

HOUSE BILL NO. 76
INTRODUCED BY GOULD

IN THE HOUSE

JANUARY 3, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & ECONOMIC DEVELOPMENT.

JANUARY 7, 1991 FIRST READING.

FEBRUARY 8, 1991 COMMITTEE RECOMMEND BILL
DO PASS AS AMENDED. REPORT ADOPTED.

FEBRUARY 9, 1991 PRINTING REPORT.

FEBRUARY 11, 1991 SECOND READING, DO PASS.

FEBRUARY 12, 1991 ENGROSSING REPORT.

FEBRUARY 13, 1991 THIRD READING, PASSED.
AYES, 98; NOES, 2.

TRANSMITTED TO SENATE.

IN THE SENATE

FEBRUARY 14, 1991 INTRODUCED AND REFERRED TO COMMITTEE
ON BUSINESS & INDUSTRY.

FIRST READING.

MARCH 13, 1991 COMMITTEE RECOMMEND BILL BE
CONCURRED IN AS AMENDED. REPORT
ADOPTED.

MARCH 15, 1991 SECOND READING, CONCURRED IN AS
AMENDED.

MARCH 16, 1991 THIRD READING, CONCURRED IN.
AYES, 49; NOES, 0.

RETURNED TO HOUSE WITH AMENDMENTS.

IN THE HOUSE

MARCH 21, 1991 RECEIVED FROM SENATE.

SECOND READING, AMENDMENTS
CONCURRED IN.

MARCH 23, 1991

THIRD READING, AMENDMENTS
CONCURRED IN.

SENT TO ENROLLING.

REPORTED CORRECTLY ENROLLED.

1 HOUSE BILL NO. 76
2 INTRODUCED BY GOULD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 WINE LAWS; REGULATING BUSINESS RELATIONS BETWEEN TABLE WINE
6 DISTRIBUTORS AND SUPPLIERS; PROHIBITING CERTAIN ACTS BY
7 SUPPLIERS; PROVIDING PROCEDURES FOR TERMINATION OF
8 AGREEMENTS OF DISTRIBUTORSHIP; PROVIDING FOR TABLE WINE
9 DISTRIBUTORS' OBLIGATIONS; ALLOWING DUAL APPOINTMENTS IN A
10 SPECIFIED TERRITORY; PROVIDING REMEDIES FOR DISPUTES; AND
11 AMENDING SECTIONS 16-1-106 AND 16-3-401, MCA."

12
13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

14 NEW SECTION. **Section 1.** Definitions. As used in this
15 part, unless the context requires otherwise, the following
16 definitions apply:

17 (1) "Agreement of distributorship" means a contract,
18 agreement, commercial relationship, license, or other
19 arrangement for a definite or an indefinite period of time
20 between a supplier and a table wine distributor that
21 provides for the sale of table wine by the supplier to the
22 table wine distributor.

23 (2) "Good cause" means failure by a table wine
24 distributor to comply with essential and reasonable
25 requirements imposed, or sought to be imposed, by a supplier

1 under the terms of an agreement of distributorship if the
2 requirements are imposed on other similarly situated
3 distributors either by the terms or their agreements or in
4 the manner of their enforcement by the supplier.

5 (3) "Person" means a natural person, corporation,
6 partnership, trust, agency, or other entity and includes
7 individual officers, directors, or other persons in active
8 control of the activities of the entity.

9 (4) "Supplier" means a winery or an importer of table
10 wines that enters into or is a party to an agreement of
11 distributorship with a table wine distributor.

12 NEW SECTION. **Section 2.** Suppliers' prohibitions. A
13 supplier may not:

14 (1) coerce, induce, or attempt to coerce or induce a
15 table wine distributor to engage in an illegal act or course
16 of conduct;

17 (2) require a table wine distributor to accept delivery
18 of a product or other item or commodity that was not ordered
19 by the wine distributor; or

20 (3) fail or refuse to enter into an agreement of
21 distributorship with a wholesale table wines distributor
22 that provides for purchases of the supplier's products from
23 the supplier.

24 NEW SECTION. **Section 3.** Table wine distributor
25 provisions. (1) An agreement of distributorship must be in

1 writing and must provide that:

2 (a) a supplier shall notify a table wine distributor in
 3 writing at least 60 days prior to termination of an
 4 agreement of distributorship unless a termination without
 5 notice is permitted as provided in [section 4]. The written
 6 notice must state the reasons for termination. If within 60
 7 days after receipt of the written notice the table wine
 8 distributor rectifies the deficiencies stated as reasons for
 9 termination in the written notice, the proposed termination
 10 is void.

11 (b) a supplier may not unreasonably withhold or delay
 12 approval of a sale or transfer of the ownership, management,
 13 or control of a table wine distributorship; however, a table
 14 wine distributor shall give a supplier no less than 60 days
 15 prior written notice of any material change in ownership
 16 management, or control.

17 (2) Within 30 days after entering into an agreement of
 18 distributorship, the supplier shall advise the department of
 19 the agreement by written notice that must include the sales
 20 area or areas designated for the table wine distributor.

21 (3) If a supplier terminates an agreement of
 22 distributorship under the provisions of subsection (1)(a),
 23 the table wine distributor subject to the termination is
 24 entitled to compensation for the laid-in cost of his
 25 inventory and liquidated damages measured on the fair market

1 price of the business as provided for in the agreement for
 2 any termination of the agreement by the supplier other than
 3 termination for good cause or for any reason set forth in
 4 [section 4(3)].

5 NEW SECTION. **Section 4. Supplier provisions.** (1) An
 6 agreement of distributorship must provide that a table wine
 7 distributor shall:

8 (a) maintain the financial and competitive capability
 9 to efficiently and effectively distribute a supplier's
 10 products;

11 (b) maintain the quality and integrity of a supplier's
 12 products in a manner set forth by the supplier;

13 (c) exert the table wine distributor's best efforts to
 14 sell the supplier's wines;

15 (d) merchandize the products in retail stores as agreed
 16 between the table wine distributor and the supplier; and

17 (e) give a supplier not less than 60 days' written
 18 notice of the table wine distributor's intent to terminate
 19 an agreement of distributorship.

20 (2) As provided in [section 3], a supplier may
 21 terminate an agreement of distributorship based on a
 22 deficiency or other good cause by giving 60 days' prior
 23 written notice to the table wine distributor.

24 (3) A supplier may terminate an agreement of
 25 distributorship immediately and without notice if the reason

1 for the termination is insolvency, assignment for the
2 benefit of creditors, bankruptcy, or revocation or
3 suspension for more than 14 days of a license to operate
4 that is required by the state or the federal government.

5 NEW SECTION. **Section 5.** Dual appointments -- equal
6 support. A supplier may appoint one or more table wine
7 distributors to distribute its table wines in a specified
8 territory. If the supplier appoints two or more table wine
9 distributors to sell its table wines in the same or
10 overlapping territories, the supplier shall offer the same
11 prices, delivery, terms, and promotional support to each
12 table wine distributor.

13 NEW SECTION. **Section 6.** Injunction. A person injured
14 by a violation of this part may bring a civil action in a
15 court of competent jurisdiction to enjoin further violations
16 in addition to other remedies provided by law.

17 **Section 7.** Section 16-1-106, MCA, is amended to read:

18 "16-1-106. Definitions. As used in this code, the
19 following definitions apply:

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

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

25 (3) "Alcoholic beverage" means a compound produced and

1 sold for human consumption as a drink that contains more
2 than .5% of alcohol by volume.

