

SENATE BILL NO. 241

INTRODUCED BY W. GALT

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING ALCOHOL LICENSES TO PROHIBIT THE DEPARTMENT OF REVENUE FROM DENYING A TRANSFER OF AN ALCOHOL LICENSE SOLELY BECAUSE THE SELLER HAS OUTSTANDING TAXES, PENALTIES, OR INTEREST OWED TO THE DEPARTMENT; PROVIDING THAT PROCEEDS FROM THE SALE OF THE ALCOHOL LICENSE MAY GO TO ANY OUTSTANDING LIENS OWED TO THE DEPARTMENT; AMENDING SECTIONS 16-4-404 AND 16-6-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE."

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

Section 1. Section 16-4-404, MCA, is amended to read:

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

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

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

(4) A license may be transferred pursuant to 16-4-431 to the personal representative, executor, or administrator of the estate of a deceased licensee, or to a designee of the personal representative, executor, or

1 administrator, when the estate consists in whole or in part of the business of selling alcoholic beverages under
2 a license. The license may descend or be disposed of with the licensed business under appropriate probate
3 proceedings.

4 (5) A licensee may apply to the department for a transfer of the license to different premises within
5 the quota area. The department may, after notice and opportunity for protest, permit a transfer if the transfer is
6 justified by public convenience and necessity, pursuant to 16-4-203, unless a public convenience and necessity
7 hearing is required by 16-4-207.

8 (6) On a bona fide sale of the business operated under a license, the license may be transferred to
9 a qualified purchaser. A transfer of a license to a person or location is not effective unless approved by the
10 department. A licensee or transferee or proposed transferee who operates or attempts to operate under a
11 supposedly transferred license prior to the approval of the transfer by the department, endorsed on the license
12 in writing, is considered to be operating without a license and the license affected may be revoked or
13 suspended by the department.

14 (7) The department may not deny or withhold approval of the transfer of an alcoholic beverage
15 license to a purchaser or transferee solely because of outstanding taxes, penalties, or interest owed by the
16 seller. Any proceeds from the sale of an alcoholic beverage license are subject to any existing liens or warrants
17 for distraint that the department has filed against the seller as provided in 16-1-414.

18 ~~(7)~~(8) The alcoholic beverage inventory of an existing licensee may be transferred under the following
19 scenarios:

- 20 (a) on a bona fide sale of the business operated under a license when the department:
- 21 (i) has granted temporary operating authority to the buyer to operate the license; or
- 22 (ii) has approved transfer of the license to the buyer;
- 23 (b) on a license type change at an existing licensed premises when the department has granted
- 24 temporary operating authority or approved the issuance of the new license, as long as the alcoholic beverage is
- 25 allowed by the new license type;
- 26 (c) on approval of a corporate structure change at an existing licensed premises;
- 27 (d) on the sale of a license to be floated out of a quota area when the department has granted
- 28 temporary operating authority or approved the license transfer; or

(e) when a licensee is going out of business but only if the unopened alcohol is in its original packaging and the licensee receiving the alcohol is licensed for that type of alcohol.

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

Section 2. Section 16-6-303, MCA, is amended to read:

"16-6-303. Sale of liquor not purchased or transferred from agency liquor store forbidden -- penalty. It is unlawful for any licensee to sell or keep for sale or have on the licensee's premises for any purpose any liquor except that purchased from an agency liquor store or transferred as allowed in 16-4-404~~(7)(8)~~. Any licensee found in possession of or selling and keeping for sale any liquor that was not purchased from an agency liquor store or transferred as allowed in 16-4-404~~(7)(8)~~ shall, upon conviction, be punished by a fine of not less than \$500 or more than \$1,500, by imprisonment for not less than 3 months or more than 1 year, or by both fine and imprisonment. If the department is satisfied that the liquor was knowingly sold or kept for sale within the licensed premises by the licensee or by the licensee's agents, servants, or employees, the department shall immediately revoke the license."

NEW SECTION. **Section 3. Effective date.** [This act] is effective on passage and approval.

NEW SECTION. **Section 4. Applicability.** [This act] applies to all alcohol license transfers:

(1) filed with the department before [the effective date of this act] and that are being considered by the department as of [the effective date of this act]; or

(2) filed with the department on or after [the effective date of this act].

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