



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

*Senate* BILL NO. *206*  
INTRODUCED BY *Wells*

A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS RELATING TO THE ADMINISTRATION OF BEER AND WINE LICENSES, SPECIAL LICENSES, AND ALL-BEVERAGES LICENSES; LIMITING CONCURRENT APPLICATIONS FOR THE SAME PREMISES; PROHIBITING FOR 5 YEARS AN APPLICATION FOR A LICENSE IN THE VICINITY OF ONE THAT WAS DENIED BECAUSE OF ADVERSE AND SERIOUS EFFECTS ON THE WELFARE OF THE PEOPLE RESIDING IN THE VICINITY; ALLOWING THE DEPARTMENT OF REVENUE TO PLACE SPECIAL RESTRICTIONS ON LICENSES; REQUIRING A DETERMINATION OF PUBLIC CONVENIENCE AND NECESSITY BEFORE TRANSFER OF LOCATION OF A LICENSE; REQUIRING THE DEPARTMENT TO INVESTIGATE MATTERS RELATING TO LICENSE APPLICATIONS; ALLOWING THE DEPARTMENT TO DENY A LICENSE BASED UPON A FALSE STATEMENT IN AN ORIGINAL OR RENEWAL APPLICATION OR MADE AT A HEARING ON AN APPLICATION; ALLOWING THE DEPARTMENT TO REVOKE A LICENSE OR REFUSE RENEWAL OF A LICENSE IF THE LICENSEE NO LONGER MEETS LICENSING CRITERIA; AND AMENDING SECTIONS 16-1-302, 16-4-203, 16-4-207, 16-4-402, 16-4-404, 16-4-405, AND 16-4-406, MCA."

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

NEW SECTION. Section 1. Limits on concurrent

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

applications. (1) An application for the issuance of a new license or for the transfer of an existing license may not be considered by the department if a previous application for the same premises is pending. An application is considered pending if a final decision:

(a) has not been made by the department; or

(b) has been made by the department but:

(i) a petition for judicial review can still be filed or has been filed; or

(ii) an appeal to the Montana supreme court can still be filed or has been filed.

(2) This section does not prevent the department from considering more than one application for the same location pursuant to competition for a last available license.

NEW SECTION. Section 2. Denial of application based on effects on people residing in vicinity -- five year moratorium. (1) If an application for the issuance of a new license or for the transfer of an existing license has been denied because of a finding that the welfare of the people residing in the vicinity of the premises proposed for licensing would be adversely and seriously affected, the department may not consider an application or issue any retail license, special permit, or special license for those premises for 5 years. The prohibition period commences on the date of the final agency decision or, if judicially

1 reviewed, on the date of a final judicial decision that  
 2 determines or affirms the adverse and serious effect on the  
 3 welfare of the people residing in the vicinity of the  
 4 premises proposed for licensing.

5 (2) If an application is withdrawn after a hearing has  
 6 been held in which testimony is received regarding the  
 7 adverse and serious effect on the welfare of the people  
 8 residing in the vicinity of the premises proposed for  
 9 licensing, the effect of the withdrawal is the same as if a  
 10 final decision had been made that found that the welfare of  
 11 the people residing in the vicinity of the premises proposed  
 12 for licensing would be adversely and seriously affected. The  
 13 5-year prohibition against considering an application or  
 14 issuing a license for that vicinity commences on the date of  
 15 the withdrawal.

16 **Section 3.** Section 16-1-302, MCA, is amended to read:

17 "16-1-302. Functions, powers, and duties of department.

18 The department ~~shall--have~~ has the following functions,  
 19 duties, and powers:

20 (1) to buy, import, have in its possession for sale,  
 21 and sell liquors and table wine in the manner set forth in  
 22 this code;

23 (2) to control the possession, sale, and delivery of  
 24 liquors in accordance with the provisions of this code;

25 (3) to determine the municipalities ~~within-which~~ where

1 state liquor stores ~~shall~~ are to be established throughout  
 2 the state and the situation of the stores within ~~every-such~~  
 3 municipality these municipalities;

4 (4) to lease, furnish, and equip any building or land  
 5 required for the operation of this code;

6 (5) to buy or lease all plants and equipment it may  
 7 consider necessary and useful in carrying into effect the  
 8 objects and purposes of this code;

9 (6) to employ store managers and also every officer,  
 10 investigator, clerk, or other employee required for the  
 11 operation or carrying out of this code and to dismiss the  
 12 same them, fix their salaries or remuneration, assign them  
 13 their title, define their respective duties and powers, and  
 14 to engage the service of experts and persons engaged in the  
 15 practice of a profession, if deemed-expedient considered  
 16 appropriate;

17 (7) to determine the nature, form, and capacity of all  
 18 packages to be used for containing liquor kept or sold under  
 19 this code;

20 (8) to grant and issue licenses under and in pursuance  
 21 to this code;

22 (9) to place special restrictions on the use of a  
 23 particular license, which must be endorsed upon the face of  
 24 the license, if the special restrictions are made pursuant  
 25 to a hearing held in connection with the issuance of the

1 license or if the special restrictions are agreed to by the  
 2 licensee;  
 3 ~~(9)~~(10) without ~~in-any-way~~ limiting or being limited by  
 4 the foregoing, to do all such things ~~as--are---deemed~~  
 5 considered necessary or advisable by the department for the  
 6 purpose of carrying into effect the provisions of this code  
 7 or the rules made ~~thereunder~~ under the provisions of this  
 8 code."

9 **Section 4.** Section 16-4-203, MCA, is amended to read:  
 10 "16-4-203. Determination of public convenience and  
 11 necessity. Any An original license issued pursuant to  
 12 16-4-104, 16-4-201, or 16-4-202 ~~subsequent--to-April-30,~~  
 13 ~~1974,~~ or the transfer of location of a license shall may be  
 14 issued approved only upon if the department ~~having-first has~~  
 15 ~~determined,~~ ~~--upon--a--hearing--held--pursuant--to--the--Montana~~  
 16 ~~Administrative-Procedure-Act,~~ that the issuance or transfer  
 17 of such the license is justified by public convenience and  
 18 necessity."

