26 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
 27 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
 28 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
 29 A Except for beer and wine licenses issued pursuant to [section 1], a person holding a beer-and-wine
 30 license may sell wine for consumption on or off the premises. Nonretention of the beer license, for

1 whatever reason, means automatic loss of the wine amendment license.

2 (3) (a) Except as provided in ~~subsection~~ SUBSECTIONS (1)(E) AND (3)(b), a license issued pursuant
 3 to this section after [the effective date of this ~~section~~ ACT] must have a conspicuous notice that the license
 4 may not be used for premises where gambling is conducted.

5 (b) Subsection (3)(a) does not apply to licenses issued under this section if the department received
 6 the application before [the effective date of this ~~section~~ ACT]. For the purposes of this subsection (3)(b),
 7 the application is received by the department before [the effective date of this ~~section~~ ACT] if the
 8 application's mail cover is postmarked by the United States postal service before [the effective date of this
 9 ~~section~~ ACT] or if the application was consigned to a private courier service for delivery to the department
 10 before [the effective date of this ~~section~~ ACT]. An applicant who consigns an application to a private
 11 courier shall provide to the department, upon demand, documentary evidence satisfactory to the
 12 department that the application was consigned to a private courier before [the effective date of this ~~section~~
 13 ACT]."

14

15 **SECTION 7. SECTION 16-4-111, MCA, IS AMENDED TO READ:**

16 **"16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged**
 17 **primarily in the business of providing meals with table service and who is licensed to sell beer at retail or**
 18 **beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be**
 19 **granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to**
 20 **persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and**
 21 **wine for on-premises consumption. The beer ~~and~~ or wine must be consumed on the premises where the**
 22 **event is held.**

23 **(b) A person who is licensed pursuant to [section 1] to sell beer at retail or beer and wine at retail**
 24 **for on-premises consumption may, upon the approval of the liquor division, be granted a catering**
 25 **endorsement to the license to allow the catering and sale of beer and wine to persons attending a special**
 26 **event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal**
 27 **in cost to 75% of the total gross revenue from the catering contract, for on-premises consumption. The**
 28 **beer or wine must be consumed on the premises where the event is held.**

29 **(2) A written application for a catering endorsement and an annual fee of \$200 must be submitted**
 30 **to the department for its approval.**

1 (3) A licensee who holds a catering endorsement may not cater an event in which the licensee is
2 the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

3 (4) The licensee shall notify the local law enforcement agency that has jurisdiction over the
4 premises that the catered event is to be held. A fee of \$35 must accompany the notice.

5 (5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
6 provisions of 16-6-103.

7 (6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
8 provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises
9 sale of beer or beer and wine on premises where the event is to be held.

10 (7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at
11 a special event conducted on the premises of a county fairground or public sports arena authorizes the
12 licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as
13 well as from a booth, stand, or other fixed place on the premises."

14
15 **Section 8.** Section 23-5-306, MCA, is amended to read:

16 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has
17 been granted an operator's license under 23-5-177 and ~~a~~ who holds an appropriate license to sell alcoholic
18 beverages for consumption on the premises as provided in [section 2 5] may be granted an annual permit
19 for the placement of live card game tables.

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

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

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

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

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

27 (A) the person has continuously operated a live card game table on the premises since January 15,
28 1989; and

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

1 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed
2 operator's premises may not be prorated and must be:

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

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

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

7 (4) The department shall forward on a quarterly basis the remaining balance of the fee collected
8 under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or
9 town in which the live card game table is located for deposit to the county or municipal treasury. A county
10 is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and
11 towns within the county. The local government portion of this fee is statutorily appropriated to the
12 department, as provided in 17-7-502, for deposit to the county or municipal treasury."
13

14 **Section 9.** Section 23-5-502, MCA, is amended to read:

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

17 (a) sports tab games may ~~only~~ be conducted only on premises appropriately licensed to sell
18 alcoholic beverages for consumption on the premises as provided in [section 2 5]; and

19 (b) only a licensee of premises that are located in an incorporated city or town with a population
20 of less than 100 or located outside the boundaries of an incorporated city or town and that are
21 appropriately licensed to sell alcoholic beverages for consumption on the premises under [section 2 5] may
22 conduct a race between animals and conduct one or more sports pools on the race. The race may be
23 conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of
24 interior areas of the establishment where food and beverages are usually stored, prepared, or served.

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

1 administer this part."

2

3 **Section 10.** Section 23-5-603, MCA, is amended to read:

4 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator
5 may make available for public play only the number of approved video gambling machines specifically
6 authorized by this part.

7 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw
8 poker machines. Only the number of approved machines for which permits have been granted under
9 23-5-612 may be made available for play by the public on the premises of a licensed operator. The
10 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced
11 while it is being repaired with a video gambling machine that is approved under the permit provisions of
12 this part. A fee may not be charged for the replacement machine.

13 (3) Machines on premises appropriately licensed to sell alcoholic beverages for on-premises
14 consumption as provided in [section 2 5] must be placed:

15 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or
16 consumed; and

17 (b) within control of the operator for the purpose of preventing access to the machines by persons
18 under 18 years of age."

19

20 **Section 11.** Section 23-5-611, MCA, is amended to read:

21 **"23-5-611. Machine permit qualifications -- limitations.** (1) (a) A person who has been granted an
22 operator's license under 23-5-177 and a who holds an appropriate license to sell alcoholic beverages for
23 consumption on the premises as provided in [section 2 5] may be granted a permit for the placement of
24 video gambling machines ~~in his~~ on the person's premises.

25 (b) If video keno or bingo gambling machines were legally operated on a premises on January 15,
26 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the
27 premises or operated for the principal purpose of gaming and there is an operator's license for the premises
28 under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated
29 on the premises on that date may be granted to the person who held the permit for such machines on those
30 premises on that date.

1 (c) A person who legally operated an establishment on January 15, 1989, for the principal purpose
2 of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the
3 placement of bingo and keno machines ~~in his~~ on the person's premises.

4 (2) An applicant for a permit shall disclose on the application form to the department any
5 information required by the department consistent with the provisions of 23-5-176.

6 (3) A licensee may not have on the premises or make available for play on the premises more than
7 20 machines of any combination."
8

9 NEW SECTION. SECTION 12. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
10 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
11 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
12 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.
13

14 NEW SECTION. Section 13. Codification instruction. (1) [Sections 1 and 2 THROUGH 4] are
15 intended to be codified as an integral part of Title 16, CHAPTER 4, PART 4, and the provisions of Title 16,
16 CHAPTER 4, PART 4, apply to [sections 1 and 2 THROUGH 4].

17 (2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 23, CHAPTER
18 5, PART 1, AND THE PROVISIONS OF TITLE 23, CHAPTER 5, PART 1, APPLY TO [SECTION 5].
19

20 NEW SECTION. SECTION 14. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION
21 (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 1997.

22 (2) [SECTION 6] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.
23

-END-

1 SENATE BILL NO. 354

2 INTRODUCED BY WATERMAN, MARSHALL, ECK, HIBBARD, EWER, MESAROS, GROSFIELD, TASH,
3 HALLIGAN, BOHLINGER, BARTLETT, SANDS, SWYSGOOD, SWANSON, BARNHART, SMITH,
4 SIMPKINS, AHNER, M. TAYLOR, BURNETT, WYATT, L. TAYLOR, ROSE, SCHMIDT, J. JOHNSON,
5 CRIPPEN, TOEWS, CAREY, COBB, REHBEIN, REAM, STOVALL, JABS, MILLER, R. JOHNSON, SHEA,
6 ELLINGSON, FOSTER, BECK, DEPRATU, GRIMES

7
8 A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO
9 ALLOW RESTAURANTS TO SERVE BEER AND WINE TO PATRONS WHO PURCHASE FOOD; PROHIBITING
10 A RESTAURANT BEER AND WINE LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR
11 LIQUOR LICENSE; ~~EXEMPTING~~ BASING THE ISSUANCE OF RESTAURANT BEER AND WINE LICENSES
12 ~~FROM ON~~ THE QUOTA SYSTEM; LIMITING THE NUMBER OF LICENSES THAT MAY BE ISSUED TO
13 RESTAURANTS WITH A SEATING CAPACITY OF 101 PERSONS OR MORE; PROVIDING THAT CERTAIN
14 LICENSES BE ISSUED BY LOTTERY; PROVIDING THAT RESTAURANT BEER AND WINE LICENSES ARE
15 ~~NONTRANSFERABLE~~ TRANSFERABLE UNDER CERTAIN CONDITIONS; PROHIBITING GAMING AND
16 GAMBLING IN CONJUNCTION WITH A LICENSE, OTHER THAN AN ALL-BEVERAGES LICENSE OR A BEER
17 AND WINE LICENSE ISSUED OUTSIDE OF A CITY OR TOWN, TO SELL ALCOHOLIC BEVERAGES FOR
18 CONSUMPTION ON PREMISES NOT ORIGINALLY LICENSED PRIOR TO THE EFFECTIVE DATE ~~OF SECTION~~
19 ~~6~~ OF THIS ACT; AND AMENDING SECTIONS 16-4-105, 16-4-111, 23-5-306, 23-5-502, 23-5-603,
20 AND 23-5-611, MCA; AND PROVIDING EFFECTIVE DATES."

