

HOUSE BILL NO. 150

INTRODUCED BY S. FITZPATRICK

A BILL FOR AN ACT ENTITLED: "AN ACT GENERALLY REVISING ALCOHOL AND GAMBLING LAWS;
REVISING OWNERSHIP CONSIDERATIONS IN GAMBLING AND ALCOHOL LICENSES; REVISING LAWS
RELATED TO REGULATED LENDERS AND ALCOHOL AND GAMBLING LICENSES; REVISING LAWS
RELATED TO OTHER PERSONS AND OWNERSHIP INTERESTS IN AN ALCOHOLIC BEVERAGE LICENSE
OR GAMBLING LICENSE; REVISING LAWS FOR DEPARTMENT INVESTIGATIONS RELATING TO
OWNERSHIP INTERESTS; PROVIDING DEFINITIONS; AND AMENDING SECTIONS 16-1-106, 16-4-801, 23-
5-112, AND 23-5-176 16-4-801 AND 23-5-118, MCA."

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

Section 1. Section 16-1-106, MCA, is amended to read:

"16-1-106. Definitions. As used in this code, the following definitions apply:

(1) "Agency franchise agreement" means an agreement between the department and a person
appointed to sell liquor as a commission merchant rather than as an employee.

(2) "Agency liquor store" means a store operated under an agency franchise agreement in
accordance with this code for the purpose of selling liquor at either the posted or the retail price for off-premises
consumption.

(3) "Alcohol" means ethyl alcohol, also called ethanol, or the hydrated oxide of ethyl.

(4) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink
that contains more than 0.5% of alcohol by volume.

(5) (a) "Beer" means:

(i) a malt beverage containing not more than 8.75% of alcohol by volume; or

(ii) an alcoholic beverage containing not more than 14% alcohol by volume:

(A) that is made by the alcoholic fermentation of an infusion or decoction, or a combination of both,
in potable brewing water, of malted cereal grain; and

(B) — in which the sugars used for fermentation of the alcoholic beverage are at least 75% derived from malted cereal grain measured as a percentage of the total dry weight of the fermentable ingredients.

~~(b) — The term does not include a caffeinated or stimulant-enhanced malt beverage.~~

~~(6) — "Beer importer" means a person other than a brewer who imports malt beverages.~~

~~(7) — "Beer wholesaler" means a person importing into or purchasing in Montana beer for sale or resale to retailers licensed in Montana.~~

~~(8) — "Brewer" means a person who produces malt beverages.~~

~~(9) — "Caffeinated or stimulant-enhanced malt beverage" means:~~

~~(a) — a beverage:~~

~~(i) — that is fermented in a manner similar to beer and from which some or all of the fermented alcohol has been removed and replaced with distilled ethyl alcohol;~~

~~(ii) — that contains at least 0.5% of alcohol by volume;~~

~~(iii) — that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55; and~~

~~(iv) — to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine; or~~

~~(b) — a beverage:~~

~~(i) — that contains at least 0.5% of alcohol by volume;~~

~~(ii) — that is treated by processing, filtration, or another method of manufacture that is not generally recognized as a traditional process in the production of beer as described in 27 CFR 25.55;~~

~~(iii) — to which is added a flavor or other ingredient containing alcohol, except for a hop extract;~~

~~(iv) — to which is added caffeine or other stimulants, including but not limited to guarana, ginseng, and taurine;~~

~~(v) — for which the producer is required to file a formula for approval with the United States alcohol and tobacco tax and trade bureau pursuant to 27 CFR 25.55; and~~

~~(vi) — that is not exempt pursuant to 27 CFR 25.55(f).~~

~~(10) — "Community" means:~~

~~(a) — in an incorporated city or town, the area within the incorporated city or town boundaries;~~

(b) — in an unincorporated city or area, the area identified by the federal bureau of the census as a community for census purposes; and

(c) — in a consolidated local government, the area of the consolidated local government not otherwise incorporated.

(11) — "Concessionaire" means an entity that has a concession agreement with a licensed entity.

(12) — "Curbside pickup" means the sale of alcoholic beverages that meets the requirements of 16-3-312.

(13) — "Department" means the department of revenue, unless otherwise specified, and includes the department of justice with respect to receiving and processing, but not granting or denying, an application under a contract entered into under 16-1-302.

(14) — "Growler" means any fillable, sealable container complying with federal law.