19 **Section 5.** Section 16-4-207, MCA, is amended to read:  
 20 "16-4-207. Notice of application -- investigation --  
 21 publication -- protest. (1) When an application has been  
 22 filed with the department for a license to sell alcoholic  
 23 beverages at retail or to transfer a retail license, the  
 24 department shall investigate the application as provided in  
 25 16-4-402. If after the investigation the department does not

1 discover a basis to deny the application, the department  
 2 shall promptly publish in a newspaper of general circulation  
 3 in the city, town, or county from which the application  
 4 comes a notice that the applicant has made application for a  
 5 retail license and that protests against the issuance of a  
 6 license to the applicant by a person who has extended credit  
 7 to the transferor or residents of the county from which the  
 8 application comes or adjoining Montana counties may be  
 9 mailed to a named administrator in the department of revenue  
 10 within 10 days after the final notice is published. Notice  
 11 of application for a new license ~~shall~~ must be published  
 12 once a week for 4 consecutive weeks. Notice of application  
 13 for transfer of a license ~~shall~~ must be published once a  
 14 week for 2 consecutive weeks. Notice may be substantially in  
 15 the following form:

NOTICE OF APPLICATION FOR RETAIL

ALL-BEVERAGES LICENSE

17  
 18 Notice is hereby given that on the .... day of .....,  
 19 19.., one (name of applicant) filed an application for a  
 20 retail all-beverages license with the Montana department of  
 21 revenue, to be used at (describe location of premises where  
 22 beverages are to be sold). ~~and protests by a~~ A person who  
 23 has extended credit to the transferor ~~or and~~ residents of  
 24 ..... counties, ~~if any there be,~~ may protest against the  
 25 issuance of such the license. Protests may be mailed to

1 ..... , department of revenue, Helena, Montana, on or before  
2 the .... day of ....., 19...

3 Dated ..... Signed .....

4 ADMINISTRATOR

5 (2) Each applicant shall, at the time of filing his  
6 application, pay to the department an amount sufficient to  
7 cover the costs of publishing the notice.

8 (3) If the administrator receives no written protests,  
9 the department may issue or transfer the license without  
10 holding a public hearing. If written protests by a person  
11 who has extended credit to the transferor or residents of  
12 the county from which the application comes or adjoining  
13 Montana counties against the issuance or transfer of the  
14 license are received, the department shall hold a public  
15 hearing at its office in Helena."

16 **Section 6.** Section 16-4-402, MCA, is amended to read:

17 "16-4-402. Application -- investigation. (1) Prior to  
18 the issuance of any a license under this chapter, the  
19 applicant shall file with the department an application in  
20 writing, signed by the applicant and containing such  
21 information and statements relative to the applicant and the  
22 premises where the alcoholic beverage is to be sold as may  
23 be required by the department. The application ~~shall~~ must be  
24 verified by the affidavit of the person making ~~the same~~ it  
25 before a person authorized to administer oaths.

1 (2) (a) Upon receipt of a completed application for a  
2 license under this code, accompanied by the necessary  
3 license fee or letter of credit as provided in  
4 16-4-501(7)(f), the department shall within 30 days make a  
5 thorough investigation of all matters ~~pertaining thereto~~  
6 relating to the application. and The department shall  
7 determine whether:

8 (i) such the applicant is qualified to receive a  
9 license and;

10 (ii) his premises are suitable for the carrying on of  
11 the business; and

12 (iii) whether the requirements of this code and the  
13 rules promulgated by the department are met and complied  
14 with.

15 (b) This subsection (2) does not apply to a catering  
16 endorsement provided in 16-4-204(2) or a special permit  
17 provided in 16-4-301.

18 (3) Upon proof that any an applicant made a false  
19 statement in any part of the original application, in any  
20 part of an annual renewal application, or in any hearing  
21 conducted pursuant to an application, the application for  
22 the license may be denied, and if issued, the license may be  
23 revoked."

24 **Section 7.** Section 16-4-404, MCA, is amended to read:

25 "16-4-404. Protest period -- contents of license --

1 posting -- privilege -- transfer. (1) No license may be  
2 issued until on or after the date set in the notice for  
3 hearing protests.

4 (2) Every license issued under this code shall set  
5 forth state the name of the person to whom it is issued, the  
6 location, by street and number or other appropriate specific  
7 description of location if no street address exists, of the  
8 premises where the business is to be carried on under said  
9 the license, and such other information as the department  
10 shall--deem considers necessary. If the licensee is a  
11 partnership or if more than one person has any interest in  
12 the business operated under the license, the names of all  
13 persons in the partnership or interested in the business  
14 must appear on the license. Every license must be posted in  
15 a conspicuous place on the premises wherein in which the  
16 business authorized under the license is conducted, and such  
17 the license shall must be exhibited upon request to any  
18 authorized representative of the department or to any peace  
19 officer of the state of Montana.

20 (3) Any A license issued under the provisions of this  
21 code shall-be-considered is a privilege personal to the  
22 licensee named in the license and shall-be-good is valid  
23 until the expiration of the license unless sooner revoked or  
24 suspended.

25 (4) A license may be transferred to the executor or

1 administrator of the estate of any a deceased licensee when  
2 such the estate consists in whole or in part of the business  
3 of selling alcoholic beverages under a license, ~~and in such~~  
4 ~~event-the~~ The license may descend or be disposed of with the  
5 licensed business ~~to--which--it--is--applicable~~ under  
6 appropriate probate proceedings.

7 (5) (a) ~~In--the--event--of--a~~ A licensee may apply to the  
8 department for a transfer of the license to different  
9 premises if:

10 (i) there has been major loss or damage to the licensed  
11 premises by unforeseen natural causes ~~or-in-case-of;~~

12 (ii) expiration--of the lease of the licensed premises  
13 has expired or;

14 (iii) ~~in--the--event--of~~ in case of rented licensed  
15 premises, there has been an eviction or increase of rent by  
16 the landlord ~~{in-case-of-rented-licensed-premises};~~ or

17 (iv) ~~in-case-of~~ the licensee has proposed removal of the  
18 license to premises that are as substantially suited for the  
19 retail alcoholic beverages business as the premises proposed  
20 to be vacated, ~~the licensee may apply to the department for~~  
21 ~~a transfer of the license to different premises.~~

22 (b) The department may, in-its-discretion after notice  
23 and opportunity for protest, permit a transfer in such the  
24 cases specified in subsection (5)(a) if it appears to the  
25 department that such a transfer is required to do justice to

1 the licensee applying for the transfer and is justified by  
 2 public convenience and necessity. The department ~~shall-in-no~~  
 3 ~~event-nor-for-any-cause-permit~~ may not allow a transfer to  
 4 different premises where the sanitary, health, and service  
 5 facilities are less satisfactory than ~~such~~ facilities ~~which~~  
 6 that exist or had existed at the premises from which the  
 7 transfer is proposed to be made.