21
22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

23
24 NEW SECTION. Section 1. Restaurant beer and wine license. (1) The department shall issue a
25 restaurant beer and wine license TO AN APPLICANT whenever THE DEPARTMENT DETERMINES THAT THE
26 APPLICANT, IN ADDITION TO SATISFYING THE REQUIREMENTS OF THIS SECTION, MEETS THE
27 FOLLOWING QUALIFICATIONS AND CONDITIONS:

28 (a) ~~the applicant is otherwise qualified to possess a beer and wine license~~ IN THE CASE OF AN
29 INDIVIDUAL APPLICANT:

30 (i) THE APPLICANT'S PAST RECORD AND PRESENT STATUS AS A PURVEYOR OF ALCOHOLIC

1 BEVERAGES AND AS A BUSINESS PERSON AND CITIZEN DEMONSTRATE THAT THE APPLICANT IS
 2 LIKELY TO OPERATE THE ESTABLISHMENT IN COMPLIANCE WITH ALL APPLICABLE LAWS OF THE
 3 STATE AND LOCAL GOVERNMENTS; AND

4 (II) THE APPLICANT IS NOT UNDER 19 YEARS OF AGE;

5 (B) IN THE CASE OF A CORPORATE APPLICANT:

6 (I) IN THE CASE OF A CORPORATION LISTED ON A NATIONAL STOCK EXCHANGE, THE
 7 CORPORATE OFFICERS AND THE BOARD OF DIRECTORS MUST MEET THE REQUIREMENTS OF
 8 SUBSECTION (1)(A);

9 (II) IN THE CASE OF A CORPORATION NOT LISTED ON A NATIONAL STOCK EXCHANGE, EACH
 10 OWNER OF 10% OR MORE OF THE OUTSTANDING STOCK MUST MEET THE REQUIREMENTS FOR AN
 11 INDIVIDUAL LISTED IN SUBSECTION (1)(A); AND

12 (III) THE CORPORATION IS AUTHORIZED TO DO BUSINESS IN MONTANA;

13 (C) IN THE CASE OF ANY OTHER BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO
 14 PARTNERSHIPS INCLUDING LIMITED LIABILITY PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED
 15 LIABILITY COMPANIES, BUT NOT INCLUDING ANY FORM OF A TRUST:

16 (I) IF THE APPLICANT CONSISTS OF MORE THAN ONE INDIVIDUAL, ALL INDIVIDUALS MUST
 17 MEET THE REQUIREMENTS OF SUBSECTION (1)(A); AND

18 (II) IF THE APPLICANT CONSISTS OF MORE THAN ONE CORPORATION, ALL CORPORATIONS
 19 LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE REQUIREMENTS OF SUBSECTION (1)(B)(I)
 20 AND CORPORATIONS NOT LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE
 21 REQUIREMENTS OF SUBSECTION (1)(B)(II);

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

24 (i) that the applicant intends to open a restaurant that will meet the requirements of subsection
 25 ~~(2)(6)~~ and intends to operate the restaurant so that at least 75% of the restaurant's gross income during
 26 its first year of operation is expected to be the result of the sale of food; ~~and~~

27 (ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, THAT
 28 THE RESTAURANT WILL SERVE ONLY BEER AND WINE TO A PATRON WHO ORDERS FOOD, AND THAT
 29 BEER AND WINE PURCHASES WILL BE STATED ON THE FOOD BILL; AND

30 (III) THAT THE RESTAURANT WILL SERVE BEER AND WINE FROM A SERVICE BAR, AS SERVICE

1 BAR IS DEFINED BY THE DEPARTMENT BY RULE;

2 ~~(e)(E)~~ the applicant understands AND ACKNOWLEDGES IN WRITING ON THE APPLICATION that
 3 this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or
 4 operate any gambling machines and that if any gaming or gambling activity or machine exists at the location
 5 where the restaurant beer and wine license will be used, the activity must be discontinued or the machines
 6 must be removed before the restaurant beer and wine license takes effect; AND

7 ~~(d)~~ ~~the owner of an existing all beverages, beer, wine, or beer and wine license agrees to sell any~~
 8 ~~existing license before the restaurant beer and wine license takes effect; and~~

9 ~~(e)(F)~~ ~~the applicant does not hold any other retail license for the sale of beer, wine, or any other~~
 10 ~~alcoholic beverages~~ THE APPLICANT STATES THE PLANNED SEATING CAPACITY OF THE RESTAURANT,
 11 IF IT IS TO BE BUILT, OR THE CURRENT SEATING CAPACITY IF THE RESTAURANT IS OPERATING.

12 (2) A RESTAURANT THAT HAS AN EXISTING RETAIL LICENSE FOR THE SALE OF BEER, WINE,
 13 OR ANY OTHER ALCOHOLIC BEVERAGE MAY NOT BE CONSIDERED FOR A RESTAURANT BEER AND
 14 WINE LICENSE AT THE SAME LOCATION.

15 (3) (A) A COMPLETED APPLICATION FOR A LICENSE UNDER THIS SECTION AND THE
 16 APPROPRIATE APPLICATION FEE, AS PROVIDED IN SUBSECTION (11), MUST BE SUBMITTED TO THE
 17 DEPARTMENT. THE DEPARTMENT SHALL REQUEST THAT THE DEPARTMENT OF JUSTICE MAKE AN
 18 INVESTIGATION OF ALL THE ITEMS RELATING TO THE APPLICATION AS DESCRIBED IN SUBSECTIONS
 19 (3)(A)(I) THROUGH (3)(A)(IV). BASED ON THE RESULTS OF THE INVESTIGATION OR IN EXERCISING ITS
 20 SOUND DISCRETION, THE DEPARTMENT SHALL DETERMINE WHETHER:

21 (I) THE APPLICANT IS QUALIFIED TO RECEIVE A LICENSE;

22 (II) THE APPLICANT'S PREMISES ARE SUITABLE FOR THE CARRYING ON OF THE BUSINESS;

23 (III) THE REQUIREMENTS OF THIS CODE AND THE RULES PROMULGATED BY THE DEPARTMENT
 24 ARE MET AND COMPLIED WITH; AND

25 (IV) THE SEATING CAPACITY AS STATED ON THE APPLICATION IS CORRECT.

26 (B) THE DEPARTMENT MAY RETAIN 20% OF THE APPLICATION FEE COLLECTED UNDER
 27 SUBSECTION ~~(10)~~ (11) TO DEFRAY THE COSTS OF THE DEPARTMENT AND DEPARTMENT OF JUSTICE
 28 ASSOCIATED WITH INVESTIGATING AND PROCESSING APPLICATIONS.

29 (4) AN APPLICATION FOR A BEER AND WINE LICENSE SUBMITTED UNDER THIS SECTION IS
 30 SUBJECT TO THE PROVISIONS OF 16-4-203, 16-4-207, AND 16-4-405.

1 (5) IF A PREMISES PROPOSED FOR LICENSING UNDER THIS SECTION IS A NEW OR REMODELED
2 STRUCTURE, THEN THE DEPARTMENT MAY ISSUE A CONDITIONAL LICENSE PRIOR TO COMPLETION
3 OF THE PREMISES BASED ON REASONABLE EVIDENCE, INCLUDING A STATEMENT FROM THE
4 APPLICANT'S ARCHITECT OR CONTRACTOR CONFIRMING THAT THE SEATING CAPACITY STATED ON
5 THE APPLICATION IS CORRECT, THAT THE PREMISES WILL BE SUITABLE FOR THE CARRYING ON OF
6 BUSINESS AS A BONA FIDE RESTAURANT, AS DEFINED IN SUBSECTION (6).

7 ~~(2)(6)~~ For purposes of this section, "restaurant" means a public eating place where individually
8 priced meals are prepared and served for on-premises consumption. At least 75% of the restaurant's annual
9 gross income from the operation must be from the sale of food and not from the sale of alcoholic
10 beverages. EACH YEAR AFTER A LICENSE IS ISSUED, THE APPLICANT SHALL FILE WITH THE
11 DEPARTMENT A STATEMENT, IN A FORM APPROVED BY THE DEPARTMENT, ATTESTING THAT AT
12 LEAST 75% OF THE GROSS INCOME OF THE RESTAURANT DURING THE PRIOR YEAR RESULTED FROM
13 THE SALE OF FOOD. The restaurant must have a dining room, a kitchen, and the number and kinds of
14 employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department
15 that the space is intended for use as a full-service restaurant. A FULL-SERVICE RESTAURANT IS A
16 RESTAURANT THAT PROVIDES AN EVENING DINNER MENU.

17 ~~(3)(7) (A) (I)~~ A SUBJECT TO THE CONDITIONS OF SUBSECTION (7)(A)(II), A restaurant beer and
18 wine license is not transferable and may not be sold by a licensee MAY BE TRANSFERRED, UPON
19 APPROVAL BY THE DEPARTMENT, FROM THE ORIGINAL APPLICANT TO A NEW OWNER OF THE
20 RESTAURANT IF THERE IS NO CHANGE OF LOCATION, AND THE ORIGINAL OWNER MAY TRANSFER
21 LOCATION AFTER THE LICENSE IS ISSUED BY THE DEPARTMENT TO A NEW LOCATION, UPON
22 APPROVAL BY THE DEPARTMENT.

23 (II) A NEW OWNER MAY NOT TRANSFER THE LICENSE TO A NEW LOCATION FOR A PERIOD OF
24 1 YEAR FOLLOWING THE TRANSFER OF THE LICENSE TO THE NEW OWNER.

25 (B) A LICENSE ISSUED UNDER THIS SECTION MAY BE JOINTLY OWNED, AND THE LICENSE MAY
26 PASS TO THE SURVIVING JOINT TENANT UPON THE DEATH OF THE OTHER TENANT. HOWEVER, THE
27 LICENSE MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR ENTITY BY OPERATION OF THE
28 LAWS OF INHERITANCE OR SUCCESSION OR ANY OTHER LAWS ALLOWING THE TRANSFER OF
29 PROPERTY UPON THE DEATH OF THE OWNER IN THIS STATE OR IN ANOTHER STATE.