3 (4) "Beer" means a malt beverage containing not more
4 than 7% of alcohol by weight.

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

7 (6) "Brewer" means a person who produces malt
8 beverages.

9 (7) "Department" means the department of revenue.

10 (8) "Immediate family" means a spouse, dependent
11 children, or dependent parents.

12 (9) "Import" means to transfer beer or table wine from
13 outside the state of Montana into the state of Montana.

14 (10) "Industrial use" means a use described as
15 industrial use by the federal Alcohol Administration Act and
16 the federal rules and regulations of 27 CFR.

17 (11) "Liquor" means an alcoholic beverage except beer
18 and table wine.

19 (12) "Malt beverage" means an alcoholic beverage made by
20 the fermentation of an infusion or decoction, or a
21 combination of both, in potable brewing water, of malted
22 barley with or without hops or their parts or their products
23 and with or without other malted cereals and with or without
24 the addition of unmalted or prepared cereals, other
25 carbohydrates, or products prepared therefrom and with or

1 without other wholesome products suitable for human food
2 consumption.

3 (13) "Package" means a container or receptacle used for
4 holding an alcoholic beverage.

5 (14) "Posted price" means the retail price of liquor and
6 table wine as fixed and determined by the department and in
7 addition thereto an excise and license tax as provided in
8 this code.

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

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

15 (17) "Rules" means rules published by the department
16 pursuant to this code.

17 (18) "State liquor facility" means a facility owned or
18 under control of the department for the purpose of
19 receiving, storing, transporting, or selling alcoholic
20 beverages.

21 (19) "State liquor store" means a retail store operated
22 by the department in accordance with this code for the
23 purpose of selling liquor and table wine.

24 (20) "Storage depot" means a building or structure owned
25 or operated by a brewer at any point in the state of Montana

1 off and away from the premises of a brewery, and which
2 structure is equipped with refrigeration or cooling
3 apparatus for the storage of beer and from which a brewer
4 may sell or distribute beer as permitted by this code.

5 (21) "Subwarehouse" means a building or structure owned
6 or operated by a licensed beer wholesaler or table wine
7 distributor, located at a site in Montana other than the
8 site of such beer wholesaler's or table wine distributor's
9 warehouse or principal place of business, and used for the
10 receiving, storage, and distribution of beer or table wine
11 as permitted by this code.

12 (22) "Table wine" means wine as defined below which
13 contains not more than 16% alcohol by volume.

14 (23) "Table wine distributor" means a person importing
15 into or purchasing in Montana table wine for sale or resale
16 to retailers licensed in Montana.

17 ~~(23)~~(24) "Warehouse" means a building or structure
18 located in Montana owned or operated by a licensed beer
19 wholesaler or table wine distributor for the receiving,
20 storage, and distribution of beer or table wine as permitted
21 by this code.

22 ~~(24)~~(25) "Wine" means an alcoholic beverage made from or
23 containing the normal alcoholic fermentation of the juice of
24 sound, ripe fruit or other agricultural products without
25 addition or abstraction, except as may occur in the usual

1 cellar treatment of clarifying and aging, and that contains
 2 more than 0.5% but not more than 24% of alcohol by volume.
 3 Wine may be ameliorated to correct natural deficiencies,
 4 sweetened, and fortified in accordance with applicable
 5 federal regulations and the customs and practices of the
 6 industry. Other alcoholic beverages not defined as above but
 7 made in the manner of wine and labeled and sold as wine in
 8 accordance with federal regulations are also wine."

9 **Section 8.** Section 16-3-401, MCA, is amended to read:

10 "16-3-401. Public Short title -- public policy --
 11 purpose. (1) This part may be cited as the "Wine
 12 Distribution Act".

13 (2) The public policy of the state of Montana is to
 14 maintain a system for the importation and sale of table wine
 15 by the state through state liquor facilities and provide
 16 for, regulate, and control the acquisition, importation, and
 17 distribution of table wine by licensed table wine
 18 distributors and the state.

19 (3) This part governs relationships between suppliers
 20 and table wine distributors, and because the legislature
 21 recognizes the public interest and the interests of
 22 suppliers and table wine distributors in the fair,
 23 efficient, and competitive distribution of table wine, this
 24 part is intended to:

25 (a) protect the table wine distributor's independence

1 in managing his own business, including the establishment of
 2 selling prices; and
 3 (b) encourage table wine distributors to devote their
 4 best efforts to the sale and distribution of the table wines
 5 they sell and distribute."
 6 **NEW SECTION. Section 9.** Codification instruction.
 7 [Sections 1 through 6] are intended to be codified as an
 8 integral part of Title 16, chapter 3, part 4, and the
 9 provisions of Title 16, chapter 3, part 4, apply to
 10 [sections 1 through 6].

-End-

APPROVED BY COMM. ON BUSINESS AND ECONOMIC DEVELOPMENT

HOUSE BILL NO. 76
INTRODUCED BY GOULD

A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE WINE LAWS; REGULATING BUSINESS RELATIONS BETWEEN TABLE WINE DISTRIBUTORS AND SUPPLIERS; PROHIBITING CERTAIN ACTS BY SUPPLIERS; PROVIDING PROCEDURES FOR TERMINATION OF AGREEMENTS OF DISTRIBUTORSHIP; PROVIDING FOR TABLE WINE DISTRIBUTORS' OBLIGATIONS; ALLOWING DUAL APPOINTMENTS IN A SPECIFIED TERRITORY; PROVIDING REMEDIES FOR DISPUTES; AND AMENDING SECTIONS 16-1-106 AND 16-3-401, MCA."

STATEMENT OF INTENT

BECAUSE THE DEPARTMENT OF REVENUE HAS RULEMAKING AUTHORITY UNDER 16-1-303(2)(M), A STATEMENT OF INTENT MAY BE NECESSARY FOR [THIS ACT]. THE DEPARTMENT SHALL CONSIDER THE RULES AND INTERPRETATIONS OF THE WASHINGTON WHOLESALER/SUPPLIER EQUITY AGREEMENT ACT, RCW 19.126.010, ET SEQ., UPON WHICH MANY OF THE PROVISIONS OF THIS BILL ARE BASED. IT IS NOT INTENDED THAT THE DEPARTMENT ADOPT ANY RULE INTERPRETING OR IMPLEMENTING [SECTION 3(3)], REGARDING THE DESIGNATION OF SALES TERRITORIES FOR WINE DISTRIBUTORS BY A WINERY.

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



NEW SECTION. Section 1. Definitions. As used in this part, unless the context requires otherwise, the following definitions apply:

(1) "Agreement of distributorship" means a contract, agreement, commercial relationship, license, or other arrangement for a definite or an indefinite period of time between a supplier and a table wine distributor that provides for the sale of table wine by the supplier to the table wine distributor.

(2) "Good cause" means failure by a table wine distributor to comply with essential and reasonable requirements imposed, or sought to be imposed, by a supplier under the terms of an agreement of distributorship if the requirements are imposed on other similarly situated distributors either by the terms of their agreements or in the manner of their enforcement by the supplier.

(3) "Person" means a natural person, corporation, partnership, trust, agency, or other entity and includes individual officers, directors, or other persons in active control of the activities of the entity.