(15) — (a) "Guest ranch" means a business or organization that provides guests with overnight lodging, dining, and onsite outdoor recreational activities typical of western ranching for the purposes of vacation or recreation. Recreational activities offered by a guest ranch may include but are not limited to horseback riding, wagon or sleigh rides, shooting, and working with livestock. The property of a guest ranch must be composed of at least 50 contiguous acres. The property must be located entirely outside the license quota area of an incorporated city or an incorporated town as determined under 16-4-105(1) or 16-4-201. The premises of a guest ranch may include restaurants, sporting and recreational equipment shops, event venues, arenas, and other facilities that may be used by other persons in addition to the overnight guests.

(b) — The term does not include premises used as rehabilitation centers, group homes, clinics, nursing homes, church or other religious campgrounds, or other similar uses.

(16) — "Hard cider" means an alcoholic beverage that is made from the alcoholic fermentation of the juices of apples or pears and that contains not less than 0.5% of alcohol by volume and not more than 8.5% of alcohol by volume, including but not limited to flavored, sparkling, or carbonated cider.

(17) — "Immediate family" means a spouse, dependent children, or dependent parents.

(18) — "Import" means to transfer beer or table wine from outside the state of Montana into the state of Montana.

(19) — "Liquor" means an alcoholic beverage except beer and table wine. The term includes a

~~caffeinated or stimulant-enhanced malt beverage.~~

~~(20) — "Location manager" means a person who provides general oversight of the alcoholic beverage operations and ensures compliance with alcoholic beverage laws and regulations. A location manager may be an owner of a license, an employee of the licensee, or an entity that contracts to provide services for the licensee.~~

~~(21) — "Malt beverage" means:~~

~~(a) — an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts or their products and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates, or products prepared from carbohydrates and with or without other wholesome products suitable for human food consumption; or~~

~~(b) — an alcoholic beverage made by the fermentation of malt substitutes, including rice, grain of any kind, glucose, sugar, or molasses that has not undergone distillation.~~

~~(22) — (a) "Original package" means the sealed container in which a manufacturer packages its product for retail sale.~~

~~(b) — The term includes but is not limited to:~~

~~(i) — bottles;~~

~~(ii) — cans; and~~

~~(iii) — kegs.~~

~~(23) — (a) — "Owner", "ownership", or "ownership interest" means the ability to:~~

~~(i) — share in the profits, losses, or liabilities of a business operating under a license issued pursuant to this code;~~

~~(ii) — enjoy the privileges reserved to licensees of a license pursuant to this code; or~~

~~(iii) — control a business operating under a license issued pursuant to this code.~~

~~(b) — The term "ownership" relating to a premises in which a license is issued pursuant to this code does not constitute an ownership interest in a license if the owner of the premises gives control over the premises to the applicant or licensee through a lease or rental agreement or a similar agreement if the contractual terms of the agreement are submitted to the department for review and found to be commercially~~

1 ~~reasonable and at arms-length.~~

2 ~~(23)(24)"Package" means a container or receptacle used for holding an alcoholic beverage.~~

3 ~~(24)(25)"Posted price" means the wholesale price of liquor for sale to persons who hold liquor licenses~~
4 ~~as fixed and determined by the department and in addition an excise and license tax as provided in this code.~~
5 ~~In the case of sacramental wine sold in agency liquor stores, the wholesale price may not exceed the sum of~~
6 ~~the department's cost to acquire the sacramental wine, the department's current freight rate to agency liquor~~
7 ~~stores, and a 20% markup.~~

8 ~~(25)(26)"Prepared serving" means a container of alcoholic beverages, filled at the time of sale and~~
9 ~~sealed with a lid, for consumption at a place other than the licensee's premises.~~

10 ~~(26)(27)"Proof gallon" means a U.S. gallon of liquor at 60 degrees on the Fahrenheit scale that~~
11 ~~contains 50% of alcohol by volume.~~

12 ~~(27)(28)"Public place" means a place, building, or conveyance to which the public has or may be~~
13 ~~permitted to have access and any place of public resort.~~

14 ~~(28)(29)"Retail price" means the price established by an agent for the sale of liquor to persons who do~~
15 ~~not hold liquor licenses. The retail price may not be less than the department's posted price.~~

16 ~~(29)(30)"Rules" means rules adopted by the department or the department of justice pursuant to this~~
17 ~~code.~~

18 ~~(30)(31)"Sacramental wine" means wine that contains more than 0.5% but not more than 24% of~~
19 ~~alcohol by volume that is manufactured and sold exclusively for use as sacramental wine or for other religious~~
20 ~~purposes.~~