30 (C) AN ESTATE MAY, UPON THE SALE OF A RESTAURANT THAT IS PROPERTY OF THE ESTATE

1 AND WITH THE APPROVAL OF THE DEPARTMENT, TRANSFER A RESTAURANT BEER AND WINE LICENSE
2 TO A NEW OWNER.

3 ~~(4)(B) (A)~~ The department shall issue a restaurant beer and wine license to a qualified applicant
4 ~~regardless of the number of beer and wine licenses already issued within a beer license quota area in which~~
5 ~~the restaurant is located;~~

6 (I) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,000
7 PERSONS OR FEWER, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
8 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
9 THAN 60% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
10 PURSUANT TO 16-4-105;

11 (II) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,001 TO
12 60,000 PERSONS, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
13 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
14 THAN 50% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
15 PURSUANT TO 16-4-105;

16 (III) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 60,001
17 PERSONS OR MORE, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
18 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
19 THAN 40% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
20 PURSUANT TO 16-4-105; AND

21 (IV) FOR A RESTAURANT LOCATED IN A QUOTA AREA THAT IS ALSO A RESORT COMMUNITY,
22 AS THE RESORT COMMUNITY IS DESIGNATED BY THE DEPARTMENT OF COMMERCE UNDER
23 7-6-4461(5), IF THE NUMBER OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THE QUOTA AREA
24 THAT IS ALSO A RESORT COMMUNITY IS EQUAL TO OR LESS THAN 100% OF THE NUMBER OF BEER
25 LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA PURSUANT TO 16-4-105.

26 (B) IN DETERMINING THE NUMBER OF RESTAURANT BEER AND WINE LICENSES THAT MAY BE
27 ISSUED UNDER THIS SUBSECTION (8) BASED ON THE PERCENTAGE AMOUNTS DESCRIBED IN
28 SUBSECTIONS (8)(A)(I) THROUGH (8)(A)(III), THE DEPARTMENT SHALL ROUND TO THE NEARER WHOLE
29 NUMBER.

30 (C) IF THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE IN A QUOTA AREA, THEN

1 THE LICENSE MUST BE AWARDED BY LOTTERY AS PROVIDED IN SUBSECTION (9).

2 (9) (A) WHEN A RESTAURANT BEER AND WINE LICENSE BECOMES AVAILABLE BY THE INITIAL
 3 ISSUANCE OF LICENSES UNDER THIS SECTION OR AS THE RESULT OF AN INCREASE IN THE
 4 POPULATION IN THE QUOTA AREA, THE NONRENEWAL OF RESTAURANT BEER AND WINE LICENSE,
 5 OR THE LAPSE OR REVOCATION OF THE LICENSE BY THE DEPARTMENT, THEN THE DEPARTMENT
 6 SHALL ADVERTISE THE AVAILABILITY OF THE LICENSE IN THE QUOTA AREA FOR WHICH IT IS
 7 AVAILABLE. IF THERE ARE MORE APPLICANTS THAN NUMBER OF LICENSES AVAILABLE, THE LICENSE
 8 MUST BE AWARDED TO AN APPLICANT BY A LOTTERY.

9 (B) ANY APPLICANT WHO OPERATES A RESTAURANT THAT MEETS THE QUALIFICATIONS OF
 10 SUBSECTION (6) FOR AT LEAST 12 MONTHS PRIOR TO THE FILING OF AN APPLICATION MUST BE
 11 GIVEN A PREFERENCE.

12 (C) THE DEPARTMENT SHALL NUMERICALLY RANK ALL APPLICANTS IN THE LOTTERY. ONLY
 13 THE SUCCESSFUL APPLICANTS WILL BE REQUIRED TO SUBMIT A COMPLETED APPLICATION AND THE
 14 REQUIRED FEE. AN APPLICANT'S RANKING MAY NOT BE SOLD OR TRANSFERRED TO ANOTHER
 15 PERSON OR ENTITY. THE PREFERENCE AND AN APPLICANT'S RANKING APPLY ONLY TO THE
 16 INTENDED LICENSE ADVERTISED BY THE DEPARTMENT OR TO THE NUMBER OF LICENSES DETERMINED
 17 UNDER SUBSECTION (8) WHEN THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE. THE
 18 APPLICANT'S QUALIFICATIONS FOR ANY OTHER RESTAURANT BEER AND WINE LICENSE AWARDED
 19 BY LOTTERY MUST BE DETERMINED AT THE TIME OF THE LOTTERY.

20 ~~(6)(10)~~ Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
 21 consumption.

22 ~~(6)(11)~~ An application for a restaurant beer and wine license must be accompanied by a fee of
 23 \$1,000 ACCORDING TO THE FOLLOWING SCHEDULE:

24 (A) \$5,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 60 PERSONS OR LESS;

25 (B) \$10,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 61 TO 100 PERSONS;

26 OR

27 (C) \$20,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 101 PERSONS OR
 28 MORE.

29 (12) The annual fee for a restaurant beer and wine license is ~~\$300~~ \$400.

30 (13) IF A RESTAURANT INCREASES THE STATED SEATING CAPACITY OF THE LICENSED

1 RESTAURANT OR IF THE DEPARTMENT DETERMINES THAT AN APPLICANT HAS INCREASED THE
 2 STATED SEATING CAPACITY OF THE LICENSED RESTAURANT, THEN THE APPLICANT SHALL PAY TO
 3 THE DEPARTMENT THE DIFFERENCE BETWEEN THE APPLICATION FEE PAID AT THE TIME OF FILING THE
 4 ORIGINAL APPLICATION AND THE APPLICABLE APPLICATION FEE FOR THE ADDITIONAL SEATING.

5 (14) THE NUMBER OF BEER AND WINE LICENSES ISSUED TO RESTAURANTS WITH A STATED
 6 SEATING CAPACITY OF 101 PERSONS OR MORE MAY NOT EXCEED 25% OF THE TOTAL LICENSES
 7 ISSUED.

8 ~~(7)(15)~~ Possession of a restaurant beer and wine license is not a qualification for licensure of any
 9 gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant
 10 with a restaurant beer and wine license.

11
 12 ~~**NEW SECTION. Section 2. Appropriate alcoholic beverage license for gaming or gambling.**~~ (1)
 13 ~~Gaming or gambling may be conducted on premises with retail all beverages licenses issued under 16-4-201~~
 14 ~~but may not be conducted on premises that are originally licensed after [the effective date of this act] under~~
 15 ~~any other provision of law to sell alcoholic beverages for consumption on the premises. The transfer or~~
 16 ~~renewal of a license in conformance with the provisions of this title does not constitute the new issuance~~
 17 ~~of a license, and premises operating under a license originally issued prior to [the effective date of this act]~~
 18 ~~may, subject to the provisions of Title 23, chapter 5, have gaming or gambling conducted on the premises.~~

19 ~~(2) All licenses to sell alcoholic beverages for consumption on the premises, other than~~
 20 ~~all beverages licenses issued under 16-4-201, that are issued after [the effective date of this act] must have~~
 21 ~~a conspicuous notice that the license may not be used for premises where gaming or gambling is~~
 22 ~~conducted.~~

23
 24 **NEW SECTION. SECTION 2. DENIAL OF RESTAURANT BEER AND WINE LICENSE.** (1) A
 25 RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED BY THE DEPARTMENT FOR A PREMISES
 26 SITUATED WITHIN A ZONE OF A CITY, TOWN, OR COUNTY WHERE THE SALE OF ALCOHOLIC
 27 BEVERAGES IS PROHIBITED BY ORDINANCE, A CERTIFIED COPY OF WHICH HAS BEEN FILED WITH THE
 28 DEPARTMENT.

29 (2) A RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED OR RENEWED IF THE
 30 DEPARTMENT FINDS, SUBJECT TO THE OPPORTUNITY FOR A HEARING PURSUANT TO TITLE 2,

1 CHAPTER 4, PART 6, THAT THE APPLICANT OR THE PREMISES PROPOSED FOR LICENSING FAIL TO
2 MEET THE ELIGIBILITY OR SUITABILITY CRITERIA PROVIDED BY LAW.

3

4 NEW SECTION. SECTION 3. SALE OF BEER AND WINE PROHIBITED DURING CERTAIN HOURS.
5 EXCEPT AS PROVIDED IN 16-3-305, RESTAURANTS LICENSED PURSUANT TO [SECTION 1] IN WHICH
6 BEER AND WINE ARE SOLD, OFFERED FOR SALE, OR GIVEN AWAY AT RETAIL MAY NOT SERVE BEER
7 AND WINE BETWEEN THE HOURS OF 11 P.M. AND 11 A.M. HOWEVER, IF AN INCORPORATED CITY
8 OR TOWN HAS BY ORDINANCE FURTHER RESTRICTED THE HOURS OF SALE OF BEER AND WINE, THEN
9 THE SALE OF BEER AND WINE IN RESTAURANTS LICENSED TO SELL BEER AND WINE, PURSUANT TO
10 [SECTION 1], IS PROHIBITED WITHIN THE LIMITS OF THE CITY OR TOWN DURING THE TIME THAT THE
11 SALE IS PROHIBITED BY THIS SECTION AND IN ADDITION TO THE HOURS THAT THE SALE IS
12 PROHIBITED BY ORDINANCE.

13

14 NEW SECTION. SECTION 4. RESTAURANT BEER AND WINE LICENSE -- PROHIBITED PRACTICES.
15 A RESTAURANT LICENSED FOR THE SALE OF BEER AND WINE PURSUANT TO [SECTION 1] MAY NOT
16 CONVEY TO ANY PERSON BY ANY MEANS THAT A PERSON MAY EITHER PURCHASE OR CONSUME
17 BEER OR WINE ON THE PREMISES WITHOUT BEING REQUIRED TO PURCHASE FOOD.