(4) "Supplier" means a winery or an importer of table wines that enters into or is a party to an agreement of distributorship with a table wine distributor.

NEW SECTION. Section 2. Suppliers' prohibitions. A supplier may not:

SECOND READING

1 (1) coerce, induce, or attempt to coerce or induce a
2 table wine distributor to engage in an illegal act or course
3 of conduct;

4 (2) require a table wine distributor to accept delivery
5 of a product or other item or commodity that was not ordered
6 by the wine distributor; ~~or,~~

7 ~~(3) fail or refuse to enter into an agreement of~~
8 ~~distributorship with a wholesale table wine distributor~~
9 ~~that provides for purchases of the supplier's products from~~
10 ~~the supplier.~~

11 NEW SECTION. Section 3. Table wine distributor
12 provisions. (1) A SUPPLIER OR TABLE WINE DISTRIBUTOR MAY NOT
13 FAIL OR REFUSE TO REDUCE TO WRITING AN AGREEMENT OF
14 DISTRIBUTORSHIP THAT PROVIDES FOR PURCHASE OF THE SUPPLIER'S
15 PRODUCTS FROM THE SUPPLIER BY THE TABLE WINE DISTRIBUTOR.

16 ~~(1)(2)~~ (2) An agreement of distributorship must be ~~in~~
17 ~~writing and must~~ provide that:

18 (a) a supplier shall notify a table wine distributor in
19 writing at least 60 days prior to termination of an
20 agreement of distributorship unless a termination without
21 notice is permitted as provided in [section 4]. The written
22 notice must state the reasons for termination. ~~if within 60~~
23 ~~days after receipt of the written notice the table wine~~
24 ~~distributor rectifies the deficiencies stated as reasons for~~
25 ~~termination in the written notice, the proposed termination~~

1 ~~is void.~~ NOTICE OF TERMINATION IS VOID IF WITHIN 60 DAYS OF
2 THE NOTICE THE TABLE WINE DISTRIBUTOR RECTIFIES THE
3 DEFICIENCY STATED AS THE REASON FOR TERMINATION AND IF THE
4 DEFICIENCY WAS NOT STATED AS REASON FOR TERMINATION IN A
5 NOTICE PREVIOUSLY VOIDED UNDER THE PROVISIONS OF THIS
6 SUBSECTION.

7 (b) a supplier may not unreasonably withhold or delay
8 approval of a sale or transfer of the ownership, management,
9 or control of a table wine distributorship; however, a table
10 wine distributor shall give a supplier no less than 60 days'
11 prior written notice of any material change in ownership,
12 management, or control.

13 ~~(3)~~ (3) Within 30 days after entering into an agreement
14 of distributorship, the supplier shall advise the department
15 of the agreement by written notice that must include the
16 sales area or areas designated for the table wine
17 distributor.

18 ~~(4)~~ (4) If a supplier terminates an agreement of
19 distributorship under the provisions of subsection (1)(a),
20 the table wine distributor subject to the termination is
21 entitled to compensation for the laid-in cost of his
22 inventory and liquidated damages measured on the fair market
23 price of the business as provided for in the agreement for
24 any termination of the agreement by the supplier other than
25 termination for good cause or for any reason set forth in

1 [section 4(3)].

2 (5) IF UNDERTAKEN IN GOOD FAITH BY A SUPPLIER, A
 3 SUPPLIER MAY TERMINATE AN AGREEMENT OF DISTRIBUTORSHIP FOR A
 4 LEGITIMATE BUSINESS REASON NOT WITHIN THE DEFINITION OF GOOD
 5 CAUSE IF AN ARBITRATOR APPOINTED BY THE DEPARTMENT FINDS,
 6 AFTER HEARING THE SUPPLIER AND THE TABLE WINE DISTRIBUTOR,
 7 THAT THE TERMINATION IS IN THE BEST INTEREST OF THE TABLE
 8 WINE BRAND CONCERNED. ARBITRATION UNDER THIS SECTION MUST BE
 9 CONDUCTED UNDER THE PROVISIONS OF TITLE 27, CHAPTER 5.

10 NEW SECTION. Section 4. Supplier provisions. (1) An
 11 agreement of distributorship must provide that a table wine
 12 distributor shall:

13 (a) maintain the financial and competitive capability
 14 to efficiently and effectively distribute a supplier's
 15 products;

16 (b) maintain the quality and integrity of a supplier's
 17 products in a manner set forth by the supplier;

18 (c) exert the table wine distributor's best efforts to
 19 sell the supplier's wines;

20 (d) merchandise the products in retail stores as agreed
 21 between the table wine distributor and the supplier; and

22 (e) give a supplier not less than 60 days' written
 23 notice of the table wine distributor's intent to terminate
 24 an agreement of distributorship.

25 (2) As provided in [section 3], a supplier may

1 terminate an agreement of distributorship based on a
 2 deficiency or other good cause by giving 60 days' prior
 3 written notice to the table wine distributor.

4 (3) A supplier may terminate an agreement of
 5 distributorship immediately and without notice if the reason
 6 for the termination is insolvency, assignment for the
 7 benefit of creditors, bankruptcy, or revocation or
 8 suspension for more than 14 days of a license to operate
 9 that is required by the state or the federal government.

10 NEW SECTION. Section 5. Dual appointments -- equal
 11 support -- ALTERNATE SUPPLIER. (1) A supplier may appoint
 12 one or more table wine distributors to distribute its table
 13 wines in a specified territory. If the supplier appoints two
 14 or more table wine distributors to sell its table wines in
 15 the same or overlapping territories, the supplier shall
 16 offer the same prices, delivery, terms, and promotional
 17 support to each table wine distributor.

18 (2) THE HOLDER OF AN ALL-BEVERAGES LICENSE UNDER
 19 CHAPTER 4, PART 2, MAY, UPON PRESENTATION OF HIS LICENSE OR
 20 A PHOTOCOPY OF HIS LICENSE, PERSONALLY OBTAIN FROM ANY
 21 DISTRIBUTOR'S WAREHOUSE A QUANTITY OF TABLE WINE THAT THE
 22 LICENSEE MAY AGREE TO BUY AND THAT THE DISTRIBUTOR MAY AGREE
 23 TO SELL.

24 NEW SECTION. SECTION 6. APPLICABILITY. WITHIN 60 DAYS
 25 AFTER [THE EFFECTIVE DATE OF THIS ACT] OR WITHIN 60 DAYS

1 AFTER THE CONCLUSION OF A NEW AGREEMENT BY THE PARTIES,
 2 WHICHEVER IS LATER, AN AGREEMENT OF DISTRIBUTORSHIP MUST BE
 3 REDUCED TO WRITING AND AN EXACT COPY OF THE AGREEMENT MUST
 4 BE FILED WITH THE DEPARTMENT AS A PUBLIC DOCUMENT AND MUST
 5 BE AVAILABLE TO ANY OF THE PARTIES TO A DISPUTE. UPON FILING
 6 WITH THE DEPARTMENT, THE AGREEMENT BECOMES SUBJECT TO THE
 7 PROVISIONS OF [THIS ACT].

8 NEW SECTION. Section 7. Injunction. A person injured
 9 by a violation of this part may bring a civil action in a
 10 court of competent jurisdiction to enjoin further violations
 11 in addition to other remedies provided by law.