8 (6) Upon a bona fide sale of the business operated  
 9 under any a license, the license may be transferred to a  
 10 qualified purchaser. No transfer of any a license as to a  
 11 person or location ~~shall-be~~ is effective unless ~~and-until~~  
 12 approved by the department, ~~--and--any.~~ A licensee or  
 13 transferee or proposed transferee who operates or attempts  
 14 to operate under any a supposedly transferred license prior  
 15 to the approval of ~~such~~ the transfer by the department,  
 16 endorsed upon the license in writing, ~~shall-be~~ is considered  
 17 as to be operating without a license and the license  
 18 affected may be revoked or suspended by the department. The  
 19 department may, within its discretion, permit a qualified  
 20 purchaser to operate the business to be transferred pending  
 21 final approval, ~~providing~~ if there has not been a change in  
 22 location and the application for transfer has been filed  
 23 with the department.

24 (7) Except as provided in subsections (2) through (6)  
 25 and 16-4-204, no license ~~shall~~ may be transferred or sold

1 ~~nor-shall-it-be~~ or used for any place of business not  
 2 described in the license, ~~provided, however, that such.~~ A  
 3 license may be subject to mortgage and other valid liens, in  
 4 which event the name of the mortgagee, upon application to  
 5 and approval of the department, must be endorsed on the  
 6 license."

7 **Section 8.** Section 16-4-405, MCA, is amended to read:

8 "16-4-405. Denial of license. (1) The department may  
 9 deny the issuance of a retail alcoholic beverages license if  
 10 it determines that the premises proposed for licensing are  
 11 off regular police beats and cannot be properly policed by  
 12 local authorities.

13 (2) ~~No~~ A retail license may not be issued by the  
 14 department for any a premises situated within any a zone of  
 15 such a city or town where the sale of alcoholic beverages is  
 16 prohibited by ordinance, a certified copy of which has been  
 17 filed with the department.

18 (3) ~~Nor-may-a~~ A license under this code may not be  
 19 issued if the department finds from the evidence at the  
 20 hearing held pursuant to 16-4-207(3) that:

21 (a) that the welfare of the people residing in the  
 22 vicinity of the place premises for which ~~such~~ the license is  
 23 desired will be adversely and seriously affected;

24 (b) there is not a public convenience and necessity  
 25 justification;

1 (c) the applicant or the premises proposed for  
 2 licensing fail to meet the eligibility or suitability  
 3 criteria established by this code; or

4 (d) that the purposes of this code will not be carried  
 5 out by the issuance of such the license."

6 **Section 9.** Section 16-4-406, MCA, is amended to read:

7 "16-4-406. **Renewal -- suspension or revocation --**  
 8 **penalty.** (1) The department may upon its own motion and  
 9 shall upon a written, verified complaint of any a person  
 10 investigate the action and operation of any a brewer,  
 11 wholesaler, or retailer licensed under this code.

12 (2) If Subject to the opportunity for a hearing under  
 13 the Montana Administrative Procedure Act, if the department,  
 14 after investigation, shall--have has reasonable cause to  
 15 believe that any-such a licensee has violated any--of--the  
 16 provisions a provision of this code or any-rules a rule of  
 17 the department, it may, in its discretion and in addition to  
 18 the other penalties prescribed;  
 19

20 (a) reprimand a licensee;

21 (b) proceed to revoke the license of any--such the  
 22 licensee or;

23 (c) it-may suspend the same license for a period of not  
 24 to-exceed more than 3 months or;

25 (d) it--may refuse to grant a renewal of said the  
license upon-the after its expiration thereof; or

1 (e) impose a civil penalty not to exceed \$1,500;  
 2 subject-to-the-opportunity-for-a-hearing-under--the--Montana  
 3 Administrative-Procedure-Act.

4 (3) If the department, after investigation, has  
 5 reasonable cause to believe that a licensee does not meet  
 6 the eligibility criteria established by this code or rules  
 7 of the department or that the premises are not suitable  
 8 pursuant to the provisions of this code or rules of the  
 9 department, it may, in its discretion, proceed to revoke the  
 10 license of the licensee or it may refuse to grant renewal of  
 11 the license subject to the opportunity of the licensee to  
 12 contest the action at a hearing under the Montana  
 13 Administrative Procedure Act."

14 **NEW SECTION. Section 10.** Codification instruction.  
 15 [Sections 1 and 2] are intended to be codified as an  
 16 integral part of Title 16, chapter 4, and the provisions of  
 17 Title 16, chapter 4, apply to [sections 1 and 2].