18

19 NEW SECTION. SECTION 5. APPROPRIATE ALCOHOLIC BEVERAGE LICENSE FOR CERTAIN
20 GAMBLING ACTIVITIES. (1) TO BE ELIGIBLE TO OFFER GAMBLING UNDER TITLE 23, CHAPTER 5, PART
21 3, 5, OR 6, AN APPLICANT SHALL OWN IN THE APPLICANT'S NAME:

22 (A) A RETAIL ALL-BEVERAGES LICENSE ISSUED UNDER 16-4-201; OR

23 (B) EXCEPT AS PROVIDED IN SUBSECTION (1)(C), A LICENSE ISSUED PRIOR TO [THE EFFECTIVE
24 DATE OF SECTION 6 THIS ACT] UNDER 16-4-105, AUTHORIZING THE SALE OF BEER AND WINE FOR
25 CONSUMPTION ON THE LICENSED PREMISES; OR

26 (C) A BEER AND WINE LICENSE ISSUED IN AN AREA OUTSIDE OF AN INCORPORATED CITY OR
27 TOWN AS PROVIDED IN 16-4-105(1)(E). THE OWNER OF THE LICENSE WHOSE PREMISES ARE SITUATED
28 OUTSIDE OF AN INCORPORATED CITY OR TOWN MAY OFFER GAMBLING, REGARDLESS OF WHEN THE
29 LICENSE WAS ISSUED, IF THE OWNER AND PREMISES QUALIFY UNDER TITLE 23, CHAPTER 5, PART
30 3, 5, OR 6.

1 ~~(2) FOR PURPOSES OF THIS SECTION SUBSECTION (1)(B), A LICENSE ISSUED UNDER 16-4-105~~
 2 ~~PRIOR TO [THE EFFECTIVE DATE OF SECTION 6 THIS ACT] MAY BE TRANSFERRED TO A NEW OWNER~~
 3 ~~OR TO A NEW LOCATION OR TRANSFERRED TO A NEW OWNER AND LOCATION BY THE DEPARTMENT~~
 4 ~~OF REVENUE PURSUANT TO THE APPLICABLE PROVISIONS OF TITLE 16. THE OWNER OF THE LICENSE~~
 5 ~~THAT HAS BEEN TRANSFERRED MAY OFFER GAMBLING IF THE OWNER AND THE PREMISES QUALIFY~~
 6 ~~UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.~~

7
 8 **SECTION 6. SECTION 16-4-105, MCA, IS AMENDED TO READ:**

9 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption**
 10 **-- limitation on use of license -- ~~exception~~ EXCEPTIONS.** (1) Except as otherwise provided by law, a license
 11 to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules
 12 of the department, may be issued to any person, firm, or corporation that is approved by the department
 13 as a fit and proper person, firm, or corporation to sell beer, except that:

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

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

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

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

28 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
 29 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
 30 governs the number of retail beer licenses that may be issued for use within the cities and towns and within

1 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
2 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
3 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
4 from their respective corporate limits must be determined on the basis of the combined populations of both
5 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
6 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
7 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

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

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

16 (e) the number of retail beer licenses that the department may issue for use at premises situated
17 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
18 from the corporate limits or for use at premises situated within any unincorporated area must be determined
19 by the department in its discretion, except that a retail beer license may not be issued for any premises so
20 situated unless the department determines that the issuance of the license is required by public convenience
21 and necessity. SUBSECTION (3) DOES NOT APPLY TO LICENSES ISSUED UNDER THIS SUBSECTION
22 (1)(E). THE OWNER OF THE LICENSE WHOSE PREMISES ARE SITUATED OUTSIDE OF AN INCORPORATED
23 CITY OR TOWN MAY OFFER GAMBLING, REGARDLESS OF WHEN THE LICENSE WAS ISSUED, IF THE
24 OWNER AND PREMISES QUALIFY UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.

25 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
26 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
27 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
28 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
29 A Except for beer and wine licenses issued pursuant to [section 1], a person holding a beer-and-wine
30 license may sell wine for consumption on or off the premises. Nonretention of the beer license, for

1 whatever reason, means automatic loss of the wine amendment license.

2 (3) (a) Except as provided in subsection SUBSECTIONS (1)(E) AND (3)(b), a license issued pursuant
 3 to this section after [the effective date of this section ACT] must have a conspicuous notice that the license
 4 may not be used for premises where gambling is conducted.

5 (b) Subsection (3)(a) does not apply to licenses issued under this section if the department received
 6 the application before [the effective date of this section ACT]. For the purposes of this subsection (3)(b),
 7 the application is received by the department before [the effective date of this section ACT] if the
 8 application's mail cover is postmarked by the United States postal service before [the effective date of this
 9 section ACT] or if the application was consigned to a private courier service for delivery to the department
 10 before [the effective date of this section ACT]. An applicant who consigns an application to a private
 11 courier shall provide to the department, upon demand, documentary evidence satisfactory to the
 12 department that the application was consigned to a private courier before [the effective date of this section
 13 ACT]."

14
 15 **SECTION 7. SECTION 16-4-111, MCA, IS AMENDED TO READ:**

16 **"16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged**
 17 **primarily in the business of providing meals with table service and who is licensed to sell beer at retail or**
 18 **beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be**
 19 **granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to**
 20 **persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and**
 21 **wine for on-premises consumption. The beer and or wine must be consumed on the premises where the**
 22 **event is held.**

23 **(b) A person who is licensed pursuant to [section 1] to sell beer at retail or beer and wine at retail**
 24 **for on-premises consumption may, upon the approval of the liquor division, be granted a catering**
 25 **endorsement to the license to allow the catering and sale of beer and wine to persons attending a special**
 26 **event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal**
 27 **in cost to 75% of the total gross revenue from the catering contract, for on-premises consumption. The**
 28 **beer or wine must be consumed on the premises where the event is held.**

29 **(2) A written application for a catering endorsement and an annual fee of \$200 must be submitted**
 30 **to the department for its approval.**

1 (3) A licensee who holds a catering endorsement may not cater an event in which the licensee is
2 the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

3 (4) The licensee shall notify the local law enforcement agency that has jurisdiction over the
4 premises that the catered event is to be held. A fee of \$35 must accompany the notice.

5 (5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
6 provisions of 16-6-103.

7 (6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
8 provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises
9 sale of beer or beer and wine on premises where the event is to be held.

10 (7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at
11 a special event conducted on the premises of a county fairground or public sports arena authorizes the
12 licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as
13 well as from a booth, stand, or other fixed place on the premises."
14

15 **Section 8.** Section 23-5-306, MCA, is amended to read:

16 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has
17 been granted an operator's license under 23-5-177 and a who holds an appropriate license to sell alcoholic
18 beverages for consumption on the premises as provided in [section 2 5] may be granted an annual permit
19 for the placement of live card game tables.

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

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

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

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

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

27 (A) the person has continuously operated a live card game table on the premises since January 15,
28 1989; and

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

1 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed
2 operator's premises may not be prorated and must be:

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

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

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

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

13
14 **Section 9.** Section 23-5-502, MCA, is amended to read:

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

17 (a) sports tab games may ~~only~~ be conducted only on premises appropriately licensed to sell
18 alcoholic beverages for consumption on the premises as provided in [section 2 5]; and

19 (b) only a licensee of premises that are located in an incorporated city or town with a population
20 of less than 100 or located outside the boundaries of an incorporated city or town and that are
21 appropriately licensed to sell alcoholic beverages for consumption on the premises under [section 2 5] may
22 conduct a race between animals and conduct one or more sports pools on the race. The race may be
23 conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of
24 interior areas of the establishment where food and beverages are usually stored, prepared, or served.

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

1 administer this part."

2

3 **Section 10.** Section 23-5-603, MCA, is amended to read:

4 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator
5 may make available for public play only the number of approved video gambling machines specifically
6 authorized by this part.

7 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw
8 poker machines. Only the number of approved machines for which permits have been granted under
9 23-5-612 may be made available for play by the public on the premises of a licensed operator. The
10 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced
11 while it is being repaired with a video gambling machine that is approved under the permit provisions of
12 this part. A fee may not be charged for the replacement machine.

13 (3) Machines on premises appropriately licensed to sell alcoholic beverages for on-premises
14 consumption as provided in [section 2 5] must be placed:

15 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or
16 consumed; and

17 (b) within control of the operator for the purpose of preventing access to the machines by persons
18 under 18 years of age."

19

20 **Section 11.** Section 23-5-611, MCA, is amended to read:

21 **"23-5-611. Machine permit qualifications -- limitations.** (1) (a) A person who has been granted an
22 operator's license under 23-5-177 and ~~a~~ who holds an appropriate license to sell alcoholic beverages for
23 consumption on the premises as provided in [section 2 5] may be granted a permit for the placement of
24 video gambling machines ~~in his~~ on the person's premises.

25 (b) If video keno or bingo gambling machines were legally operated on a premises on January 15,
26 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the
27 premises or operated for the principal purpose of gaming and there is an operator's license for the premises
28 under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated
29 on the premises on that date may be granted to the person who held the permit for such machines on those
30 premises on that date.

1 (c) A person who legally operated an establishment on January 15, 1989, for the principal purpose
2 of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the
3 placement of bingo and keno machines ~~in his~~ on the person's premises.

4 (2) An applicant for a permit shall disclose on the application form to the department any
5 information required by the department consistent with the provisions of 23-5-176.