12 **Section 8.** Section 16-1-106, MCA, is amended to read:

13 "16-1-106. **Definitions.** As used in this code, the
 14 following definitions apply:

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

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

20 (3) "Alcoholic beverage" means a compound produced and
 21 sold for human consumption as a drink that contains more
 22 than .5% of alcohol by volume.

23 (4) "Beer" means a malt beverage containing not more
 24 than 7% of alcohol by weight.

25 (5) "Beer importer" means a person other than a brewer

1 who imports malt beverages.

2 (6) "Brewer" means a person who produces malt
 3 beverages.

4 (7) "Department" means the department of revenue.

5 (8) "Immediate family" means a spouse, dependent
 6 children, or dependent parents.

7 (9) "Import" means to transfer beer or table wine from
 8 outside the state of Montana into the state of Montana.

9 (10) "Industrial use" means a use described as
 10 industrial use by the federal Alcohol Administration Act and
 11 the federal rules and regulations of 27 CFR.

12 (11) "Liquor" means an alcoholic beverage except beer
 13 and table wine.

14 (12) "Malt beverage" means an alcoholic beverage made by
 15 the fermentation of an infusion or decoction, or a
 16 combination of both, in potable brewing water, of malted
 17 barley with or without hops or their parts or their products
 18 and with or without other malted cereals and with or without
 19 the addition of unmalted or prepared cereals, other
 20 carbohydrates, or products prepared therefrom and with or
 21 without other wholesome products suitable for human food
 22 consumption.

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

25 (14) "Posted price" means the retail price of liquor and

1 table wine as fixed and determined by the department and in
2 addition thereto an excise and license tax as provided in
3 this code.

4 (15) "Proof gallon" means a U.S. gallon of liquor at 60
5 degrees on the Fahrenheit scale that contains 50% of alcohol
6 by volume.

7 (16) "Public place" means a place, building, or
8 conveyance to which the public has or may be permitted to
9 have access and any place of public resort.

10 (17) "Rules" means rules published by the department
11 pursuant to this code.

12 (18) "State liquor facility" means a facility owned or
13 under control of the department for the purpose of
14 receiving, storing, transporting, or selling alcoholic
15 beverages.

16 (19) "State liquor store" means a retail store operated
17 by the department in accordance with this code for the
18 purpose of selling liquor and table wine.

19 (20) "Storage depot" means a building or structure owned
20 or operated by a brewer at any point in the state of Montana
21 off and away from the premises of a brewery, and which
22 structure is equipped with refrigeration or cooling
23 apparatus for the storage of beer and from which a brewer
24 may sell or distribute beer as permitted by this code.

25 (21) "Subwarehouse" means a building or structure owned

1 or operated by a licensed beer wholesaler or table wine
2 distributor, located at a site in Montana other than the
3 site of such beer wholesaler's or table wine distributor's
4 warehouse or principal place of business, and used for the
5 receiving, storage, and distribution of beer or table wine
6 as permitted by this code.

7 (22) "Table wine" means wine as defined below which
8 contains not more than 16% alcohol by volume.

9 (23) "Table wine distributor" means a person importing
10 into or purchasing in Montana table wine for sale or resale
11 to retailers licensed in Montana.

12 ~~(23)~~(24) "Warehouse" means a building or structure
13 located in Montana owned or operated by a licensed beer
14 wholesaler or table wine distributor for the receiving,
15 storage, and distribution of beer or table wine as permitted
16 by this code.

17 ~~(24)~~(25) "Wine" means an alcoholic beverage made from or
18 containing the normal alcoholic fermentation of the juice of
19 sound, ripe fruit or other agricultural products without
20 addition or abstraction, except as may occur in the usual
21 cellar treatment of clarifying and aging, and that contains
22 more than 0.5% but not more than 24% of alcohol by volume.
23 Wine may be ameliorated to correct natural deficiencies,
24 sweetened, and fortified in accordance with applicable
25 federal regulations and the customs and practices of the

1 industry. Other alcoholic beverages not defined as above but
2 made in the manner of wine and labeled and sold as wine in
3 accordance with federal regulations are also wine."

4 **Section 9.** Section 16-3-401, MCA, is amended to read:

5 "16-3-401. Public Short title -- public policy --
6 purpose. (1) This part may be cited as the "Wine
7 Distribution Act".

8 (2) The public policy of the state of Montana is to
9 maintain a system for the importation and sale of table wine
10 by the state through state liquor facilities and provide
11 for, regulate, and control the acquisition, importation, and
12 distribution of table wine by licensed table wine
13 distributors and the state.

14 (3) This part governs relationships between suppliers
15 and table wine distributors, and because the legislature
16 recognizes the public interest and the interests of
17 suppliers and table wine distributors in the fair,
18 efficient, and competitive distribution of table wine, this
19 part is intended to:

20 (a) protect the table wine distributor's independence
21 in managing his own business, including the establishment of
22 selling prices; and

23 (b) encourage table wine distributors to devote their
24 best efforts to the sale and distribution of the table wines
25 they sell and distribute."

1 NEW SECTION. Section 10. Codification instruction.
2 [Sections 1 through 6 7] are intended to be codified as an
3 integral part of Title 16, chapter 3, part 4, and the
4 provisions of Title 16, chapter 3, part 4, apply to
5 [sections 1 through 6 7].

-End-

1 HOUSE BILL NO. 76

2 INTRODUCED BY GOULD

3
4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 WINE LAWS; REGULATING BUSINESS RELATIONS BETWEEN TABLE WINE
6 DISTRIBUTORS AND SUPPLIERS; PROHIBITING CERTAIN ACTS BY
7 SUPPLIERS; PROVIDING PROCEDURES FOR TERMINATION OF
8 AGREEMENTS OF DISTRIBUTORSHIP; PROVIDING FOR TABLE WINE
9 DISTRIBUTORS' OBLIGATIONS; ALLOWING DUAL APPOINTMENTS IN A
10 SPECIFIED TERRITORY; PROVIDING REMEDIES FOR DISPUTES; AND
11 AMENDING SECTIONS 16-1-106 AND 16-3-401, MCA."

12
13 STATEMENT OF INTENT

14 BECAUSE THE DEPARTMENT OF REVENUE HAS RULEMAKING
15 AUTHORITY UNDER 16-1-303(2)(M), A STATEMENT OF INTENT MAY BE
16 NECESSARY FOR [THIS ACT]. THE DEPARTMENT SHALL CONSIDER THE
17 RULES AND INTERPRETATIONS OF THE WASHINGTON
18 WHOLESALE/SUPPLIER EQUITY AGREEMENT ACT, RCW 19.126.010, ET
19 SEQ., UPON WHICH MANY OF THE PROVISIONS OF THIS BILL ARE
20 BASED. IT IS NOT INTENDED THAT THE DEPARTMENT ADOPT ANY RULE
21 INTERPRETING OR IMPLEMENTING [SECTION 3(3)], REGARDING THE
22 DESIGNATION OF SALES TERRITORIES FOR WINE DISTRIBUTORS BY A
23 WINERY.

24
25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 NEW SECTION. Section 1. Definitions. As used in this
2 part, unless the context requires otherwise, the following
3 definitions apply:

4 (1) "Agreement of distributorship" means a contract,
5 agreement, commercial relationship, license, or other
6 arrangement for a definite or an indefinite period of time
7 between a supplier and a table wine distributor that
8 provides for the sale of table wine by the supplier to the
9 table wine distributor.

