

## HOUSE BILL NO. 428

INTRODUCED BY D. JONES, D. BARTEL, M. BLASDEL, E. GREEF, D. LENZ, W. MCKAMEY, J. TREBAS,  
B. TSCHIDA

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING RETAIL BEER LICENSING LAWS RELATED TO  
LOTTERIES; PROVIDING CONDITIONS FOR USE; REQUIRING A PROCESSING AND ORIGINAL LICENSE  
FEE; PROVIDING RULEMAKING AUTHORITY; AND AMENDING SECTION 16-4-105, MCA."

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

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

**"16-4-105. Limit on retail beer licenses -- wine license amendments -- limitation on use of license  
-- exceptions -- lottery -- rulemaking.** (1) Except as otherwise provided by law in 16-4-109, 16-4-110, 16-4-115,  
16-4-420, and chapter 4, part 3, of this title, a license to sell beer at retail or beer and wine at retail, in accordance  
with the provisions of this code and the rules of the department, may be issued to any person, firm, or corporation  
that is approved by the department as a person, firm, or corporation qualified to sell beer, ~~except that:~~ subject to  
the provisions in subsections (1)(a) through (1)(e).

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

(i) in incorporated towns of 500 inhabitants or less and within a distance of 5 miles from the corporate  
limits of the towns, not more than one retail beer license;

(ii) in incorporated cities or incorporated towns of more than 500 inhabitants and not over 2,000  
inhabitants and within a distance of 5 miles from the corporate limits of the cities or towns, one retail beer license  
for every 500 inhabitants;

(iii) in incorporated cities of over 2,000 inhabitants and within a distance of 5 miles from the corporate  
limits of the cities, four retail beer licenses for the first 2,000 inhabitants, two additional retail beer licenses for the  
next 2,000 inhabitants or major fraction of 2,000 inhabitants, and one additional retail beer license for every  
additional 2,000 inhabitants;

(b) ~~the~~ The number of the inhabitants in incorporated cities and incorporated towns, exclusive of the

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

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

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

(e) ~~the~~ The number of retail beer licenses that the department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of 5 miles from the corporate limits or for use at premises situated within any unincorporated area must be determined by the department in its discretion, except that a retail beer license may not be issued for any premises so situated unless the department determines that the issuance of the license is required by public convenience and necessity pursuant to 16-4-203. Subsection (3) does not apply to licenses issued under this subsection (1)(e). The owner of the license whose premises are situated outside of an incorporated city or town may offer gambling, regardless of when the license was issued, if the owner and premises qualify under Title 23, chapter 5, part 3, 5, or 6.

(2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The department may issue an amendment if it finds, on a satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared-food business. Except for beer

1 and wine licenses issued pursuant to 16-4-420, a person holding a beer and wine license may sell wine for  
2 consumption on or off the premises. Nonretention of the beer license, for whatever reason, means automatic loss  
3 of the wine amendment license.

4 (3) (a) Except as provided in subsections (1)(e) and (3)(b), a license issued pursuant to this section after  
5 October 1, 1997, must have a conspicuous notice that the license may not be used for premises where gambling  
6 is conducted.

7 (b) Subsection (3)(a) does not apply to licenses issued under this section if the department received the  
8 application before October 1, 1997. For the purposes of this subsection (3)(b), the application is received by the  
9 department before October 1, 1997, if the application's mail cover is postmarked by the United States postal  
10 service before October 1, 1997, or if the application was consigned to a private courier service for delivery to the  
11 department before October 1, 1997. An applicant who consigns an application to a private courier shall provide  
12 to the department, upon demand, documentary evidence satisfactory to the department that the application was  
13 consigned to a private courier before October 1, 1997.

14 (4) A license issued under subsection (1)(e) that becomes located within 5 miles of an incorporated city  
15 or town because of annexation after April 15, 2005, may not be transferred to another location within the city  
16 quota area for 5 years from the date of the annexation.

17 (5) (a) When the department determines that a quota area is eligible for an additional retail beer license  
18 as provided in this section, the department shall advertise the availability of the license in the quota area for which  
19 the license is available. If there are more applicants than number of licenses available, the license must be  
20 awarded to an applicant by a lottery.

21 (b) The department shall numerically rank all applicants in the lottery. Only the successful applicants will  
22 be required to submit a completed application and a one-time processing fee set by the department by rule. An  
23 applicant's ranking may not be sold or transferred to another person or business entity. An applicant's ranking  
24 applies only to the intended license advertised by the department or to the number of licenses determined to be  
25 available for the lottery when there are more applicants than licenses available. The department shall determine  
26 an applicant's qualifications for a retail beer license awarded by lottery prior to the award of a license by lottery.

27 (c) A successful lottery applicant shall pay to the department a \$25,000 original license fee, and in  
28 subsequent years pay the annual fee for the license as provided in 16-4-501.

29 (d) (i) The successful lottery applicant is subject to forfeiture of the license and the original license fee  
30 if the successful lottery applicant:

(A) enters into a concession agreement, as defined in rule, for the license awarded by lottery in the first  
5 years;  
(B) transfers a license awarded by lottery within 5 years of receiving the license; or  
(C) does not use the license within 1 year of receiving the license or stops using the license within 5  
years. The department may extend the time for use if the lottery winner provides evidence the delay in use is for  
reasons outside the applicant's control.

(ii) In the case of forfeiture, the department shall offer the license to the next eligible ranked applicant in  
the lottery.

(6) The department may adopt rules to implement this section."

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