6 (3) A licensee may not have on the premises or make available for play on the premises more than
7 20 machines of any combination."
8

9 NEW SECTION. SECTION 12. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
10 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
11 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
12 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

13
14 NEW SECTION. Section 13. Codification instruction. (1) [Sections 1 and 2 THROUGH 4] are
15 intended to be codified as an integral part of Title 16, CHAPTER 4, PART 4, and the provisions of Title 16,
16 CHAPTER 4, PART 4, apply to [sections 1 and 2 THROUGH 4].

17 (2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 23, CHAPTER
18 5, PART 1, AND THE PROVISIONS OF TITLE 23, CHAPTER 5, PART 1, APPLY TO [SECTION 5].

19
20 NEW SECTION. SECTION 14. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION
21 (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 1997.

22 (2) [SECTION 6] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

23 -END-

SENATE BILL NO. 354

INTRODUCED BY WATERMAN, MARSHALL, ECK, HIBBARD, EWER, MESAROS, GROSFIELD, TASH,
 HALLIGAN, BOHLINGER, BARTLETT, SANDS, SWYSGOOD, SWANSON, BARNHART, SMITH,
 SIMPKINS, AHNER, M. TAYLOR, BURNETT, WYATT, L. TAYLOR, ROSE, SCHMIDT, J. JOHNSON,
 CRIPPEN, TOEWS, CAREY, COBB, REHBEIN, REAM, STOVALL, JABS, MILLER, R. JOHNSON, SHEA,
 ELLINGSON, FOSTER, BECK, DEPRATU, GRIMES

A BILL FOR AN ACT ENTITLED: "AN ACT ESTABLISHING A RESTAURANT BEER AND WINE LICENSE TO
 ALLOW RESTAURANTS TO SERVE BEER AND WINE TO PATRONS WHO PURCHASE FOOD; PROHIBITING
 A RESTAURANT BEER AND WINE LICENSEE FROM HOLDING ANY OTHER TYPE OF BEER, WINE, OR
 LIQUOR LICENSE; ~~EXEMPTING~~ BASING THE ISSUANCE OF RESTAURANT BEER AND WINE LICENSES
~~FROM ON~~ THE QUOTA SYSTEM; LIMITING THE NUMBER OF LICENSES THAT MAY BE ISSUED TO
RESTAURANTS WITH A SEATING CAPACITY OF 101 PERSONS OR MORE; PROVIDING THAT CERTAIN
LICENSES BE ISSUED BY LOTTERY; PROVIDING THAT RESTAURANT BEER AND WINE LICENSES ARE
~~NONTRANSFERABLE~~ TRANSFERABLE UNDER CERTAIN CONDITIONS; PROHIBITING GAMING AND
 GAMBLING IN CONJUNCTION WITH A LICENSE, OTHER THAN AN ALL-BEVERAGES LICENSE OR A BEER
AND WINE LICENSE ISSUED OUTSIDE OF A CITY OR TOWN, TO SELL ALCOHOLIC BEVERAGES FOR
 CONSUMPTION ON PREMISES NOT ORIGINALLY LICENSED PRIOR TO THE EFFECTIVE DATE ~~OF SECTION~~
~~6~~ OF THIS ACT; AND AMENDING SECTIONS 16-4-105, 16-4-111, 23-5-306, 23-5-502, 23-5-603,
 AND 23-5-611, MCA; ~~AND PROVIDING EFFECTIVE DATES.~~"

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

NEW SECTION. Section 1. Restaurant beer and wine license. (1) The department shall issue a
 restaurant beer and wine license TO AN APPLICANT whenever THE DEPARTMENT DETERMINES THAT THE
APPLICANT, IN ADDITION TO SATISFYING THE REQUIREMENTS OF THIS SECTION, MEETS THE
FOLLOWING QUALIFICATIONS AND CONDITIONS:

(a) ~~the applicant is otherwise qualified to possess a beer and wine license~~ IN THE CASE OF AN
INDIVIDUAL APPLICANT:

(I) THE APPLICANT'S PAST RECORD AND PRESENT STATUS AS A PURVEYOR OF ALCOHOLIC

1 BEVERAGES AND AS A BUSINESS PERSON AND CITIZEN DEMONSTRATE THAT THE APPLICANT IS
 2 LIKELY TO OPERATE THE ESTABLISHMENT IN COMPLIANCE WITH ALL APPLICABLE LAWS OF THE
 3 STATE AND LOCAL GOVERNMENTS; AND

4 (II) THE APPLICANT IS NOT UNDER 19 YEARS OF AGE;

5 (B) IN THE CASE OF A CORPORATE APPLICANT:

6 (I) IN THE CASE OF A CORPORATION LISTED ON A NATIONAL STOCK EXCHANGE, THE
 7 CORPORATE OFFICERS AND THE BOARD OF DIRECTORS MUST MEET THE REQUIREMENTS OF
 8 SUBSECTION (1)(A);

9 (II) IN THE CASE OF A CORPORATION NOT LISTED ON A NATIONAL STOCK EXCHANGE, EACH
 10 OWNER OF 10% OR MORE OF THE OUTSTANDING STOCK MUST MEET THE REQUIREMENTS FOR AN
 11 INDIVIDUAL LISTED IN SUBSECTION (1)(A); AND

12 (III) THE CORPORATION IS AUTHORIZED TO DO BUSINESS IN MONTANA;

13 (C) IN THE CASE OF ANY OTHER BUSINESS ENTITY, INCLUDING BUT NOT LIMITED TO
 14 PARTNERSHIPS INCLUDING LIMITED LIABILITY PARTNERSHIPS, LIMITED PARTNERSHIPS, AND LIMITED
 15 LIABILITY COMPANIES, BUT NOT INCLUDING ANY FORM OF A TRUST:

16 (I) IF THE APPLICANT CONSISTS OF MORE THAN ONE INDIVIDUAL, ALL INDIVIDUALS MUST
 17 MEET THE REQUIREMENTS OF SUBSECTION (1)(A); AND

18 (II) IF THE APPLICANT CONSISTS OF MORE THAN ONE CORPORATION, ALL CORPORATIONS
 19 LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE REQUIREMENTS OF SUBSECTION (1)(B)(I)
 20 AND CORPORATIONS NOT LISTED ON A NATIONAL STOCK EXCHANGE MUST MEET THE
 21 REQUIREMENTS OF SUBSECTION (1)(B)(II);

22 ~~(D)~~ the applicant operates a restaurant at the location where the restaurant beer and wine license
 23 will be used or satisfies the department:

24 (i) that the applicant intends to open a restaurant that will meet the requirements of subsection
 25 ~~(2)(6)~~ and intends to operate the restaurant so that at least 75% of the restaurant's gross income during
 26 its first year of operation is expected to be the result of the sale of food; and

27 (ii) that the restaurant beer and wine license will be used in conjunction with that restaurant, THAT
 28 THE RESTAURANT WILL SERVE ONLY BEER AND WINE ONLY TO A PATRON WHO ORDERS FOOD, AND
 29 THAT BEER AND WINE PURCHASES WILL BE STATED ON THE FOOD BILL; AND

30 (III) THAT THE RESTAURANT WILL SERVE BEER AND WINE FROM A SERVICE BAR, AS SERVICE

1 BAR IS DEFINED BY THE DEPARTMENT BY RULE;

2 ~~(e)~~(E) the applicant understands AND ACKNOWLEDGES IN WRITING ON THE APPLICATION that
 3 this license prohibits the applicant from being licensed to conduct any gaming or gambling activity or
 4 operate any gambling machines and that if any gaming or gambling activity or machine exists at the location
 5 where the restaurant beer and wine license will be used, the activity must be discontinued or the machines
 6 must be removed before the restaurant beer and wine license takes effect; AND

7 ~~(d) the owner of an existing all beverages, beer, wine, or beer and wine license agrees to sell any~~
 8 ~~existing license before the restaurant beer and wine license takes effect; and~~

9 ~~(e)~~(F) ~~the applicant does not hold any other retail license for the sale of beer, wine, or any other~~
 10 ~~alcoholic beverages~~ THE APPLICANT STATES THE PLANNED SEATING CAPACITY OF THE RESTAURANT,
 11 IF IT IS TO BE BUILT, OR THE CURRENT SEATING CAPACITY IF THE RESTAURANT IS OPERATING.

12 (2) A RESTAURANT THAT HAS AN EXISTING RETAIL LICENSE FOR THE SALE OF BEER, WINE,
 13 OR ANY OTHER ALCOHOLIC BEVERAGE MAY NOT BE CONSIDERED FOR A RESTAURANT BEER AND
 14 WINE LICENSE AT THE SAME LOCATION.

15 (3) (A) A COMPLETED APPLICATION FOR A LICENSE UNDER THIS SECTION AND THE
 16 APPROPRIATE APPLICATION FEE, AS PROVIDED IN SUBSECTION (11), MUST BE SUBMITTED TO THE
 17 DEPARTMENT. THE DEPARTMENT SHALL REQUEST THAT THE DEPARTMENT OF JUSTICE MAKE AN
 18 INVESTIGATION OF ALL THE ITEMS RELATING TO THE APPLICATION AS DESCRIBED IN SUBSECTIONS
 19 (3)(A)(I) THROUGH (3)(A)(IV). BASED ON THE RESULTS OF THE INVESTIGATION OR IN EXERCISING ITS
 20 SOUND DISCRETION, THE DEPARTMENT SHALL DETERMINE WHETHER:

21 (I) THE APPLICANT IS QUALIFIED TO RECEIVE A LICENSE;

22 (II) THE APPLICANT'S PREMISES ARE SUITABLE FOR THE CARRYING ON OF THE BUSINESS;

23 (III) THE REQUIREMENTS OF THIS CODE AND THE RULES PROMULGATED BY THE DEPARTMENT
 24 ARE MET AND COMPLIED WITH; AND

25 (IV) THE SEATING CAPACITY AS STATED ON THE APPLICATION IS CORRECT.