21 ~~(31)(32)"Special event", as it relates to an application for a beer and wine special permit, means a~~
22 ~~short, infrequent, out of the ordinary occurrence, such as a picnic, fair, reception, or sporting contest.~~

23 ~~(32)(33)"State liquor warehouse" means a building owned or under control of the department for the~~
24 ~~purpose of receiving, storing, transporting, or selling alcoholic beverages to agency liquor stores.~~

25 ~~(33)(34)"Storage depot" means a building or structure owned or operated by a brewer at any point in~~
26 ~~the state of Montana off and away from the premises of a brewery, which building or structure is equipped with~~
27 ~~refrigeration or cooling apparatus for the storage of beer and from which a brewer may sell or distribute beer as~~
28 ~~permitted by this code.~~

~~(34)(35)"Subwarehouse" means a building or structure owned or operated by a licensed combined beer wholesaler and table wine distributor, located at a site in Montana other than the site of the combined beer wholesaler's and table wine distributor's warehouse, and used for the receiving, storage, and distribution of beer, table wine, or sacramental wine as permitted by this code.~~

~~(35)(36)"Table wine" means wine that contains not more than 16% of alcohol by volume and includes hard cider.~~

~~(36)(37)"Table wine distributor" means a person importing into or purchasing in Montana table wine or sacramental wine for sale or resale to retailers licensed in Montana and a person importing into or purchasing in Montana table wine for sale or resale to agency liquor stores.~~

~~(37)(38)"Warehouse" means a building or structure located in Montana that is owned or operated by a licensed combined beer wholesaler and table wine distributor for the receiving, storage, and distribution of beer or table wine as permitted by this code.~~

~~(38)(39)"Wine" means an alcoholic beverage made from or containing the normal alcoholic fermentation of the juice of sound, ripe fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging, and that contains more than 0.5% but not more than 24% of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened, and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined in this subsection but made in the manner of wine and labeled and sold as wine in accordance with federal regulations are also wine."~~

Section 1. Section 16-4-801, MCA, is amended to read:

"16-4-801. Security interest in alcoholic beverage license -- definitions. (1) (a) A security interest in an alcoholic beverage license is an interest in the alcoholic beverage license that secures payment or performance of an obligation. A contract for the sale of an alcoholic beverage license, including a provision allowing the seller to retain an ownership interest in the license solely for the purpose of guaranteeing payment for the license, may, for the purposes of this section, be treated as a security interest.

(b) For the purposes of this section:

(i) "alcoholic beverage license" means a license issued under this chapter; and

(ii) "default" means that:

(A) the defaulting party has acknowledged in writing pursuant to the terms of a written security agreement or contract for sale that the defaulting party no longer has any ownership interest or any other rights to possess or control the alcoholic beverage license;

(B) a court of competent jurisdiction has made an order foreclosing all of the defaulting party's interests in the license; or

(C) there has been a nonjudicial sale by the secured party made pursuant to the Uniform Commercial Code and the secured party has provided written proof of the sale to the department.

(2) The department, after review of the underlying documents creating the security interest, may approve a transfer of ownership of an alcoholic beverage license subject to a security interest as provided in subsection (1). A person holding a security interest may not have any control in the operation of the business operated under a license subject to a security interest nor may that person share in the profits or the liabilities of the business other than the payment or performance of the licensee's obligation under a security agreement.

(3) (a) Within 7 days of a default by a licensee, the person holding the security interest shall give notice to the department of the licensee's default and either apply to have the license transferred to that person, subject to that person meeting the requirements of 16-4-401 and all other applicable provisions of this code, or the person shall place the license on nonuse status. On receipt of an application to transfer the license, the department may, pursuant to 16-4-433, grant the applicant temporary operating authority to operate the license. If the person holding the license places the license on nonuse status, the person shall transfer ownership of the license within 180 days from the date on which the notice of the default was given to the department. The operation of a business under a license by a person holding a security interest for more than 7 days after default of the licensee or without temporary operating authority issued by the department must be considered to be a violation of this code and constitutes grounds for the department to either deny an application for transfer of the license or for the revocation of the license pursuant to 16-4-406.

(b) If the person holding the security interest does not qualify for or cannot qualify for ownership of an alcoholic beverage license under 16-4-401, the secured party shall transfer ownership of the alcoholic beverage license within 180 days of the notice of the default of the licensee.

(c) The department, on a showing of good cause, may in its discretion extend the time for sale of

the license for an additional period of up to 180 days.