-End-



APPROVED BY COMMITTEE  
ON TAXATION

1 SENATE BILL NO. 206  
 2 INTRODUCED BY HALLIGAN  
 3  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS  
 5 RELATING TO THE ADMINISTRATION OF BEER AND WINE LICENSES,  
 6 SPECIAL LICENSES, AND ALL-BEVERAGES LICENSES; LIMITING  
 7 CONCURRENT APPLICATIONS FOR THE SAME PREMISES; PROHIBITING  
 8 FOR 5 YEARS AN APPLICATION FOR A LICENSE IN THE VICINITY OF  
 9 ONE THAT WAS DENIED BECAUSE-OF-ADVERSE-AND-SERIOUS-EFFECTS  
 10 ON-THE-WELFARE-OF-THE-PEOPLE-RESIDING-IN--THE--VICINITY FOR  
 11 CERTAIN REASONS; ALLOWING THE DEPARTMENT OF REVENUE TO PLACE  
 12 SPECIAL RESTRICTIONS ON LICENSES; REQUIRING A DETERMINATION  
 13 OF PUBLIC CONVENIENCE AND NECESSITY BEFORE TRANSFER OF  
 14 LOCATION OF A LICENSE; REQUIRING THE DEPARTMENT TO  
 15 INVESTIGATE MATTERS RELATING TO LICENSE APPLICATIONS;  
 16 ALLOWING THE DEPARTMENT TO DENY A LICENSE BASED UPON A FALSE  
 17 STATEMENT IN AN ORIGINAL OR RENEWAL APPLICATION OR MADE AT A  
 18 HEARING ON AN APPLICATION; ALLOWING THE DEPARTMENT TO REVOKE  
 19 A LICENSE OR REFUSE RENEWAL OF A LICENSE IF THE LICENSEE NO  
 20 LONGER MEETS LICENSING CRITERIA; AND AMENDING SECTIONS  
 21 16-1-302, 16-4-203, 16-4-207, 16-4-402, 16-4-404, 16-4-405,  
 22 AND 16-4-406, MCA."

23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 NEW SECTION. Section 1. Limits on concurrent

1 applications. (1) An application for the issuance of a new  
 2 license or for the transfer of an existing license may not  
 3 be considered by the department if a previous application  
 4 for the same premises is pending. An application is  
 5 considered pending if a final decision:

- 6 (a) has not been made by the department; or
- 7 (b) has been made by the department but:
  - 8 (i) a petition for judicial review can still be filed
  - 9 or has been filed; or
  - 10 (ii) an appeal to the Montana supreme court can still be
  - 11 filed or has been filed.

12 (2) This section does not prevent the department from  
13 considering more than one application for the same location  
14 pursuant to competition for a last available license.

15 NEW SECTION. Section 2. Denial of application based on  
 16 effects-on-people-residing-in--vicinity-----five-year --  
 17 FIVE-YEAR moratorium. (1) If an application for the issuance  
 18 of a new license or for the transfer of an existing license  
 19 has been denied because-of-a-finding-that-the-welfare-of-the  
 20 people-residing-in-the-vicinity-of-the-premises-proposed-for  
 21 licensing-would-be-adversely-and-seriously-affected FOR ANY  
 22 REASON PROVIDED IN 16-4-405, the department may not consider  
 23 an application or issue any retail license, special permit,  
 24 or special license for those premises for 5 years UNLESS THE  
 25 DEPARTMENT, USING THE CRITERIA DESCRIBED IN SUBSECTION (3),

SECOND READING



1 DETERMINES THAT THE PROPOSED USE IS SIGNIFICANTLY DIFFERENT  
 2 FROM THE USE THAT WAS REJECTED. The prohibition period  
 3 commences on the date of the final agency decision or, if  
 4 judicially reviewed, on the date of ~~a final judicial~~  
 5 ~~decision that determines or affirms the adverse and serious~~  
 6 ~~effect on the welfare of the people residing in the vicinity~~  
 7 ~~of the premises proposed for licensing~~ THE JUDICIAL DECISION  
 8 IS FINAL.

9 (2) If an application is withdrawn after a hearing has  
 10 been held in which testimony is received regarding the  
 11 ~~adverse and serious effect on the welfare of the people~~  
 12 ~~residing in the vicinity of the premises proposed for~~  
 13 ~~licensing~~ ANY REASON FOR DENIAL PROVIDED IN 16-4-405, the  
 14 effect of the withdrawal is the same as if a final decision  
 15 had been made that ~~found that the welfare of the people~~  
 16 ~~residing in the vicinity of the premises proposed for~~  
 17 ~~licensing would be adversely and seriously affected~~ DENYING  
 18 THE APPLICATION FOR ANY REASON PROVIDED IN 16-4-405. The  
 19 5-year prohibition against considering an application or  
 20 issuing a license for that vicinity commences on the date of  
 21 the withdrawal.

22 (3) THE DEPARTMENT SHALL DETERMINE WHETHER A PROPOSED  
 23 USE IS SUBSTANTIALLY DIFFERENT BY CONSIDERING:

24 (A) THE CAPACITY OF THE PROPOSED USE;

25 (B) THE NATURE OF THE ESTABLISHMENT;

1 (C) THE PRESENCE AND CHARACTER OF ANY ENTERTAINMENT;

2 AND

3 (D) THE CHARACTERISTICS OF THE NEIGHBORHOOD.

4 **Section 3.** Section 16-1-302, MCA, is amended to read:

5 "16-1-302. Functions, powers, and duties of department.  
 6 The department ~~shall have~~ has the following functions,  
 7 duties, and powers:

8 (1) to buy, import, have in its possession for sale,  
 9 and sell liquors and table wine in the manner set forth in  
 10 this code;

11 (2) to control the possession, sale, and delivery of  
 12 liquors in accordance with the provisions of this code;

13 (3) to determine the municipalities ~~within which~~ where  
 14 state liquor stores ~~shall are to~~ be established throughout  
 15 the state and the situation of the stores within ~~every~~ such  
 16 municipality these municipalities;

17 (4) to lease, furnish, and equip any building or land  
 18 required for the operation of this code;

19 (5) to buy or lease all plants and equipment it may  
 20 consider necessary and useful in carrying into effect the  
 21 objects and purposes of this code;

22 (6) to employ store managers and also every officer,  
 23 investigator, clerk, or other employee required for the  
 24 operation or carrying out of this code and to dismiss the  
 25 same them, fix their salaries or remuneration, assign them

1 their title, define their respective duties and powers, and  
 2 to engage the service of experts and persons engaged in the  
 3 practice of a profession, if ~~deemed--expedient~~ considered  
 4 appropriate;

5 (7) to determine the nature, form, and capacity of all  
 6 packages to be used for containing liquor kept or sold under  
 7 this code;

8 (8) to grant and issue licenses under and in pursuance  
 9 to this code;

10 (9) to place special restrictions on the use of a  
 11 particular license, which must be endorsed upon the face of  
 12 the license, if the special restrictions are made pursuant  
 13 to a hearing held in connection with the issuance of the  
 14 license or if the special restrictions are agreed to by the  
 15 licensee;

16 ~~(9)(10)~~ without ~~in-any-way~~ limiting or being limited by  
 17 the foregoing, to do all such things ~~as--are--deemed~~  
 18 considered necessary or advisable by the department for the  
 19 purpose of carrying into effect the provisions of this code  
 20 or the rules made ~~thereunder~~ under the provisions of this  
 21 code."