26 (B) THE DEPARTMENT MAY RETAIN 20% OF THE APPLICATION FEE COLLECTED UNDER
 27 SUBSECTION ~~(10)~~ (11) TO DEFRAY THE COSTS OF THE DEPARTMENT AND DEPARTMENT OF JUSTICE
 28 ASSOCIATED WITH INVESTIGATING AND PROCESSING APPLICATIONS.

29 (4) AN APPLICATION FOR A BEER AND WINE LICENSE SUBMITTED UNDER THIS SECTION IS
 30 SUBJECT TO THE PROVISIONS OF 16-4-203, 16-4-207, AND 16-4-405.

1 (5) IF A PREMISES PROPOSED FOR LICENSING UNDER THIS SECTION IS A NEW OR REMODELED
 2 STRUCTURE, THEN THE DEPARTMENT MAY ISSUE A CONDITIONAL LICENSE PRIOR TO COMPLETION
 3 OF THE PREMISES BASED ON REASONABLE EVIDENCE, INCLUDING A STATEMENT FROM THE
 4 APPLICANT'S ARCHITECT OR CONTRACTOR CONFIRMING THAT THE SEATING CAPACITY STATED ON
 5 THE APPLICATION IS CORRECT, THAT THE PREMISES WILL BE SUITABLE FOR THE CARRYING ON OF
 6 BUSINESS AS A BONA FIDE RESTAURANT, AS DEFINED IN SUBSECTION (6).

7 ~~(2)(6)~~ For purposes of this section, "restaurant" means a public eating place where individually
 8 priced meals are prepared and served for on-premises consumption. At least 75% of the restaurant's annual
 9 gross income from the operation must be from the sale of food and not from the sale of alcoholic
 10 beverages. EACH YEAR AFTER A LICENSE IS ISSUED, THE APPLICANT SHALL FILE WITH THE
 11 DEPARTMENT A STATEMENT, IN A FORM APPROVED BY THE DEPARTMENT, ATTESTING THAT AT
 12 LEAST 75% OF THE GROSS INCOME OF THE RESTAURANT DURING THE PRIOR YEAR RESULTED FROM
 13 THE SALE OF FOOD. The restaurant must have a dining room, a kitchen, and the number and kinds of
 14 employees necessary for the preparation, cooking, and serving of meals in order to satisfy the department
 15 that the space is intended for use as a full-service restaurant. A FULL-SERVICE RESTAURANT IS A
 16 RESTAURANT THAT PROVIDES AN EVENING DINNER MENU.

17 ~~(3)(7) (A) (I)~~ A SUBJECT TO THE CONDITIONS OF SUBSECTION (7)(A)(II), A restaurant beer and
 18 wine license is not transferable and may not be sold by a licensee MAY BE TRANSFERRED, UPON
 19 APPROVAL BY THE DEPARTMENT, FROM THE ORIGINAL APPLICANT TO A NEW OWNER OF THE
 20 RESTAURANT IF THERE IS NO CHANGE OF LOCATION, AND THE ORIGINAL OWNER MAY TRANSFER
 21 LOCATION AFTER THE LICENSE IS ISSUED BY THE DEPARTMENT TO A NEW LOCATION, UPON
 22 APPROVAL BY THE DEPARTMENT.

23 (II) A NEW OWNER MAY NOT TRANSFER THE LICENSE TO A NEW LOCATION FOR A PERIOD OF
 24 1 YEAR FOLLOWING THE TRANSFER OF THE LICENSE TO THE NEW OWNER.

25 (B) A LICENSE ISSUED UNDER THIS SECTION MAY BE JOINTLY OWNED, AND THE LICENSE MAY
 26 PASS TO THE SURVIVING JOINT TENANT UPON THE DEATH OF THE OTHER TENANT. HOWEVER, THE
 27 LICENSE MAY NOT BE TRANSFERRED TO ANY OTHER PERSON OR ENTITY BY OPERATION OF THE
 28 LAWS OF INHERITANCE OR SUCCESSION OR ANY OTHER LAWS ALLOWING THE TRANSFER OF
 29 PROPERTY UPON THE DEATH OF THE OWNER IN THIS STATE OR IN ANOTHER STATE.

30 (C) AN ESTATE MAY, UPON THE SALE OF A RESTAURANT THAT IS PROPERTY OF THE ESTATE

1 AND WITH THE APPROVAL OF THE DEPARTMENT, TRANSFER A RESTAURANT BEER AND WINE LICENSE
2 TO A NEW OWNER.

3 (4)(8) (A) The department shall issue a restaurant beer and wine license to a qualified applicant
4 regardless of the number of beer and wine licenses already issued within a beer license quota area in which
5 the restaurant is located;

6 (I) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,000
7 PERSONS OR FEWER, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
8 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
9 THAN 60% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
10 PURSUANT TO 16-4-105;

11 (II) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 20,001 TO
12 60,000 PERSONS, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
13 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
14 THAN 50% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
15 PURSUANT TO 16-4-105;

16 (III) FOR A RESTAURANT LOCATED IN A QUOTA AREA WITH A POPULATION OF 60,001
17 PERSONS OR MORE, AS THE QUOTA AREA POPULATION IS DETERMINED IN 16-4-105, IF THE NUMBER
18 OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THAT QUOTA AREA IS EQUAL TO OR LESS
19 THAN 40% OF THE NUMBER OF BEER LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA
20 PURSUANT TO 16-4-105; AND

21 (IV) FOR A RESTAURANT LOCATED IN A QUOTA AREA THAT IS ALSO A RESORT COMMUNITY,
22 AS THE RESORT COMMUNITY IS DESIGNATED BY THE DEPARTMENT OF COMMERCE UNDER
23 7-6-4461(5), IF THE NUMBER OF RESTAURANT BEER AND WINE LICENSES ISSUED IN THE QUOTA AREA
24 THAT IS ALSO A RESORT COMMUNITY IS EQUAL TO OR LESS THAN 100% OF THE NUMBER OF BEER
25 LICENSES THAT MAY BE ISSUED IN THAT QUOTA AREA PURSUANT TO 16-4-105.

26 (B) IN DETERMINING THE NUMBER OF RESTAURANT BEER AND WINE LICENSES THAT MAY BE
27 ISSUED UNDER THIS SUBSECTION (8) BASED ON THE PERCENTAGE AMOUNTS DESCRIBED IN
28 SUBSECTIONS (8)(A)(I) THROUGH (8)(A)(III), THE DEPARTMENT SHALL ROUND TO THE NEARER WHOLE
29 NUMBER.

30 (C) IF THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE IN A QUOTA AREA, THEN

1 THE LICENSE MUST BE AWARDED BY LOTTERY AS PROVIDED IN SUBSECTION (9).

2 (9) (A) WHEN A RESTAURANT BEER AND WINE LICENSE BECOMES AVAILABLE BY THE INITIAL
 3 ISSUANCE OF LICENSES UNDER THIS SECTION OR AS THE RESULT OF AN INCREASE IN THE
 4 POPULATION IN THE QUOTA AREA, THE NONRENEWAL OF RESTAURANT BEER AND WINE LICENSE,
 5 OR THE LAPSE OR REVOCATION OF THE LICENSE BY THE DEPARTMENT, THEN THE DEPARTMENT
 6 SHALL ADVERTISE THE AVAILABILITY OF THE LICENSE IN THE QUOTA AREA FOR WHICH IT IS
 7 AVAILABLE. IF THERE ARE MORE APPLICANTS THAN NUMBER OF LICENSES AVAILABLE, THE LICENSE
 8 MUST BE AWARDED TO AN APPLICANT BY A LOTTERY.

9 (B) ANY APPLICANT WHO OPERATES A RESTAURANT THAT MEETS THE QUALIFICATIONS OF
 10 SUBSECTION (6) FOR AT LEAST 12 MONTHS PRIOR TO THE FILING OF AN APPLICATION MUST BE
 11 GIVEN A PREFERENCE.

12 (C) THE DEPARTMENT SHALL NUMERICALLY RANK ALL APPLICANTS IN THE LOTTERY. ONLY
 13 THE SUCCESSFUL APPLICANTS WILL BE REQUIRED TO SUBMIT A COMPLETED APPLICATION AND THE
 14 REQUIRED FEE. AN APPLICANT'S RANKING MAY NOT BE SOLD OR TRANSFERRED TO ANOTHER
 15 PERSON OR ENTITY. THE PREFERENCE AND AN APPLICANT'S RANKING APPLY ONLY TO THE
 16 INTENDED LICENSE ADVERTISED BY THE DEPARTMENT OR TO THE NUMBER OF LICENSES DETERMINED
 17 UNDER SUBSECTION (8) WHEN THERE ARE MORE APPLICANTS THAN LICENSES AVAILABLE. THE
 18 APPLICANT'S QUALIFICATIONS FOR ANY OTHER RESTAURANT BEER AND WINE LICENSE AWARDED
 19 BY LOTTERY MUST BE DETERMINED AT THE TIME OF THE LOTTERY.

20 ~~(6)(10)~~ Under a restaurant beer and wine license, beer and wine may not be sold for off-premises
 21 consumption.

22 ~~(6)(11)~~ An application for a restaurant beer and wine license must be accompanied by a fee of
 23 ~~\$1,000~~ ACCORDING TO THE FOLLOWING SCHEDULE:

24 (A) \$5,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 60 PERSONS OR LESS;

25 (B) \$10,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 61 TO 100 PERSONS;

26 OR

27 (C) \$20,000 FOR RESTAURANTS WITH A STATED SEATING CAPACITY OF 101 PERSONS OR

28 MORE.

29 (12) The annual fee for a restaurant beer and wine license is ~~\$300~~ \$400.