(4) (a) A regulated lender, as defined in 31-1-111, may obtain a security interest in an alcoholic beverage license or in other assets of a business operating an alcoholic beverage license to secure a loan or a guaranty of a loan. A regulated lender may use loan and collateral documentation and loan and collateral structure consistent with that used by the regulated lender in commercial loans generally, and the documentation and structure used by the lender do not create an undisclosed ownership interest in the alcoholic beverage license or the licensee's business by a coborrower, or guarantor, or other person who may directly or indirectly benefit from the pledge of the alcoholic beverage license as collateral, if the alcoholic beverage license is issued or proposed for use on premises that meet the requirements of 16-3-311 if the department determines the borrower, coborrower, guarantor, and owner or owners of the assets pledged as collateral ~~meet the requirements of 16-4-401~~. As used in this subsection (4), permissible loan and collateral structuring includes but is not limited to permitting owners and nonowners of an alcoholic beverage license to:

- (i) be coborrowers of a borrower's loan;
- (ii) be guarantors of a borrower's loan, with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting from the guarantor; ~~or~~
- (iii) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan; or
- (iv) use the license as additional collateral for a loan made by a regulated lender to the owner of the premises where the alcoholic beverage license is located and operated pursuant to contractual terms approved by the department. The terms and approval by the department may not be conditioned on the owner of the premises or its principals meeting the requirements of 16-4-401 if the contractual terms are otherwise commercially reasonable and at arms-length PLEDGE AN ALCOHOLIC BEVERAGE LICENSE OR THE ASSETS OF AN ALCOHOLIC BEVERAGE OPERATION AS ADDITIONAL COLLATERAL FOR A LOAN MADE BY A REGULATED LENDER.

(b) A person claiming a security interest in an alcoholic beverage license may submit to the department copies of documents evidencing the security interest, the license number, and a \$30 notification fee. The department shall deposit the fee as provided in 16-2-108. The department may create and provide a form to be used for this purpose.

(c) The department shall notify those that have filed information provided in subsection (4)(b):

- (i) at least 20 days prior to issuance of an order of default for revocation, nonrenewal, or lapse of

1 a license; or

2 (ii) immediately after the department's office of dispute resolution has issued a decision to uphold
3 the department's revocation or nonrenewal of a license under 16-4-406 or lapse of a license under 16-3-310.

4 (5) When a licensee is the borrower, an owner of the licensee may make a payment on the
5 institutional loan. If a payment is made under this subsection (5):

6 (a) the party making the payment must be vetted and approved prior to making the payment;

7 (b) the licensee shall notify the department within 90 days that the payment was made and
8 designate whether the payment will be treated as a loan or an equity investment as follows:

9 (i) for a payment treated as a loan, the licensee shall memorialize the loan by a written
10 agreement, which must be provided to the department; or

11 (ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as
12 a result, the licensee shall follow department requirements for disclosing changes in ownership percentages;
13 and

14 (c) the funds used for the payment must be the party's own funds or funds borrowed from an
15 institutional lender.

16 (6) If a borrower, coborrower, ~~or guarantor~~, OR OTHER PERSON WHO MAY DIRECTLY OR INDIRECTLY
17 BENEFIT FROM THE PLEDGE OF THE ALCOHOLIC BEVERAGE LICENSE OR THE ASSETS OF AN ALCOHOLIC BEVERAGE
18 OPERATION AS COLLATERAL is not the licensee or an owner of the licensee, the coborrower, ~~or guarantor~~, OR
19 OTHER PERSON may make a payment on ~~the~~ A LICENSEE'S institutional loan, and the payment does not create an
20 undisclosed ownership interest in the alcoholic beverage license by the borrower, coborrower, ~~or guarantor~~, OR
21 OTHER PERSON only if:

22 (a) the licensee notifies the department within 90 days that the payment was made;

23 (b) the payment is made as a loan that is memorialized by a written agreement; and

24 (c) the funds used for the payment are the coborrower's, ~~or guarantor's~~, OR OTHER PERSON'S own
25 funds or funds borrowed from an institutional lender.

26 (7) A regulated lender that obtains a security interest in an alcoholic beverage license or in other
27 assets of a business operating an alcoholic beverage license has no duty to ensure a coborrower's or
28 guarantor's compliance with the requirements of subsection (5) or (6) in connection with loan or guaranty

1 payments it may receive from the coborrower or guarantor.

2 (8) For the purposes of subsections (5) and (6), the term "borrower" means the party that is
3 primarily responsible for making payments and that receives the funds or on whose behalf the funds were paid."