22 **Section 4.** Section 16-4-203, MCA, is amended to read:

23 "16-4-203. Determination of public convenience and  
 24 necessity. Any An original license issued pursuant to  
 25 16-4-104, 16-4-201, or 16-4-202 subsequent--to--April--30,

1 ~~1974,~~ or the transfer of location of a license shall may be  
 2 issued approved only upon if the department having-first has  
 3 determined,--upon-a-hearing--held--pursuant--to--the--Montana  
 4 Administrative--Procedure-Act, UPON A HEARING HELD PURSUANT  
 5 TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT, that the  
 6 issuance or transfer of such the license is justified by  
 7 public convenience and necessity. IF THERE IS NO OPPOSITION  
 8 TO THE APPLICATION FOR ISSUANCE OR TRANSFER OF THE LICENSE,  
 9 A HEARING IS NOT REQUIRED."

10 **Section 5.** Section 16-4-207, MCA, is amended to read:

11 "16-4-207. Notice of application -- investigation --  
 12 publication -- protest. (1) When an application has been  
 13 filed with the department for a license to sell alcoholic  
 14 beverages at retail or to transfer a retail license, the  
 15 department shall investigate the application as provided in  
 16 16-4-402. If after the investigation the department does not  
 17 discover a basis to deny the application, the department  
 18 shall promptly publish in a newspaper of general circulation  
 19 in the city, town, or county from which the application  
 20 comes a notice that the applicant has made application for a  
 21 retail license and that protests against the issuance of a  
 22 license to the applicant by a person who has extended credit  
 23 to the transferor or residents of the county from which the  
 24 application comes or adjoining Montana counties may be  
 25 mailed to a named administrator in the department of revenue

1 within 10 days after the final notice is published. Notice  
2 of application for a new license shall must be published  
3 once a week for 4 consecutive weeks. Notice of application  
4 for transfer of a license shall must be published once a  
5 week for 2 consecutive weeks. Notice may be substantially in  
6 the following form:

7 NOTICE OF APPLICATION FOR RETAIL

8 ALL-BEVERAGES LICENSE

9 Notice is hereby given that on the .... day of ....,  
10 19.., one (name of applicant) filed an application for a  
11 retail all-beverages license with the Montana department of  
12 revenue, to be used at (describe location of premises where  
13 beverages are to be sold), ~~and protests by a~~ A person who  
14 has extended credit to the transferor or and residents of  
15 ..... counties, ~~if any there be,~~ may protest against the  
16 issuance of such the license. Protests may be mailed to  
17 ....., department of revenue, Helena, Montana, on or before  
18 the .... day of ....., 19...

19 Dated ..... Signed .....

20 ADMINISTRATOR

21 (2) Each applicant shall, at the time of filing his  
22 application, pay to the department an amount sufficient to  
23 cover the costs of publishing the notice.

24 (3) If the administrator receives no written protests,  
25 the department may issue or transfer the license without

1 holding a public hearing. If written protests by a person  
2 who has extended credit to the transferor or residents of  
3 the county from which the application comes or adjoining  
4 Montana counties against the issuance or transfer of the  
5 license are received, the department shall hold a public  
6 hearing ~~at its office in Helena.~~"

7 **Section 6.** Section 16-4-402, MCA, is amended to read:

8 "16-4-402. Application -- investigation. (1) Prior to  
9 the issuance of any a license under this chapter, the  
10 applicant shall file with the department an application in  
11 writing, signed by the applicant and containing such  
12 information and statements relative to the applicant and the  
13 premises where the alcoholic beverage is to be sold as may  
14 be required by the department. The application shall must be  
15 verified by the affidavit of the person making the ~~same~~ it  
16 before a person authorized to administer oaths.

17 (2) (a) Upon receipt of a completed application for a  
18 license under this code, accompanied by the necessary  
19 license fee or letter of credit as provided in  
20 16-4-501(7)(f), the department shall within 30 days make a  
21 thorough investigation of all matters ~~pertaining thereto~~  
22 relating to the application. and The department shall  
23 determine whether:

24 (i) such the applicant is qualified to receive a  
25 license and;

1       (ii) his premises are suitable for the carrying on of  
2 the business; and

3       (iii) whether the requirements of this code and the  
4 rules promulgated by the department are met and complied  
5 with.

6       (b) This subsection (2) does not apply to a catering  
7 endorsement provided in 16-4-204(2) or a special permit  
8 provided in 16-4-301.

9       (3) Upon proof that any an applicant made a false  
10 statement in any part of the original application, in any  
11 part of an annual renewal application, or in any hearing  
12 conducted pursuant to an application, the application for  
13 the license may be denied, and if issued, the license may be  
14 revoked."

15       **Section 7.** Section 16-4-404, MCA, is amended to read:

16       "16-4-404. Protest period -- contents of license --  
17 posting -- privilege -- transfer. (1) No license may be  
18 issued until on or after the date set in the notice for  
19 hearing protests.

20       (2) Every license issued under this code shall set  
21 forth the name of the person to whom it is issued, the  
22 location, by street and number or other appropriate specific  
23 description of location if no street address exists, of the  
24 premises where the business is to be carried on under said  
25 the license, and such other information as the department

1       ~~shall--deem~~ considers necessary. If the licensee is a  
2 partnership or if more than one person has any interest in  
3 the business operated under the license, the names of all  
4 persons in the partnership or interested in the business  
5 must appear on the license. Every license must be posted in  
6 a conspicuous place on the premises wherein in which the  
7 business authorized under the license is conducted, and ~~such~~  
8 the license ~~shall~~ must be exhibited upon request to any  
9 authorized representative of the department or to any peace  
10 officer of the state of Montana.

11       (3) Any ~~A~~ license issued under the provisions of this  
12 code ~~shall--be--considered~~ is a privilege personal to the  
13 licensee named in the license and ~~shall--be--good~~ is valid  
14 until the expiration of the license unless sooner revoked or  
15 suspended.