30 (13) IF A RESTAURANT INCREASES THE STATED SEATING CAPACITY OF THE LICENSED

1 RESTAURANT OR IF THE DEPARTMENT DETERMINES THAT AN APPLICANT HAS INCREASED THE
 2 STATED SEATING CAPACITY OF THE LICENSED RESTAURANT, THEN THE APPLICANT SHALL PAY TO
 3 THE DEPARTMENT THE DIFFERENCE BETWEEN THE APPLICATION FEE PAID AT THE TIME OF FILING THE
 4 ORIGINAL APPLICATION AND THE APPLICABLE APPLICATION FEE FOR THE ADDITIONAL SEATING.

5 (14) THE NUMBER OF BEER AND WINE LICENSES ISSUED TO RESTAURANTS WITH A STATED
 6 SEATING CAPACITY OF 101 PERSONS OR MORE MAY NOT EXCEED 25% OF THE TOTAL LICENSES
 7 ISSUED.

8 ~~(7)(15)~~ Possession of a restaurant beer and wine license is not a qualification for licensure of any
 9 gaming or gambling activity. A gaming or gambling activity may not occur on the premises of a restaurant
 10 with a restaurant beer and wine license.

11
 12 NEW SECTION. Section 2. Appropriate alcoholic beverage license for gaming or gambling. (1)
 13 ~~Gaming or gambling may be conducted on premises with retail all-beverages licenses issued under 16-4-201~~
 14 ~~but may not be conducted on premises that are originally licensed after [the effective date of this act] under~~
 15 ~~any other provision of law to sell alcoholic beverages for consumption on the premises. The transfer or~~
 16 ~~renewal of a license in conformance with the provisions of this title does not constitute the new issuance~~
 17 ~~of a license, and premises operating under a license originally issued prior to [the effective date of this act]~~
 18 ~~may, subject to the provisions of Title 23, chapter 5, have gaming or gambling conducted on the premises.~~

19 ~~(2) All licenses to sell alcoholic beverages for consumption on the premises, other than~~
 20 ~~all-beverages licenses issued under 16-4-201, that are issued after [the effective date of this act] must have~~
 21 ~~a conspicuous notice that the license may not be used for premises where gaming or gambling is~~
 22 ~~conducted.~~

23
 24 NEW SECTION. SECTION 2. DENIAL OF RESTAURANT BEER AND WINE LICENSE. (1) A
 25 RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED BY THE DEPARTMENT FOR A PREMISES
 26 SITUATED WITHIN A ZONE OF A CITY, TOWN, OR COUNTY WHERE THE SALE OF ALCOHOLIC
 27 BEVERAGES IS PROHIBITED BY ORDINANCE, A CERTIFIED COPY OF WHICH HAS BEEN FILED WITH THE
 28 DEPARTMENT.

29 (2) A RESTAURANT BEER AND WINE LICENSE MAY NOT BE ISSUED OR RENEWED IF THE
 30 DEPARTMENT FINDS, SUBJECT TO THE OPPORTUNITY FOR A HEARING PURSUANT TO TITLE 2,

1 CHAPTER 4, PART 6, THAT THE APPLICANT OR THE PREMISES PROPOSED FOR LICENSING FAIL TO
 2 MEET THE ELIGIBILITY OR SUITABILITY CRITERIA PROVIDED BY LAW.

3
 4 NEW SECTION. SECTION 3. SALE OF BEER AND WINE PROHIBITED DURING CERTAIN HOURS.
 5 EXCEPT AS PROVIDED IN 16-3-305, RESTAURANTS LICENSED PURSUANT TO [SECTION 1] IN WHICH
 6 BEER AND WINE ARE SOLD, OFFERED FOR SALE, OR GIVEN AWAY AT RETAIL MAY NOT SERVE BEER
 7 AND WINE BETWEEN THE HOURS OF 11 P.M. AND 11 A.M. HOWEVER, IF AN INCORPORATED CITY
 8 OR TOWN HAS BY ORDINANCE FURTHER RESTRICTED THE HOURS OF SALE OF BEER AND WINE, THEN
 9 THE SALE OF BEER AND WINE IN RESTAURANTS LICENSED TO SELL BEER AND WINE, PURSUANT TO
 10 [SECTION 1], IS PROHIBITED WITHIN THE LIMITS OF THE CITY OR TOWN DURING THE TIME THAT THE
 11 SALE IS PROHIBITED BY THIS SECTION AND IN ADDITION TO THE HOURS THAT THE SALE IS
 12 PROHIBITED BY ORDINANCE.

13
 14 NEW SECTION. SECTION 4. RESTAURANT BEER AND WINE LICENSE -- PROHIBITED PRACTICES.
 15 A RESTAURANT LICENSED FOR THE SALE OF BEER AND WINE PURSUANT TO [SECTION 1] MAY NOT
 16 CONVEY TO ANY PERSON BY ANY MEANS THAT A PERSON MAY EITHER PURCHASE OR CONSUME
 17 BEER OR WINE ON THE PREMISES WITHOUT BEING REQUIRED TO PURCHASE FOOD.

18
 19 NEW SECTION. SECTION 5. APPROPRIATE ALCOHOLIC BEVERAGE LICENSE FOR CERTAIN
 20 GAMBLING ACTIVITIES. (1) TO BE ELIGIBLE TO OFFER GAMBLING UNDER TITLE 23, CHAPTER 5, PART
 21 3, 5, OR 6, AN APPLICANT SHALL OWN IN THE APPLICANT'S NAME:

22 (A) A RETAIL ALL-BEVERAGES LICENSE ISSUED UNDER 16-4-201; OR

23 (B) EXCEPT AS PROVIDED IN SUBSECTION (1)(C), A LICENSE ISSUED PRIOR TO [THE EFFECTIVE
 24 DATE OF SECTION 6 THIS ACT] UNDER 16-4-105, AUTHORIZING THE SALE OF BEER AND WINE FOR
 25 CONSUMPTION ON THE LICENSED PREMISES; OR

26 (C) A BEER AND WINE LICENSE ISSUED IN AN AREA OUTSIDE OF AN INCORPORATED CITY OR
 27 TOWN AS PROVIDED IN 16-4-105(1)(E). THE OWNER OF THE LICENSE WHOSE PREMISES ARE SITUATED
 28 OUTSIDE OF AN INCORPORATED CITY OR TOWN MAY OFFER GAMBLING, REGARDLESS OF WHEN THE
 29 LICENSE WAS ISSUED, IF THE OWNER AND PREMISES QUALIFY UNDER TITLE 23, CHAPTER 5, PART
 30 3, 5, OR 6.

1 (2) FOR PURPOSES OF THIS SECTION SUBSECTION (1)(B), A LICENSE ISSUED UNDER 16-4-105
 2 PRIOR TO [THE EFFECTIVE DATE OF SECTION 6 THIS ACT] MAY BE TRANSFERRED TO A NEW OWNER
 3 OR TO A NEW LOCATION OR TRANSFERRED TO A NEW OWNER AND LOCATION BY THE DEPARTMENT
 4 OF REVENUE PURSUANT TO THE APPLICABLE PROVISIONS OF TITLE 16. THE OWNER OF THE LICENSE
 5 THAT HAS BEEN TRANSFERRED MAY OFFER GAMBLING IF THE OWNER AND THE PREMISES QUALIFY
 6 UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.

7

8 **SECTION 6. SECTION 16-4-105, MCA, IS AMENDED TO READ:**

9 **"16-4-105. Limit on retail beer licenses -- wine license amendments -- off-premises consumption**
 10 **-- limitation on use of license -- ~~exception~~ EXCEPTIONS.** (1) Except as otherwise provided by law, a license
 11 to sell beer at retail or beer and wine at retail, in accordance with the provisions of this code and the rules
 12 of the department, may be issued to any person, firm, or corporation that is approved by the department
 13 as a fit and proper person, firm, or corporation to sell beer, except that:

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

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

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

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

28 (b) the number of the inhabitants in incorporated cities and incorporated towns, exclusive of the
 29 number of inhabitants residing within a distance of 5 miles from the corporate limits of the cities or towns,
 30 governs the number of retail beer licenses that may be issued for use within the cities and towns and within

1 a distance of 5 miles from the corporate limits of the cities and towns. If two or more incorporated
 2 municipalities are situated within a distance of 5 miles from each other, the total number of retail beer
 3 licenses that may be issued for use in both the incorporated municipalities and within a distance of 5 miles
 4 from their respective corporate limits must be determined on the basis of the combined populations of both
 5 municipalities and may not exceed the limitations in this section. The distance of 5 miles from the corporate
 6 limits of any incorporated city or incorporated town must be measured in a straight line from the nearest
 7 entrance of the premises proposed for licensing to the nearest corporate boundary of the city or town.

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

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

16 (e) the number of retail beer licenses that the department may issue for use at premises situated
 17 outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles
 18 from the corporate limits or for use at premises situated within any unincorporated area must be determined
 19 by the department in its discretion, except that a retail beer license may not be issued for any premises so
 20 situated unless the department determines that the issuance of the license is required by public convenience
 21 and necessity. SUBSECTION (3) DOES NOT APPLY TO LICENSES ISSUED UNDER THIS SUBSECTION
 22 (1)(E). THE OWNER OF THE LICENSE WHOSE PREMISES ARE SITUATED OUTSIDE OF AN INCORPORATED
 23 CITY OR TOWN MAY OFFER GAMBLING, REGARDLESS OF WHEN THE LICENSE WAS ISSUED, IF THE
 24 OWNER AND PREMISES QUALIFY UNDER TITLE 23, CHAPTER 5, PART 3, 5, OR 6.