4
5 **Section 3.** Section 23-5-112, MCA, is amended to read:

6 **~~"23-5-112. Definitions.~~** Unless the context requires otherwise, the following definitions apply to parts
7 1 through 8 of this chapter:

8 (1) ~~—"Antique gambling device" means:~~

9 (a) ~~—an illegal gambling device manufactured prior to 1994; or~~

10 (b) ~~—any gambling device which, at any present time, is 30 years old or older.~~

11 (2) ~~—"Applicant" means a person who has applied for a license or permit issued by the department~~
12 ~~pursuant to parts 1 through 8 of this chapter.~~

13 (3) ~~—"Application" means a written request for a license or permit issued by the department. The~~
14 ~~department shall adopt rules describing the forms and information required for issuance of a license.~~

15 (4) ~~—"Associated gambling business" means a person who provides a service or product to a~~
16 ~~licensed gambling business and who:~~

17 (a) ~~—has a reason to possess or maintain control over gambling devices;~~

18 (b) ~~—has access to proprietary information or gambling tax information; or~~

19 (c) ~~—is a party in processing gambling transactions.~~

20 (5) ~~—"Authorized equipment" means, with respect to live keno or bingo, equipment that may be~~
21 ~~inspected by the department and that randomly selects the numbers.~~

22 (6) ~~—"Bingo" means a gambling activity played for prizes with a card bearing a printed design of 5~~
23 ~~columns. The letters B-I-N-G-O must appear above the design, with each letter above one of the columns.~~
24 ~~More than 75 numbers may not be used. One or more numbers may appear in each square, except for the~~
25 ~~center square, which may be considered a free play. Numbers must be randomly drawn using authorized~~
26 ~~equipment until the game is won by the person or persons who first cover one or more previously designated~~
27 ~~arrangements of numbers on the bingo card.~~

28 (7) ~~—"Bingo caller" means a person 18 years of age or older who, using authorized equipment,~~

1 announces the order of the numbers drawn in live bingo.

2 (8) ~~—"Bingo session" means all activities incidental to a series of bingo games conducted by a~~
3 ~~licensed operator beginning when the first bingo ball is drawn in the first game of bingo.~~

4 (9) ~~—"Card game table" or "table" means a live card game table:~~

5 (a) ~~—authorized by permit and made available to the public on the premises of a licensed gambling~~
6 ~~operator; or~~

7 (b) ~~—operated by a senior citizen center.~~

8 (10) ~~—"Card game tournament" means a gambling activity for which a permit has been issued~~
9 ~~involving participants who pay valuable consideration for the opportunity to compete against each other in a~~
10 ~~series of live card games conducted over a designated period of time.~~

11 (11) ~~—"Dealer" means a person with a dealer's license issued under part 3 of this chapter.~~

12 (12) ~~—"Department" means the department of justice.~~

13 (13) ~~—"Distributor" means a person who:~~

14 (a) ~~—purchases or obtains from a licensed manufacturer, distributor, route operator, or operator~~
15 ~~equipment of any kind for use in gambling activities; and~~

16 (b) ~~—sells the equipment to a licensed manufacturer, distributor, route operator, or operator.~~

17 (14) ~~(a) "Gambling" or "gambling activity" means risking any money, credit, deposit, check, property,~~
18 ~~or other thing of value for a gain that is contingent in whole or in part upon lot, chance, or the operation of a~~
19 ~~gambling device or gambling enterprise.~~

20 (b) ~~—The term does not mean conducting or participating in:~~

21 (i) ~~—promotional games of chance;~~

22 (ii) ~~—amusement games regulated by Title 23, chapter 6, part 1;~~

23 (iii) ~~—social card games of bridge, cribbage, hearts, pinochle, pitch, rummy, solo, and whist played~~
24 ~~solely for prizes of minimal value, as defined by department rule; or~~

25 (iv) ~~—patron dice games as defined in this section.~~

26 (15) ~~—"Gambling device" means a mechanical, electromechanical, or electronic device, machine, slot~~
27 ~~machine, instrument, apparatus, contrivance, scheme, or system used or intended for use in any gambling~~
28 ~~activity.~~

1 (16) — "Gambling enterprise" means an activity, scheme, or agreement or an attempted activity,
2 scheme, or agreement to provide gambling or a gambling device to the public.

3 (17) — (a) "Gift enterprise" means a gambling activity in which persons have qualified to obtain
4 property to be awarded by purchasing or agreeing to purchase goods or services.