10 (2) "Good cause" means failure by a table wine
11 distributor to comply with essential and reasonable
12 requirements imposed, or sought to be imposed, by a supplier
13 under the terms of an agreement of distributorship if the
14 requirements are imposed on other similarly situated
15 distributors either by the terms of their agreements or in
16 the manner of their enforcement by the supplier.

17 (3) "Person" means a natural person, corporation,
18 partnership, trust, agency, or other entity and includes
19 individual officers, directors, or other persons in active
20 control of the activities of the entity.

21 (4) "Supplier" means a winery or an importer of table
22 wines that enters into or is a party to an agreement of
23 distributorship with a table wine distributor.

24 NEW SECTION. Section 2. Suppliers' prohibitions. A
25 supplier may not:

THIRD READING

1 (1) coerce, induce, or attempt to coerce or induce a
2 table wine distributor to engage in an illegal act or course
3 of conduct;

4 (2) require a table wine distributor to accept delivery
5 of a product or other item or commodity that was not ordered
6 by the wine distributor; or,

7 ~~(3) fail or refuse to enter into an agreement of~~
8 ~~distributorship with a wholesale table wine distributor~~
9 ~~that provides for purchases of the supplier's products from~~
10 ~~the supplier;~~

11 NEW SECTION. Section 3. Table wine distributor
12 provisions. (1) A SUPPLIER OR TABLE WINE DISTRIBUTOR MAY NOT
13 FAIL OR REFUSE TO REDUCE TO WRITING AN AGREEMENT OF
14 DISTRIBUTORSHIP THAT PROVIDES FOR PURCHASE OF THE SUPPLIER'S
15 PRODUCTS FROM THE SUPPLIER BY THE TABLE WINE DISTRIBUTOR.

16 ~~(2)~~ (2) An agreement of distributorship must be in
17 writing and must provide that:

18 (a) a supplier shall notify a table wine distributor in
19 writing at least 60 days prior to termination of an
20 agreement of distributorship unless a termination without
21 notice is permitted as provided in [section 4]. The written
22 notice must state the reasons for termination. ~~if within 60~~
23 ~~days after receipt of the written notice the table wine~~
24 ~~distributor rectifies the deficiencies stated as reasons for~~
25 ~~termination in the written notice, the proposed termination~~

1 ~~is void.~~ NOTICE OF TERMINATION IS VOID IF WITHIN 60 DAYS OF
2 THE NOTICE THE TABLE WINE DISTRIBUTOR RECTIFIES THE
3 DEFICIENCY STATED AS THE REASON FOR TERMINATION AND IF THE
4 DEFICIENCY WAS NOT STATED AS REASON FOR TERMINATION IN A
5 NOTICE PREVIOUSLY VOIDED UNDER THE PROVISIONS OF THIS
6 SUBSECTION.

7 (b) a supplier may not unreasonably withhold or delay
8 approval of a sale or transfer of the ownership, management,
9 or control of a table wine distributorship; however, a table
10 wine distributor shall give a supplier no less than 60 days'
11 prior written notice of any material change in ownership,
12 management, or control.

13 ~~(3)~~ (3) Within 30 days after entering into an agreement
14 of distributorship, the supplier shall advise the department
15 of the agreement by written notice that must include the
16 sales area or areas designated for the table wine
17 distributor.

18 ~~(4)~~ (4) If a supplier terminates an agreement of
19 distributorship under the provisions of subsection (1)(a),
20 the table wine distributor subject to the termination is
21 entitled to compensation for the laid-in cost of his
22 inventory and liquidated damages measured on the fair market
23 price of the business as provided for in the agreement for
24 any termination of the agreement by the supplier other than
25 termination for good cause or for any reason set forth in

1 [section 4(3)].

2 (5) IF UNDERTAKEN IN GOOD FAITH BY A SUPPLIER, A
 3 SUPPLIER MAY TERMINATE AN AGREEMENT OF DISTRIBUTORSHIP FOR A
 4 LEGITIMATE BUSINESS REASON NOT WITHIN THE DEFINITION OF GOOD
 5 CAUSE IF AN ARBITRATOR APPOINTED BY THE DEPARTMENT FINDS,
 6 AFTER HEARING THE SUPPLIER AND THE TABLE WINE DISTRIBUTOR,
 7 THAT THE TERMINATION IS IN THE BEST INTEREST OF THE TABLE
 8 WINE BRAND CONCERNED. ARBITRATION UNDER THIS SECTION MUST BE
 9 CONDUCTED UNDER THE PROVISIONS OF TITLE 27, CHAPTER 5.

10 NEW SECTION. Section 4. Supplier provisions. (1) An
 11 agreement of distributorship must provide that a table wine
 12 distributor shall:

13 (a) maintain the financial and competitive capability
 14 to efficiently and effectively distribute a supplier's
 15 products;

16 (b) maintain the quality and integrity of a supplier's
 17 products in a manner set forth by the supplier;

18 (c) exert the table wine distributor's best efforts to
 19 sell the supplier's wines;

20 (d) merchandise the products in retail stores as agreed
 21 between the table wine distributor and the supplier; and

22 (e) give a supplier not less than 60 days' written
 23 notice of the table wine distributor's intent to terminate
 24 an agreement of distributorship.

25 (2) As provided in [section 3], a supplier may

1 terminate an agreement of distributorship based on a
 2 deficiency or other good cause by giving 60 days' prior
 3 written notice to the table wine distributor.

4 (3) A supplier may terminate an agreement of
 5 distributorship immediately and without notice if the reason
 6 for the termination is insolvency, assignment for the
 7 benefit of creditors, bankruptcy, or revocation or
 8 suspension for more than 14 days of a license to operate
 9 that is required by the state or the federal government.

10 NEW SECTION. Section 5. Dual appointments -- equal
 11 support -- ALTERNATE SUPPLIER. (1) A supplier may appoint
 12 one or more table wine distributors to distribute its table
 13 wines in a specified territory. If the supplier appoints two
 14 or more table wine distributors to sell its table wines in
 15 the same or overlapping territories, the supplier shall
 16 offer the same prices, delivery, terms, and promotional
 17 support to each table wine distributor.

18 (2) THE HOLDER OF AN ALL-BEVERAGES LICENSE UNDER
 19 CHAPTER 4, PART 2, MAY, UPON PRESENTATION OF HIS LICENSE OR
 20 A PHOTOCOPY OF HIS LICENSE, PERSONALLY OBTAIN FROM ANY
 21 DISTRIBUTOR'S WAREHOUSE A QUANTITY OF TABLE WINE THAT THE
 22 LICENSEE MAY AGREE TO BUY AND THAT THE DISTRIBUTOR MAY AGREE
 23 TO SELL.

24 NEW SECTION. SECTION 6. APPLICABILITY. WITHIN 60 DAYS
 25 AFTER [THE EFFECTIVE DATE OF THIS ACT] OR WITHIN 60 DAYS

1 AFTER THE CONCLUSION OF A NEW AGREEMENT BY THE PARTIES,
 2 WHICHEVER IS LATER, AN AGREEMENT OF DISTRIBUTORSHIP MUST BE
 3 REDUCED TO WRITING AND AN EXACT COPY OF THE AGREEMENT MUST
 4 BE FILED WITH THE DEPARTMENT AS A PUBLIC DOCUMENT AND MUST
 5 BE AVAILABLE TO ANY OF THE PARTIES TO A DISPUTE. UPON FILING
 6 WITH THE DEPARTMENT, THE AGREEMENT BECOMES SUBJECT TO THE
 7 PROVISIONS OF [THIS ACT].