16       (4) A license may be transferred to the executor or  
17 administrator of the estate of any a deceased licensee when  
18 such ~~the~~ estate consists in whole or in part of the business  
19 of selling alcoholic beverages under a license, ~~and in such~~  
20 ~~event--the~~ The license may descend or be disposed of with the  
21 licensed business ~~to--which--it--is--applicable~~ under  
22 appropriate probate proceedings.

23       (5) ~~(a) In the event of a~~ A licensee may apply to the  
24 department for a transfer of the license to different  
25 premises if:

1 (i) there has been major loss or damage to the licensed  
2 premises by unforeseen natural causes ~~or-in-case-of;~~

3 (ii) expiration-of the lease of the licensed premises  
4 has expired or;

5 (iii) in--the--event--of in case of rented licensed  
6 premises, there has been an eviction or increase of rent by  
7 the landlord ~~(in-case-of-rented-licensed-premises);~~ or

8 (iv) in-case-of the licensee has proposed removal of the  
9 license to premises that are as substantially suited for the  
10 retail alcoholic beverages business as the premises proposed  
11 to be vacated;~~the-licensee-may-apply-to-the-department--for~~  
12 ~~a-transfer-of-the-license-to-different-premises.~~

13 (b) The department may, in-its-discretion after notice  
14 and opportunity for protest, permit a transfer in such the  
15 cases specified in subsection (5)(a) if it appears to the  
16 department that such a transfer is required to do justice to  
17 the licensee applying for the transfer and is justified by  
18 public convenience and necessity. The department ~~shall-in-no~~  
19 ~~event--nor--for-any-cause-permit~~ may not allow a transfer to  
20 different premises where the sanitary, health, and service  
21 facilities are less satisfactory than such facilities which  
22 that exist or had existed at the premises from which the  
23 transfer is proposed to be made.

24 (6) Upon a bona fide sale of the business operated  
25 under any a license, the license may be transferred to a

1 qualified purchaser. No transfer of any a license as to a  
2 person or location ~~shall-be~~ is effective unless ~~and--until~~  
3 approved by the department~~--and--any.~~ A licensee or  
4 transferee or proposed transferee who operates or attempts  
5 to operate under any a supposedly transferred license prior  
6 to the approval of such the transfer by the department,  
7 endorsed upon the license in writing, ~~shall-be~~ is considered  
8 as to be operating without a license and the license  
9 affected may be revoked or suspended by the department. The  
10 department may, within its discretion, permit a qualified  
11 purchaser to operate the business to be transferred pending  
12 final approval~~--providing~~ if there has not been a change in  
13 location and the application for transfer has been filed  
14 with the department.

15 (7) Except as provided in subsections (2) through (6)  
16 and 16-4-204, no license ~~shall~~ may be transferred or sold  
17 ~~nor--shall--it--be~~ or used for any place of business not  
18 described in the license~~--provided--however--that--such.~~ A  
19 license may be subject to mortgage and other valid liens, in  
20 which event the name of the mortgagee, upon application to  
21 and approval of the department, must be endorsed on the  
22 license."

23 **Section 8.** Section 16-4-405, MCA, is amended to read:

24 "16-4-405. Denial of license. (1) The department may  
25 deny the issuance of a retail alcoholic beverages license if

1 it determines that the premises proposed for licensing are  
2 off regular police beats and cannot be properly policed by  
3 local authorities.

4 (2) No A retail license may not be issued by the  
5 department for any a premises situated within any a zone of  
6 such a city or town where the sale of alcoholic beverages is  
7 prohibited by ordinance, a certified copy of which has been  
8 filed with the department.

9 (3) ~~Nor--may--a~~ A license under this code may not be  
10 issued if the department finds from the evidence at the  
11 hearing held pursuant to 16-4-207(3) that:

12 (a) that the welfare of the people residing in the  
13 vicinity of the place premises for which such the license is  
14 desired will be adversely and seriously affected;

15 (b) there is not a public convenience and necessity  
16 justification;

17 (c) the applicant or the premises proposed for  
18 licensing fail to meet the eligibility or suitability  
19 criteria established by this code; or

20 (d) that the purposes of this code will not be carried  
21 out by the issuance of such the license."

22 **Section 9.** Section 16-4-406, MCA, is amended to read:

23 "16-4-406. Renewal -- suspension or revocation --  
24 penalty. (1) The department may upon its own motion and  
25 shall upon a written, verified complaint of any a person

1 investigate the action and operation of any a brewer,  
2 wholesaler, or retailer licensed under this code.

3 (2) If Subject to the opportunity for a hearing under  
4 the Montana Administrative Procedure Act, if the department,  
5 after investigation, shall--have has reasonable cause to  
6 believe that any--such a licensee has violated any-of-the  
7 provisions a provision of this code or any-rules a rule of  
8 the department, it may, in its discretion and in addition to  
9 the other penalties prescribed;

10 (a) reprimand a licensee;

11 (b) proceed to revoke the license of any-such the  
12 licensee or;

13 (c) it-may suspend the same license for a period of not  
14 to-exceed more than 3 months or;

15 (d) it-may refuse to grant a renewal of said the  
16 license upon-the after its expiration thereof; or

17 (e) impose a civil penalty not to exceed \$1,500;  
18 subject--to--the-opportunity-for-a-hearing-under-the-Montana  
19 Administrative-Procedure-Act.

20 (3) If the department, after investigation, has  
21 reasonable cause to believe that a licensee does not meet  
22 the eligibility criteria established by this code or rules  
23 of the department or that the premises are not suitable  
24 pursuant to the provisions of this code or rules of the  
25 department, it may, in its discretion, proceed to revoke the

1 license of the licensee or it may refuse to grant renewal of  
2 the license subject to the opportunity of the licensee to  
3 contest the action at a hearing under the Montana  
4 Administrative Procedure Act."