5 (b) — The term does not mean:

6 (i) — a cash or merchandise attendance prize or premium that county fair commissioners of
7 agricultural fairs and rodeo associations may give away at public drawings at fairs and rodeos;

8 (ii) — a promotional game of chance;

9 (iii) — an amusement game regulated under Title 23, chapter 6;

10 (iv) — a savings promotion raffle offered by a bank, trust company, mutual savings bank, savings and
11 loan association, or credit union authorized to do business and accept deposits in this state under state or
12 federal law and conducted in compliance with 23-5-413 that entitles individual members or depositors equal
13 chances to win a designated prize by depositing a sum of money during a specified savings period; or

14 (v) — an entry into a raffle as a result of paying membership dues or making a purchase of an item
15 offered during a fundraising event held by a nonprofit organization.

16 (18) — "Gross proceeds" means gross revenue received less prizes paid out.

17 (19) — "Heads or tails" means a gambling activity in which players attempt to predict the outcome of a
18 coin toss. Those who are incorrect are eliminated and those who are correct continue to another round until one
19 winning player remains and is awarded a prize.

20 (20) — "House player" means a person participating in a card game who has a financial relationship
21 with the operator, card room contractor, or dealer or who has received money or chips from the operator, card
22 room contractor, or dealer to participate in a card game.

23 (21) — "Illegal gambling device" means a gambling device not specifically authorized by statute or by
24 the rules of the department. The term includes:

25 (a) — a ticket or card, by whatever name known, containing concealed numbers or symbols that may
26 match numbers or symbols designated in advance as prize winners, including a pull tab, punchboard, push
27 card, tip board, pickle ticket, break-open, or jar game, except for one used under Title 23, chapter 7, under part
28 5 of this chapter, in a bingo game approved by the department under part 4 of this chapter, or in a promotional

game of chance approved by the department; and

(b) — an apparatus, implement, or device, by whatever name known, specifically designed to be used in conducting an illegal gambling enterprise, including a faro box, faro layout, roulette wheel, roulette table, craps table, or slot machine, except as provided in 23-5-153.

(22) — "Illegal gambling enterprise" means a gambling enterprise that violates or is not specifically authorized by a statute or a rule of the department. The term includes:

(a) — a card game, by whatever name known, involving any bank or fund from which a participant may win money or other consideration and that receives money or other consideration lost by the participant and includes the card games of blackjack, twenty-one, jacks or better, baccarat, or chemin de fer;

(b) — dice games known as craps, hazard, or chuck-a-luck, but not including patron dice games or activities authorized by 23-5-160;

(c) — credit gambling; and

(d) — internet gambling.

(23) — (a) "Internet gambling", by whatever name known, includes but is not limited to the conduct of any legal or illegal gambling enterprise through the use of communications technology that allows a person using money, paper checks, electronic checks, electronic transfers of money, credit cards, debit cards, or any other instrumentality to transmit to a computer information to assist in the placing of a bet or wager and corresponding information related to the display of the game, game outcomes, or other similar information.

(b) — The term does not include the operation of a simulcast facility or advance deposit wagering with a licensed advance deposit wagering hub operator allowed by Title 23, chapter 4, the state lottery provided for in Title 23, chapter 7, or a raffle authorized under Title 23, chapter 5, part 4, that is sponsored by a nonprofit organization and that is registered with the department. If all aspects of the gaming are conducted on Indian lands in conformity with federal statutes and with administrative regulations of the national Indian gaming commission, the term does not include class II gaming or class III gaming as defined by 25 U.S.C. 2703.

(24) — "Keno" means a game of chance in which prizes are awarded using a card with 8 horizontal rows and 10 columns on which a player may pick up to 10 numbers. A keno caller, using authorized equipment, shall select at random at least 20 numbers out of numbers between 1 and 80, inclusive.

(25) — "Keno caller" means a person 18 years of age or older who, using authorized equipment,

announces the order of the numbers drawn in live keno.

(26) — "License" means a license for an operator, dealer, card room contractor, manufacturer of devices not legal in Montana, sports tab game seller, manufacturer of electronic live bingo or keno equipment, other manufacturer, distributor, or route operator that is issued to a person by the department.

(27) — "Licensee" means a person who has received a license from the department.

(28) — "Live card game" or "card game" means a card game that is played in public between persons on the premises of a licensed gambling operator or in a senior citizen center.