8 NEW SECTION. Section 7. Injunction. A person injured
 9 by a violation of this part may bring a civil action in a
 10 court of competent jurisdiction to enjoin further violations
 11 in addition to other remedies provided by law.

12 **Section 8.** Section 16-1-106, MCA, is amended to read:

13 "16-1-106. **Definitions.** As used in this code, the
 14 following definitions apply:

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

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

20 (3) "Alcoholic beverage" means a compound produced and
 21 sold for human consumption as a drink that contains more
 22 than .5% of alcohol by volume.

23 (4) "Beer" means a malt beverage containing not more
 24 than 7% of alcohol by weight.

25 (5) "Beer importer" means a person other than a brewer

1 who imports malt beverages.

2 (6) "Brewer" means a person who produces malt
 3 beverages.

4 (7) "Department" means the department of revenue.

5 (8) "Immediate family" means a spouse, dependent
 6 children, or dependent parents.

7 (9) "Import" means to transfer beer or table wine from
 8 outside the state of Montana into the state of Montana.

9 (10) "Industrial use" means a use described as
 10 industrial use by the federal Alcohol Administration Act and
 11 the federal rules and regulations of 27 CFR.

12 (11) "Liquor" means an alcoholic beverage except beer
 13 and table wine.

14 (12) "Malt beverage" means an alcoholic beverage made by
 15 the fermentation of an infusion or decoction, or a
 16 combination of both, in potable brewing water, of malted
 17 barley with or without hops or their parts or their products
 18 and with or without other malted cereals and with or without
 19 the addition of unmalted or prepared cereals, other
 20 carbohydrates, or products prepared therefrom and with or
 21 without other wholesome products suitable for human food
 22 consumption.

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

25 (14) "Posted price" means the retail price of liquor and

1 table wine as fixed and determined by the department and in
2 addition thereto an excise and license tax as provided in
3 this code.

4 (15) "Proof gallon" means a U.S. gallon of liquor at 60
5 degrees on the Fahrenheit scale that contains 50% of alcohol
6 by volume.

7 (16) "Public place" means a place, building, or
8 conveyance to which the public has or may be permitted to
9 have access and any place of public resort.

10 (17) "Rules" means rules published by the department
11 pursuant to this code.

12 (18) "State liquor facility" means a facility owned or
13 under control of the department for the purpose of
14 receiving, storing, transporting, or selling alcoholic
15 beverages.

16 (19) "State liquor store" means a retail store operated
17 by the department in accordance with this code for the
18 purpose of selling liquor and table wine.

19 (20) "Storage depot" means a building or structure owned
20 or operated by a brewer at any point in the state of Montana
21 off and away from the premises of a brewery, and which
22 structure is equipped with refrigeration or cooling
23 apparatus for the storage of beer and from which a brewer
24 may sell or distribute beer as permitted by this code.

25 (21) "Subwarehouse" means a building or structure owned

1 or operated by a licensed beer wholesaler or table wine
2 distributor, located at a site in Montana other than the
3 site of such beer wholesaler's or table wine distributor's
4 warehouse or principal place of business, and used for the
5 receiving, storage, and distribution of beer or table wine
6 as permitted by this code.

7 (22) "Table wine" means wine as defined below which
8 contains not more than 16% alcohol by volume.

9 (23) "Table wine distributor" means a person importing
10 into or purchasing in Montana table wine for sale or resale
11 to retailers licensed in Montana.

12 ~~(23)~~(24) "Warehouse" means a building or structure
13 located in Montana owned or operated by a licensed beer
14 wholesaler or table wine distributor for the receiving,
15 storage, and distribution of beer or table wine as permitted
16 by this code.

17 ~~(24)~~(25) "Wine" means an alcoholic beverage made from or
18 containing the normal alcoholic fermentation of the juice of
19 sound, ripe fruit or other agricultural products without
20 addition or abstraction, except as may occur in the usual
21 cellar treatment of clarifying and aging, and that contains
22 more than 0.5% but not more than 24% of alcohol by volume.
23 Wine may be ameliorated to correct natural deficiencies,
24 sweetened, and fortified in accordance with applicable
25 federal regulations and the customs and practices of the

1 industry. Other alcoholic beverages not defined as above but
2 made in the manner of wine and labeled and sold as wine in
3 accordance with federal regulations are also wine."

4 **Section 9.** Section 16-3-401, MCA, is amended to read:

5 "16-3-401. Public Short title -- public policy --
6 purpose. (1) This part may be cited as the "Wine
7 Distribution Act".

8 (2) The public policy of the state of Montana is to
9 maintain a system for the importation and sale of table wine
10 by the state through state liquor facilities and provide
11 for, regulate, and control the acquisition, importation, and
12 distribution of table wine by licensed table wine
13 distributors and the state.

14 (3) This part governs relationships between suppliers
15 and table wine distributors, and because the legislature
16 recognizes the public interest and the interests of
17 suppliers and table wine distributors in the fair,
18 efficient, and competitive distribution of table wine, this
19 part is intended to:

20 (a) protect the table wine distributor's independence
21 in managing his own business, including the establishment of
22 selling prices; and

23 (b) encourage table wine distributors to devote their
24 best efforts to the sale and distribution of the table wines
25 they sell and distribute."

1 NEW SECTION. Section 10. Codification instruction.
2 [Sections 1 through 6 7] are intended to be codified as an
3 integral part of Title 16, chapter 3, part 4, and the
4 provisions of Title 16, chapter 3, part 4, apply to
5 [sections 1 through 6 7].

-End-

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
March 13, 1991

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration House Bill No. 76 (third reading copy -- blue), respectfully report that House Bill No. 76 be amended and as so amended be concurred in:

1. Page 2, line 11.

Strike: "essential and"

Following: "reasonable"

Insert: "business"

2. Page 4, line 15.

Strike: "written notice"

Insert: "filing a copy of the agreement"

3. Page 4, line 19.

Strike: "(1)(a)"

Insert: "(2)(a)"

4. Page 4, lines 22 and 23.

Strike: "and" on line 22 through "agreement for" on line 23

Insert: ". In the event of"

5. Page 5, line 1.

Following: "]"

Insert: ", the distributor is entitled to compensation for the laid-in cost of his inventory and to liquidated damages based on the sales of the brand or brands involved, as may be provided in the agreement. If the supplier and the distributor are unable to agree on the amount of liquidated damages, the amount of liquidated damages must be determined by an arbitrator appointed under subsection (5) of this section"

6. Page 7, line 1.

Strike: "CONCLUSION"

Insert: "execution"

Signed: _____


John "J.D." Lynch, Chairman

Jan 3-13-91
Amd. Coord.

SB 3-13-2:50
Sec. of Senate

SENATE
HB 76

SENATE COMMITTEE OF THE WHOLE AMENDMENT

March 14, 1991 9:41 am

Mr. Chairman: I move to amend House Bill No. 76 (third reading copy -- blue) as follows:

1. Page 4, line 13.
Following: "within"
Strike: "30"
Insert: "60"

ADOPT

REJECT

Signed: _____

J. H. Lynch

Senator Lynch

ML 3-14-91
And. Coord.