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

-End-



1 SENATE BILL NO. 206  
2 INTRODUCED BY HALLIGAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS  
5 RELATING TO THE ADMINISTRATION OF BEER AND WINE LICENSES,  
6 SPECIAL LICENSES, AND ALL-BEVERAGES LICENSES; LIMITING  
7 CONCURRENT APPLICATIONS FOR THE SAME PREMISES; PROHIBITING  
8 FOR 5 YEARS AN APPLICATION FOR A LICENSE IN THE VICINITY OF  
9 ONE THAT WAS DENIED ~~BECAUSE-OF-ADVERSE-AND-SERIOUS-EFFECTS~~  
10 ~~ON-THE-WELFARE-OF-THE-PEOPLE-RESIDING-IN--THE--VICINITY~~ FOR  
11 CERTAIN REASONS; ALLOWING THE DEPARTMENT OF REVENUE TO PLACE  
12 SPECIAL RESTRICTIONS ON LICENSES; REQUIRING A DETERMINATION  
13 OF PUBLIC CONVENIENCE AND NECESSITY BEFORE TRANSFER OF  
14 LOCATION OF A LICENSE; REQUIRING THE DEPARTMENT TO  
15 INVESTIGATE MATTERS RELATING TO LICENSE APPLICATIONS;  
16 ALLOWING THE DEPARTMENT TO DENY A LICENSE BASED UPON A FALSE  
17 STATEMENT IN AN ORIGINAL OR RENEWAL APPLICATION OR MADE AT A  
18 HEARING ON AN APPLICATION; ALLOWING THE DEPARTMENT TO REVOKE  
19 A LICENSE OR REFUSE RENEWAL OF A LICENSE IF THE LICENSEE NO  
20 LONGER MEETS LICENSING CRITERIA; AND AMENDING SECTIONS  
21 16-1-302, 16-4-203, 16-4-207, 16-4-402, 16-4-404, 16-4-405,  
22 AND 16-4-406, MCA."

23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 NEW SECTION. Section 1. Limits on concurrent

1 applications. (1) An application for the issuance of a new  
2 license or for the transfer of an existing license may not  
3 be considered by the department if a previous application  
4 for the same premises is pending. An application is  
5 considered pending if a final decision:

6 (a) has not been made by the department; or

7 (b) has been made by the department but:

8 (i) a petition for judicial review can still be filed  
9 or has been filed; or

10 (ii) an appeal to the Montana supreme court can still be  
11 filed or has been filed.

12 (2) This section does not prevent the department from  
13 considering more than one application for the same location  
14 pursuant to competition for a last available license.

15 NEW SECTION. Section 2. Denial of application ~~based on~~  
16 ~~effects on people residing in vicinity~~ ~~five-year~~ ~~---~~  
17 FIVE-YEAR moratorium. (1) If an application for the issuance  
18 of a new license or for the transfer of an existing license  
19 has been denied ~~because of a finding that the welfare of the~~  
20 ~~people residing in the vicinity of the premises proposed for~~  
21 ~~licensing would be adversely and seriously affected~~ FOR ANY  
22 REASON PROVIDED IN 16-4-405, the department may not consider  
23 an application or issue any retail license, special permit,  
24 or special license for those premises for 5 years UNLESS THE  
25 DEPARTMENT, USING THE CRITERIA DESCRIBED IN SUBSECTION (3),

1 DETERMINES THAT THE PROPOSED USE IS SIGNIFICANTLY  
 2 SUBSTANTIALLY DIFFERENT FROM THE USE THAT WAS REJECTED. The  
 3 prohibition period commences on the date of the final agency  
 4 decision or, if judicially reviewed, on the date of a final  
 5 ~~judicial decision that determines or affirms the adverse and~~  
 6 ~~serious effect on the welfare of the people residing in the~~  
 7 ~~vicinity of the premises proposed for licensing~~ THE JUDICIAL  
 8 DECISION IS FINAL.

9 (2) If an application is withdrawn after a hearing has  
 10 been held in which testimony is received regarding the  
 11 ~~adverse and serious effect on the welfare of the people~~  
 12 ~~residing in the vicinity of the premises proposed for~~  
 13 ~~licensing~~ ANY REASON FOR DENIAL PROVIDED IN 16-4-405, the  
 14 effect of the withdrawal is the same as if a final decision  
 15 had been made that ~~found that the welfare of the people~~  
 16 ~~residing in the vicinity of the premises proposed for~~  
 17 ~~licensing would be adversely and seriously affected~~ DENYING  
 18 THE APPLICATION FOR ANY REASON PROVIDED IN 16-4-405. The  
 19 5-year prohibition against considering an application or  
 20 issuing a license for that vicinity commences on the date of  
 21 the withdrawal.

22 (3) THE DEPARTMENT SHALL DETERMINE WHETHER A PROPOSED  
 23 USE IS SUBSTANTIALLY DIFFERENT BY CONSIDERING:

24 (A) THE CAPACITY OF THE PROPOSED USE;

25 (B) THE NATURE OF THE ESTABLISHMENT;

1 (C) THE PRESENCE AND CHARACTER OF ANY ENTERTAINMENT;

2 AND

3 (D) THE CHARACTERISTICS OF THE NEIGHBORHOOD.

4 **Section 3.** Section 16-1-302, MCA, is amended to read:

5 "16-1-302. Functions, powers, and duties of department.  
 6 The department ~~shall have~~ has the following functions,  
 7 duties, and powers:

8 (1) to buy, import, have in its possession for sale,  
 9 and sell liquors and table wine in the manner set forth in  
 10 this code;

11 (2) to control the possession, sale, and delivery of  
 12 liquors in accordance with the provisions of this code;

13 (3) to determine the municipalities ~~within which~~ where  
 14 state liquor stores ~~shall~~ are to be established throughout  
 15 the state and the situation of the stores within ~~every~~ such  
 16 municipality these municipalities;

17 (4) to lease, furnish, and equip any building or land  
 18 required for the operation of this code;

19 (5) to buy or lease all plants and equipment it may  
 20 consider necessary and useful in carrying into effect the  
 21 objects and purposes of this code;

22 (6) to employ store managers and also every officer,  
 23 investigator, clerk, or other employee required for the  
 24 operation or carrying out of this code and to dismiss ~~the~~  
 25 ~~same~~ them, fix their salaries or remuneration, ~~assign them~~

1 their title, define their respective duties and powers, and  
 2 to engage the service of experts and persons engaged in the  
 3 practice of a profession, if ~~deemed--expedient~~ considered  
 4 appropriate;

5 (7) to determine the nature, form, and capacity of all  
 6 packages to be used for containing liquor kept or sold under  
 7 this code;

8 (8) to grant and issue licenses under and in pursuance  
 9 to this code;

10 (9) to place special restrictions on the use of a  
 11 particular license, which must be endorsed upon the face of  
 12 the license, if the special restrictions are made pursuant  
 13 to a hearing held in connection with the issuance of the  
 14 license or if the special restrictions are agreed to by the  
 15 licensee;

16 ~~(9)(10)~~ without ~~in-any-way~~ limiting or being limited by  
 17 the foregoing, to do all such things ~~as--are--deemed~~  
 18 considered necessary or advisable by the department for the  
 19 purpose of carrying into effect the provisions of this code  
 20 or the rules made ~~thereunder~~ under the provisions of this  
 21 code."