25 (2) A person holding a license to sell beer for consumption on the premises at retail may apply to
 26 the department for an amendment to the license permitting the holder to sell wine as well as beer. The
 27 division may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of
 28 wine for consumption on the premises would be supplementary to a restaurant or prepared-food business.
 29 A Except for beer and wine licenses issued pursuant to [section 1], a person holding a beer-and-wine
 30 license may sell wine for consumption on or off the premises. Nonretention of the beer license, for

1 whatever reason, means automatic loss of the wine amendment license.

2 (3) (a) Except as provided in ~~subsection~~ SUBSECTIONS (1)(E) AND (3)(b), a license issued pursuant
 3 to this section after [the effective date of this ~~section~~ ACT] must have a conspicuous notice that the license
 4 may not be used for premises where gambling is conducted.

5 (b) Subsection (3)(a) does not apply to licenses issued under this section if the department received
 6 the application before [the effective date of this ~~section~~ ACT]. For the purposes of this subsection (3)(b),
 7 the application is received by the department before [the effective date of this ~~section~~ ACT] if the
 8 application's mail cover is postmarked by the United States postal service before [the effective date of this
 9 ~~section~~ ACT] or if the application was consigned to a private courier service for delivery to the department
 10 before [the effective date of this ~~section~~ ACT]. An applicant who consigns an application to a private
 11 courier shall provide to the department, upon demand, documentary evidence satisfactory to the
 12 department that the application was consigned to a private courier before [the effective date of this ~~section~~
 13 ACT]."

14

15 **SECTION 7. SECTION 16-4-111, MCA, IS AMENDED TO READ:**

16 **"16-4-111. Catering endorsement for beer and wine licensees. (1) (a) A person who is engaged**
 17 **primarily in the business of providing meals with table service and who is licensed to sell beer at retail or**
 18 **beer and wine at retail for on-premises consumption may, upon the approval of the liquor division, be**
 19 **granted a catering endorsement to the license to allow the catering and sale of beer or beer and wine to**
 20 **persons attending a special event upon premises not otherwise licensed for the sale of beer or beer and**
 21 **wine for on-premises consumption. The beer ~~and or~~ wine must be consumed on the premises where the**
 22 **event is held.**

23 (b) A person who is licensed pursuant to [section 1] to sell beer at retail or beer and wine at retail
 24 for on-premises consumption may, upon the approval of the liquor division, be granted a catering
 25 endorsement to the license to allow the catering and sale of beer and wine to persons attending a special
 26 event upon premises not otherwise licensed for the sale of beer or beer and wine, along with food equal
 27 in cost to 75% of the total gross revenue from the catering contract, for on-premises consumption. The
 28 beer or wine must be consumed on the premises where the event is held.

29 (2) A written application for a catering endorsement and an annual fee of \$200 must be submitted
 30 to the department for its approval.

1 (3) A licensee who holds a catering endorsement may not cater an event in which the licensee is
2 the sponsor. The catered event must be within 100 miles of the licensee's regular place of business.

3 (4) The licensee shall notify the local law enforcement agency that has jurisdiction over the
4 premises that the catered event is to be held. A fee of \$35 must accompany the notice.

5 (5) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
6 provisions of 16-6-103.

7 (6) The sale of beer or beer and wine pursuant to a catering endorsement is subject to the
8 provisions of 16-3-306, unless entities named in 16-3-306 give their written approval for the on-premises
9 sale of beer or beer and wine on premises where the event is to be held.

10 (7) A catering endorsement issued for the purpose of selling and serving beer or beer and wine at
11 a special event conducted on the premises of a county fairground or public sports arena authorizes the
12 licensee to sell and serve beer or beer and wine in the grandstand and bleacher area of the premises, as
13 well as from a booth, stand, or other fixed place on the premises."
14

15 **Section 8.** Section 23-5-306, MCA, is amended to read:

16 **"23-5-306. Live card game table -- permit -- fees -- disposition of fees.** (1) (a) A person who has
17 been granted an operator's license under 23-5-177 and a who holds an appropriate license to sell alcoholic
18 beverages for consumption on the premises as provided in [section 2 5] may be granted an annual permit
19 for the placement of live card game tables.

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

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

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

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

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

27 (A) the person has continuously operated a live card game table on the premises since January 15,
28 1989; and

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

1 (2) The annual permit fee in lieu of taxes for each live card game table operated in a licensed
2 operator's premises may not be prorated and must be:

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

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

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

7 (4) The department shall forward on a quarterly basis the remaining balance of the fee collected
8 under subsection (2) to the treasurer of the county or the clerk, finance officer, or treasurer of the city or
9 town in which the live card game table is located for deposit to the county or municipal treasury. A county
10 is not entitled to proceeds from fees assessed on live card game tables located in incorporated cities and
11 towns within the county. The local government portion of this fee is statutorily appropriated to the
12 department, as provided in 17-7-502, for deposit to the county or municipal treasury."
13

14 **Section 9.** Section 23-5-502, MCA, is amended to read:

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

17 (a) sports tab games may ~~only~~ be conducted only on premises appropriately licensed to sell
18 alcoholic beverages for consumption on the premises as provided in [section 2 5]; and

19 (b) only a licensee of premises that are located in an incorporated city or town with a population
20 of less than 100 or located outside the boundaries of an incorporated city or town and that are
21 appropriately licensed to sell alcoholic beverages for consumption on the premises under [section 2 5] may
22 conduct a race between animals and conduct one or more sports pools on the race. The race may be
23 conducted only if it is between pigs, gerbils, or hamsters and is conducted on the premises but outside of
24 interior areas of the establishment where food and beverages are usually stored, prepared, or served.

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

1 administer this part."

2

3 **Section 10.** Section 23-5-603, MCA, is amended to read:

4 **"23-5-603. Video gambling machines -- possession -- play -- restriction.** (1) A licensed operator
5 may make available for public play only the number of approved video gambling machines specifically
6 authorized by this part.

7 (2) The video gambling machines specifically authorized by this part are bingo, keno, and draw
8 poker machines. Only the number of approved machines for which permits have been granted under
9 23-5-612 may be made available for play by the public on the premises of a licensed operator. The
10 department shall adopt rules allowing a video gambling machine that needs repair to be temporarily replaced
11 while it is being repaired with a video gambling machine that is approved under the permit provisions of
12 this part. A fee may not be charged for the replacement machine.

13 (3) Machines on premises appropriately licensed to sell alcoholic beverages for on-premises
14 consumption as provided in [section 2 5] must be placed:

15 (a) in a room, area, or other part of the premises in which alcoholic beverages are sold or
16 consumed; and

17 (b) within control of the operator for the purpose of preventing access to the machines by persons
18 under 18 years of age."

19

20 **Section 11.** Section 23-5-611, MCA, is amended to read:

21 **"23-5-611. Machine permit qualifications -- limitations.** (1) (a) A person who has been granted an
22 operator's license under 23-5-177 and ~~a~~ who holds an appropriate license to sell alcoholic beverages for
23 consumption on the premises as provided in [section 2 5] may be granted a permit for the placement of
24 video gambling machines ~~in his~~ on the person's premises.

25 (b) If video keno or bingo gambling machines were legally operated on a premises on January 15,
26 1989, and the premises were not on that date licensed to sell alcoholic beverages for consumption on the
27 premises or operated for the principal purpose of gaming and there is an operator's license for the premises
28 under 23-5-177, a permit for the same number of video keno or bingo gambling machines as were operated
29 on the premises on that date may be granted to the person who held the permit for such machines on those
30 premises on that date.

1 (c) A person who legally operated an establishment on January 15, 1989, for the principal purpose
 2 of gaming and has been granted an operator's license under 23-5-177 may be granted a permit for the
 3 placement of bingo and keno machines ~~in his~~ on the person's premises.

4 (2) An applicant for a permit shall disclose on the application form to the department any
 5 information required by the department consistent with the provisions of 23-5-176.

6 (3) A licensee may not have on the premises or make available for play on the premises more than
 7 20 machines of any combination."
 8

9 NEW SECTION. SECTION 12. SEVERABILITY. IF A PART OF [THIS ACT] IS INVALID, ALL VALID
 10 PARTS THAT ARE SEVERABLE FROM THE INVALID PART REMAIN IN EFFECT. IF A PART OF [THIS ACT]
 11 IS INVALID IN ONE OR MORE OF ITS APPLICATIONS, THE PART REMAINS IN EFFECT IN ALL VALID
 12 APPLICATIONS THAT ARE SEVERABLE FROM THE INVALID APPLICATIONS.

13
 14 NEW SECTION. Section 13. Codification instruction. (1) [Sections 1 and 2 THROUGH 4] are
 15 intended to be codified as an integral part of Title 16, CHAPTER 4, PART 4, and the provisions of Title 16,
 16 CHAPTER 4, PART 4, apply to [sections 1 and 2 THROUGH 4].

17 (2) [SECTION 5] IS INTENDED TO BE CODIFIED AS AN INTEGRAL PART OF TITLE 23, CHAPTER
 18 5, PART 1, AND THE PROVISIONS OF TITLE 23, CHAPTER 5, PART 1, APPLY TO [SECTION 5].

19
 20 NEW SECTION. SECTION 14. EFFECTIVE DATES. (1) EXCEPT AS PROVIDED IN SUBSECTION
 21 (2), [THIS ACT] IS EFFECTIVE OCTOBER 1, 1997.

22 (2) [SECTION 6] AND THIS SECTION ARE EFFECTIVE ON PASSAGE AND APPROVAL.

23 -END-