SB 3/14 9:55
Sec. of Senate

SENATE

HB 76

1 HOUSE BILL NO. 76
2 INTRODUCED BY GOULD
3

4 A BILL FOR AN ACT ENTITLED: "AN ACT TO GENERALLY REVISE THE
5 WINE LAWS; REGULATING BUSINESS RELATIONS BETWEEN TABLE WINE
6 DISTRIBUTORS AND SUPPLIERS; PROHIBITING CERTAIN ACTS BY
7 SUPPLIERS; PROVIDING PROCEDURES FOR TERMINATION OF
8 AGREEMENTS OF DISTRIBUTORSHIP; PROVIDING FOR TABLE WINE
9 DISTRIBUTORS' OBLIGATIONS; ALLOWING DUAL APPOINTMENTS IN A
10 SPECIFIED TERRITORY; PROVIDING REMEDIES FOR DISPUTES; AND
11 AMENDING SECTIONS 16-1-106 AND 16-3-401, MCA."
12

13 STATEMENT OF INTENT

14 BECAUSE THE DEPARTMENT OF REVENUE HAS RULEMAKING
15 AUTHORITY UNDER 16-1-303(2)(M), A STATEMENT OF INTENT MAY BE
16 NECESSARY FOR [THIS ACT]. THE DEPARTMENT SHALL CONSIDER THE
17 RULES AND INTERPRETATIONS OF THE WASHINGTON
18 WHOLESALE/SUPPLIER EQUITY AGREEMENT ACT, RCW 19.126.010, ET
19 SEQ., UPON WHICH MANY OF THE PROVISIONS OF THIS BILL ARE
20 BASED. IT IS NOT INTENDED THAT THE DEPARTMENT ADOPT ANY RULE
21 INTERPRETING OR IMPLEMENTING [SECTION 3(3)], REGARDING THE
22 DESIGNATION OF SALES TERRITORIES FOR WINE DISTRIBUTORS BY A
23 WINERY.
24

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

1 NEW SECTION. Section 1. Definitions. As used in this
2 part, unless the context requires otherwise, the following
3 definitions apply:

4 (1) "Agreement of distributorship" means a contract,
5 agreement, commercial relationship, license, or other
6 arrangement for a definite or an indefinite period of time
7 between a supplier and a table wine distributor that
8 provides for the sale of table wine by the supplier to the
9 table wine distributor.

10 (2) "Good cause" means failure by a table wine
11 distributor to comply with ~~essential~~ and reasonable BUSINESS
12 requirements imposed, or sought to be imposed, by a supplier
13 under the terms of an agreement of distributorship if the
14 requirements are imposed on other similarly situated
15 distributors either by the terms of their agreements or in
16 the manner of their enforcement by the supplier.

17 (3) "Person" means a natural person, corporation,
18 partnership, trust, agency, or other entity and includes
19 individual officers, directors, or other persons in active
20 control of the activities of the entity.

21 (4) "Supplier" means a winery or an importer of table
22 wines that enters into or is a party to an agreement of
23 distributorship with a table wine distributor.

24 NEW SECTION. Section 2. Suppliers' prohibitions. A
25 supplier may not:

1 (1) coerce, induce, or attempt to coerce or induce a
2 table wine distributor to engage in an illegal act or course
3 of conduct;

4 (2) require a table wine distributor to accept delivery
5 of a product or other item or commodity that was not ordered
6 by the wine distributor; ~~or,~~

7 ~~{3} fail or refuse to enter into an agreement of~~
8 ~~distributorship with a wholesale table wine distributor~~
9 ~~that provides for purchase of the supplier's products from~~
10 ~~the supplier.~~

11 NEW SECTION. Section 3. Table wine distributor
12 provisions. (1) A SUPPLIER OR TABLE WINE DISTRIBUTOR MAY NOT
13 FAIL OR REFUSE TO REDUCE TO WRITING AN AGREEMENT OF
14 DISTRIBUTORSHIP THAT PROVIDES FOR PURCHASE OF THE SUPPLIER'S
15 PRODUCTS FROM THE SUPPLIER BY THE TABLE WINE DISTRIBUTOR.

16 ~~{1}(2)~~ An agreement of distributorship must be in
17 writing and must provide that:

18 (a) a supplier shall notify a table wine distributor in
19 writing at least 60 days prior to termination of an
20 agreement of distributorship unless a termination without
21 notice is permitted as provided in [section 4]. The written
22 notice must state the reasons for termination. ~~if within 60~~
23 ~~days after receipt of the written notice the table wine~~
24 ~~distributor rectifies the deficiencies stated as reasons for~~
25 ~~termination in the written notice, the proposed termination~~

1 ~~is void.~~ NOTICE OF TERMINATION IS VOID IF WITHIN 60 DAYS OF
2 THE NOTICE THE TABLE WINE DISTRIBUTOR RECTIFIES THE
3 DEFICIENCY STATED AS THE REASON FOR TERMINATION AND IF THE
4 DEFICIENCY WAS NOT STATED AS REASON FOR TERMINATION IN A
5 NOTICE PREVIOUSLY VOIDED UNDER THE PROVISIONS OF THIS
6 SUBSECTION.

7 (b) a supplier may not unreasonably withhold or delay
8 approval of a sale or transfer of the ownership, management,
9 or control of a table wine distributorship; however, a table
10 wine distributor shall give a supplier no less than 60 days'
11 prior written notice of any material change in ownership,
12 management, or control.

13 ~~{2}(3)~~ Within ~~30~~ 60 days after entering into an
14 agreement of distributorship, the supplier shall advise the
15 department of the agreement by written notice FILING A COPY
16 OF THE AGREEMENT that must include the sales area or areas
17 designated for the table wine distributor.

18 ~~{3}(4)~~ If a supplier terminates an agreement of
19 distributorship under the provisions of subsection ~~{1}(a)~~
20 ~~(2)(A)~~, the table wine distributor subject to the
21 termination is entitled to compensation for the laid-in cost
22 of his inventory ~~and liquidated damages measured on the fair~~
23 ~~market price of the business as provided for in the~~
24 agreement for. IN THE EVENT OF any termination of the
25 agreement by the supplier other than termination for good

1 cause or for any reason set forth in [section 4(3)], THE
 2 DISTRIBUTOR IS ENTITLED TO COMPENSATION FOR THE LAID-IN COST
 3 OF HIS INVENTORY AND TO LIQUIDATED DAMAGES BASED ON THE
 4 SALES OF THE BRAND OR BRANDS INVOLVED, AS MAY BE PROVIDED IN
 5 THE AGREEMENT. IF THE SUPPLIER AND THE DISTRIBUTOR ARE
 6 UNABLE TO AGREE ON THE AMOUNT OF LIQUIDATED DAMAGES, THE
 7 AMOUNT OF LIQUIDATED DAMAGES MUST BE DETERMINED BY AN
 8 ARBITRATOR APPOINTED UNDER SUBSECTION (5) OF THIS SECTION.

9 (5) IF UNDERTAKEN IN GOOD FAITH BY A SUPPLIER, A
 10 SUPPLIER MAY TERMINATE AN AGREEMENT OF DISTRIBUTORSHIP FOR A
 11 LEGITIMATE BUSINESS REASON NOT WITHIN THE DEFINITION OF GOOD
 12 CAUSE IF AN ARBITRATOR APPOINTED BY THE DEPARTMENT FINDS,
 13 AFTER HEARING THE SUPPLIER AND THE TABLE WINE DISTRIBUTOR,
 14 THAT THE TERMINATION IS IN THE BEST INTEREST OF THE TABLE
 15 WINE BRAND CONCERNED. ARBITRATION UNDER THIS SECTION MUST BE
 16 CONDUCTED UNDER THE PROVISIONS OF TITLE 27, CHAPTER 5.