(29) — (a) "Lottery" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have paid or promised to pay valuable consideration for the chance of obtaining the property or a portion of it or for a share or interest in the property upon an agreement, understanding, or expectation that it is to be distributed or disposed of by lot or chance.

(b) — The term does not mean lotteries authorized under Title 23, chapter 7.

(30) — "Manufacturer" means a person who:

(a) — assembles from raw materials or subparts a completed piece of equipment or pieces of equipment of any kind to be used as a gambling device and who sells the equipment directly to a licensed distributor, route operator, or operator;

(b) — possesses gambling devices or components of gambling devices for the purpose of testing them; or

(c) — purchases gambling devices or components from licensed manufacturers, distributors, route operators, or operators as trade-ins or to refurbish, rebuild, or repair to sell to licensed manufacturers, distributors, route operators, or operators.

(31) — "Nonprofit organization" means an organization established as a nonprofit to support charitable, religious, scholastic, educational, veterans', fraternal, beneficial, civic, senior citizens', or service organizations' charitable activities, scholarships or educational grants, or community service projects.

(32) — "Operator" means a person who purchases, receives, or acquires, by lease or otherwise, and operates or controls for use in public a gambling device or gambling enterprise authorized under parts 1 through 8 of this chapter.

(33) — "Owner", "Ownership", "ownership", or "ownership interest" means the ability to:

(a) — share in the profits, losses, or liabilities of a gambling operation;

(b) — enjoy the privileges reserved to licensees; or

(c) — control a gambling operation.

~~(d) — The term "ownership" relating to a premises does not constitute an ownership interest in a gambling license if the owner of the premises gives control of the premises to the applicant or licensee through a lease or rental agreement or a similar agreement if the contractual terms of the agreement are submitted to the department for review and found to be commercially reasonable and at arms-length.~~

(34) — (a) "Patron dice games" means dice games involving wagers played by two or more patrons over 18 years of age on the premises of a licensed gambling operator that the licensee does not promote and in which the licensee does not participate or acquire a financial interest either as the bank of the game or as the source of credit for players.

(b) — The term does not include:

(i) — an illegal gambling enterprise as defined in this section; or

(ii) — activities authorized by 23-5-160.

(35) — "Permit" means approval from the department to make available for public play a gambling device or gambling enterprise approved by the department pursuant to parts 1 through 8 of this chapter.

(36) — "Person" or "persons" means both natural and artificial persons and all partnerships, corporations, associations, clubs, fraternal orders, and societies, including religious and charitable organizations.

(37) — "Premises" means the physical building or property within or upon which a licensed gambling activity occurs, as stated on an operator's license application and approved by the department.

(38) — "Promotional game of chance" means a scheme, by whatever name known, for the disposal or distribution of property among persons who have not paid or are not expected to pay any valuable consideration or who have not purchased or are not expected to purchase any goods or services for a chance to obtain the property, a portion of it, or a share in it. The property is disposed of or distributed by simulating a gambling enterprise authorized by parts 1 through 8 of this chapter or by operating a device or enterprise approved by the department that was manufactured or intended for use for purposes other than gambling.

(39) — "Public gambling" means gambling conducted in:

(a) ~~_____ a place, building, or conveyance to which the public has access or may be permitted to have access;~~

(b) ~~_____ a place of public resort, including but not limited to a facility owned, managed, or operated by a partnership, corporation, association, club, fraternal order, or society, including a religious or charitable organization; or~~

(c) ~~_____ a place, building, or conveyance to which the public does not have access if players are publicly solicited or the gambling activity is conducted in a predominantly commercial manner.~~

(40) ~~_____ "Raffle" means a form of lottery in which each participant pays valuable consideration for a ticket to become eligible to win a prize. Winners must be determined by a random selection process approved by department rule.~~

(41) ~~_____ "Route operator" means a person who:~~

(a) ~~_____ purchases from a licensed manufacturer, route operator, or distributor equipment of any kind for use in a gambling activity;~~

(b) ~~_____ leases the equipment to a licensed operator for use by the public; and~~

(c) ~~_____ may sell to a licensed operator equipment that had previously been authorized to be operated on a premises and may sell gambling equipment to a distributor or manufacturer.~~

(42) ~~_____ "Senior citizen center" means a facility operated by a nonprofit or governmental organization that provides services to senior citizens in the form of daytime or evening educational or recreational activities and does not provide living accommodations to senior citizens. Services qualifying under this definition must be recognized in the state plan on aging adopted by the department of public health and human services.~~

(43) ~~(a) "Slot machine" means a mechanical, electrical, electronic, or other gambling device, contrivance, or machine that, upon insertion of a coin, currency, token, credit card, or similar object or upon payment of any valuable consideration, is available to play or operate, the play or operation of which, whether by reason of the skill of the operator or application of the element of chance, or both, may deliver or entitle the person playing or operating the gambling device to receive cash, premiums, merchandise, tokens, or anything of value, whether the payoff is made automatically from the machine or in any other manner.~~

(b) ~~_____ This definition does not apply to video gambling machines authorized under part 6 of this chapter.~~

(44) ~~"Video gambling machine" is a gambling device specifically authorized by part 6 of this chapter and the rules of the department."~~

SECTION 2. SECTION 23-5-118, MCA, IS AMENDED TO READ:

"23-5-118. Transfer of ownership interest -- definitions. (1) In this section, "licensed gambling operation" means a business for which a license was obtained under parts 1 through 8 of this chapter.

(2) Except as provided in subsection (4), an owner of an interest in a licensed gambling operation shall notify the department in writing and receive approval from the department before transferring any ownership interest in the operation to a person other than another approved owner of an interest in the operation.

(3) An owner of an interest in a licensed gambling operation may transfer an ownership interest to another owner of an interest in the same licensed gambling operation without prior department approval subject to reporting requirements provided by department rules.

(4) This section does not apply to the transfer of a security interest in a licensed gambling operation under the requirements of subsection (5) or to the transfer of less than 5% of the interest in a publicly traded corporation.

(5) A regulated lender, as defined in 31-1-111, may obtain a security interest in the assets of a licensed gambling operation to secure a loan or a guaranty of a loan. A regulated lender may use loan and collateral documentation and loan and collateral structure consistent with that used by the regulated lender in commercial loans generally, and the documentation and structure used by the lender do not create an undisclosed ownership interest in the licensee's business by a coborrower, ~~or guarantor, or other person who may directly or indirectly benefit from the pledge of the assets as collateral if the department determines the borrower, coborrower, guarantor, and owner or owners of the assets pledged as collateral meet the requirements of 23-5-176.~~ As used in this subsection (5), permissible loan and collateral structuring includes but is not limited to permitting owners and nonowners of a licensed gambling operation to:

- (a) be coborrowers of a borrower's loan;
- (b) be guarantors of a borrower's loan, with or without a requirement that the regulated lender exhaust remedies against the borrower before collecting from the guarantor; ~~or~~

(c) pledge assets as collateral for a borrower's loan or for a guaranty of a borrower's loan; or

(d) pledge the assets of a licensed gambling operation as additional collateral for a loan made by a regulated lender.

(6) When a licensee is the borrower, an owner of the licensee may make a payment on the institutional loan. If a payment is made under this subsection (6):

(a) the licensee must notify the department within 90 days that the payment was made and designate whether the payment will be treated as a loan or an equity investment as follows:

(i) for a payment treated as a loan, the licensee must memorialize the loan by a written agreement, which must be provided to the department; or

(ii) for a payment treated as an equity investment, if a change in ownership percentage occurs as a result, the licensee must follow department requirements for disclosing changes in ownership percentages; and

(b) the funds used for the payment must be the party's own funds or funds borrowed from an institutional lender.

(7) If a borrower, coborrower, or guarantor is not the licensee or an owner of the licensee, the coborrower or guarantor may make a payment on ~~the~~ a licensee's institutional loan, and the payment does not create an undisclosed ownership in the licensee's business by the borrower, coborrower, or guarantor only if:

(a) the licensee notifies the department within 90 days that the payment was made;

(b) the payment is made as a loan that is memorialized by a written agreement; and

(c) the funds used for the payment are the coborrower's or guarantor's own funds or funds borrowed from an institutional lender.

(8) A regulated lender that obtains a security interest in the assets of a licensed gambling operation has no duty to ensure a coborrower's or guarantor's compliance with the requirements of subsection (6) or (7) in connection with loan or guaranty payments it may receive from the coborrower or guarantor.

(9) For the purposes of subsections (6) and (7), the term "borrower" means the party that is primarily responsible for making payments and that receives the funds or on whose behalf the funds were paid."

Section 4. ~~Section 23-5-176, MCA, is amended to read:~~

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

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

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

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

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

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

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

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

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

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

21 ~~(5) Investigations pursuant to a gambling application or to a modification to an existing gambling~~
22 ~~license may only be pursued against persons with an ownership interest in the license."~~

23 - END -