17 NEW SECTION. Section 4. Supplier provisions. (1) An
 18 agreement of distributorship must provide that a table wine
 19 distributor shall:

20 (a) maintain the financial and competitive capability
 21 to efficiently and effectively distribute a supplier's
 22 products;

23 (b) maintain the quality and integrity of a supplier's
 24 products in a manner set forth by the supplier;

25 (c) exert the table wine distributor's best efforts to

1 sell the supplier's wines;

2 (d) merchandise the products in retail stores as agreed
 3 between the table wine distributor and the supplier; and

4 (e) give a supplier not less than 60 days' written
 5 notice of the table wine distributor's intent to terminate
 6 an agreement of distributorship.

7 (2) As provided in [section 3], a supplier may
 8 terminate an agreement of distributorship based on a
 9 deficiency or other good cause by giving 60 days' prior
 10 written notice to the table wine distributor.

11 (3) A supplier may terminate an agreement of
 12 distributorship immediately and without notice if the reason
 13 for the termination is insolvency, assignment for the
 14 benefit of creditors, bankruptcy, or revocation or
 15 suspension for more than 14 days of a license to operate
 16 that is required by the state or the federal government.

17 NEW SECTION. Section 5. Dual appointments -- equal
 18 support -- ALTERNATE SUPPLIER. (1) A supplier may appoint
 19 one or more table wine distributors to distribute its table
 20 wines in a specified territory. If the supplier appoints two
 21 or more table wine distributors to sell its table wines in
 22 the same or overlapping territories, the supplier shall
 23 offer the same prices, delivery, terms, and promotional
 24 support to each table wine distributor.

25 (2) THE HOLDER OF AN ALL-BEVERAGES LICENSE UNDER

1 CHAPTER 4, PART 2, MAY, UPON PRESENTATION OF HIS LICENSE OR
 2 A PHOTOCOPY OF HIS LICENSE, PERSONALLY OBTAIN FROM ANY
 3 DISTRIBUTOR'S WAREHOUSE A QUANTITY OF TABLE WINE THAT THE
 4 LICENSEE MAY AGREE TO BUY AND THAT THE DISTRIBUTOR MAY AGREE
 5 TO SELL.

6 NEW SECTION. SECTION 6. APPLICABILITY. WITHIN 60 DAYS
 7 AFTER [THE EFFECTIVE DATE OF THIS ACT] OR WITHIN 60 DAYS
 8 AFTER THE ~~CONCLUSION~~ EXECUTION OF A NEW AGREEMENT BY THE
 9 PARTIES, WHICHEVER IS LATER, AN AGREEMENT OF DISTRIBUTORSHIP
 10 MUST BE REDUCED TO WRITING AND AN EXACT COPY OF THE
 11 AGREEMENT MUST BE FILED WITH THE DEPARTMENT AS A PUBLIC
 12 DOCUMENT AND MUST BE AVAILABLE TO ANY OF THE PARTIES TO A
 13 DISPUTE. UPON FILING WITH THE DEPARTMENT, THE AGREEMENT
 14 BECOMES SUBJECT TO THE PROVISIONS OF [THIS ACT].

15 NEW SECTION. Section 7. Injunction. A person injured
 16 by a violation of this part may bring a civil action in a
 17 court of competent jurisdiction to enjoin further violations
 18 in addition to other remedies provided by law.

19 **Section 8.** Section 16-1-106, MCA, is amended to read:

20 "16-1-106. **Definitions.** As used in this code, the
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 23 department and a person appointed to sell liquor and table
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 3 sold for human consumption as a drink that contains more
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 8 who imports malt beverages.

9 (6) "Brewer" means a person who produces malt
 10 beverages.

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12 (8) "Immediate family" means a spouse, dependent
 13 children, or dependent parents.

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 15 outside the state of Montana into the state of Montana.

16 (10) "Industrial use" means a use described as
 17 industrial use by the federal Alcohol Administration Act and
 18 the federal rules and regulations of 27 CFR.

19 (11) "Liquor" means an alcoholic beverage except beer
 20 and table wine.

21 (12) "Malt beverage" means an alcoholic beverage made by
 22 the fermentation of an infusion or decoction, or a
 23 combination of both, in potable brewing water, of malted
 24 barley with or without hops or their parts or their products
 25 and with or without other malted cereals and with or without

1 the addition of unmalted or prepared cereals, other
2 carbohydrates, or products prepared therefrom and with or
3 without other wholesome products suitable for human food
4 consumption.

5 (13) "Package" means a container or receptacle used for
6 holding an alcoholic beverage.

7 (14) "Posted price" means the retail price of liquor and
8 table wine as fixed and determined by the department and in
9 addition thereto an excise and license tax as provided in
10 this code.

11 (15) "Proof gallon" means a U.S. gallon of liquor at 60
12 degrees on the Fahrenheit scale that contains 50% of alcohol
13 by volume.

14 (16) "Public place" means a place, building, or
15 conveyance to which the public has or may be permitted to
16 have access and any place of public resort.

17 (17) "Rules" means rules published by the department
18 pursuant to this code.

19 (18) "State liquor facility" means a facility owned or
20 under control of the department for the purpose of
21 receiving, storing, transporting, or selling alcoholic
22 beverages.

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24 by the department in accordance with this code for the
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6 may sell or distribute beer as permitted by this code.

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8 or operated by a licensed beer wholesaler or table wine
9 distributor, located at a site in Montana other than the
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11 warehouse or principal place of business, and used for the
12 receiving, storage, and distribution of beer or table wine
13 as permitted by this code.

14 (22) "Table wine" means wine as defined below which
15 contains not more than 16% alcohol by volume.

16 (23) "Table wine distributor" means a person importing
17 into or purchasing in Montana table wine for sale or resale
18 to retailers licensed in Montana.

19 ~~†23†~~(24) "Warehouse" means a building or structure
20 located in Montana owned or operated by a licensed beer
21 wholesaler or table wine distributor for the receiving,
22 storage, and distribution of beer or table wine as permitted
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 4 more than 0.5% but not more than 24% of alcohol by volume.
 5 Wine may be ameliorated to correct natural deficiencies,
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 17 by the state through state liquor facilities and provide
 18 for, regulate, and control the acquisition, importation, and
 19 distribution of table wine by licensed table wine
 20 distributors and the state.

21 (3) This part governs relationships between suppliers
 22 and table wine distributors, and because the legislature
 23 recognizes the public interest and the interests of
 24 suppliers and table wine distributors in the fair,
 25 efficient, and competitive distribution of table wine, this

1 part is intended to:

2 (a) protect the table wine distributor's independence
 3 in managing his own business, including the establishment of
 4 selling prices; and

5 (b) encourage table wine distributors to devote their
 6 best efforts to the sale and distribution of the table wines
 7 they sell and distribute."

8 **NEW SECTION. Section 10.** Codification instruction.
 9 [Sections 1 through 6] are intended to be codified as an
 10 integral part of Title 16, chapter 3, part 4, and the
 11 provisions of Title 16, chapter 3, part 4, apply to
 12 [sections 1 through 6].

-End-