22 **Section 4.** Section 16-4-203, MCA, is amended to read:

23 "16-4-203. Determination of public convenience and  
 24 necessity. Any An original license issued pursuant to  
 25 16-4-104, 16-4-201, or 16-4-202 subsequent--to--April--30,

1 ~~1974,~~ or the transfer of location of a license shall may be  
 2 issued approved only upon if the department having-first has  
 3 determined, upon-a-hearing--held--pursuant--to--the--Montana  
 4 Administrative--Procedure-Act, UPON A HEARING HELD PURSUANT  
 5 TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT, that the  
 6 issuance or transfer of such the license is justified by  
 7 public convenience and necessity. IF THERE IS NO OPPOSITION  
 8 TO THE APPLICATION FOR ISSUANCE OR TRANSFER OF THE LICENSE,  
 9 A HEARING IS NOT REQUIRED."

10 **Section 5.** Section 16-4-207, MCA, is amended to read:

11 "16-4-207. Notice of application -- investigation --  
 12 publication -- protest. (1) When an application has been  
 13 filed with the department for a license to sell alcoholic  
 14 beverages at retail or to transfer a retail license, the  
 15 department shall investigate the application as provided in  
 16 16-4-402. If after the investigation the department does not  
 17 discover a basis to deny the application, the department  
 18 shall promptly publish in a newspaper of general circulation  
 19 in the city, town, or county from which the application  
 20 comes a notice that the applicant has made application for a  
 21 retail license and that protests against the issuance of a  
 22 license to the applicant by a person who has extended credit  
 23 to the transferor or residents of the county from which the  
 24 application comes or adjoining Montana counties may be  
 25 mailed to a named administrator in the department of revenue

1 within 10 days after the final notice is published. Notice  
2 of application for a new license shall must be published  
3 once a week for 4 consecutive weeks. Notice of application  
4 for transfer of a license shall must be published once a  
5 week for 2 consecutive weeks. Notice may be substantially in  
6 the following form:

7 NOTICE OF APPLICATION FOR RETAIL

8 ALL-BEVERAGES LICENSE

9 Notice is hereby given that on the .... day of .....,  
10 19..., one (name of applicant) filed an application for a  
11 retail all-beverages license with the Montana department of  
12 revenue, to be used at (describe location of premises where  
13 beverages are to be sold). ~~and protests by a~~ A person who  
14 has extended credit to the transferor or and residents of  
15 ..... counties, ~~if any there be,~~ may protest against the  
16 issuance of such the license. Protests may be mailed to  
17 ....., department of revenue, Helena, Montana, on or before  
18 the .... day of ....., 19...

19 Dated ..... Signed .....

20 ADMINISTRATOR

21 (2) Each applicant shall, at the time of filing his  
22 application, pay to the department an amount sufficient to  
23 cover the costs of publishing the notice.

24 (3) If the administrator receives no written protests,  
25 the department may issue or transfer the license without

1 holding a public hearing. If written protests by a person  
2 who has extended credit to the transferor or residents of  
3 the county from which the application comes or adjoining  
4 Montana counties against the issuance or transfer of the  
5 license are received, the department shall hold a public  
6 hearing ~~at its office in Helena.~~

7 **Section 6.** Section 16-4-402, MCA, is amended to read:

8 "16-4-402. Application -- investigation. (1) Prior to  
9 the issuance of any a license under this chapter, the  
10 applicant shall file with the department an application in  
11 writing, signed by the applicant and containing such  
12 information and statements relative to the applicant and the  
13 premises where the alcoholic beverage is to be sold as may  
14 be required by the department. The application shall must be  
15 verified by the affidavit of the person making the ~~same~~ it  
16 before a person authorized to administer oaths.

17 (2) (a) Upon receipt of a completed application for a  
18 license under this code, accompanied by the necessary  
19 license fee or letter of credit as provided in  
20 16-4-501(7)(f), the department shall within 30 days make a  
21 thorough investigation of all matters ~~pertaining--thereto~~  
22 relating to the application. and The department shall  
23 determine whether:

24 (i) such the applicant is qualified to receive a  
25 license and;

1        (ii) his premises are suitable for the carrying on of  
2 the business; and

3        (iii) whether the requirements of this code and the  
4 rules promulgated by the department are met and complied  
5 with.

6        (b) This subsection (2) does not apply to a catering  
7 endorsement provided in 16-4-204(2) or a special permit  
8 provided in 16-4-301.

9        (3) Upon proof that any an applicant made a false  
10 statement in any part of the original application, in any  
11 part of an annual renewal application, or in any hearing  
12 conducted pursuant to an application, the application for  
13 the license may be denied, and if issued, the license may be  
14 revoked."

15        **Section 7.** Section 16-4-404, MCA, is amended to read:

16        "16-4-404. Protest period -- contents of license --  
17 posting -- privilege -- transfer. (1) No license may be  
18 issued until on or after the date set in the notice for  
19 hearing protests.

20        (2) Every license issued under this code shall set  
21 forth state the name of the person to whom it is issued, the  
22 location, by street and number or other appropriate specific  
23 description of location if no street address exists, of the  
24 premises where the business is to be carried on under said  
25 the license, and such other information as the department

1 ~~shall--deem~~ considers necessary. If the licensee is a  
2 partnership or if more than one person has any interest in  
3 the business operated under the license, the names of all  
4 persons in the partnership or interested in the business  
5 must appear on the license. Every license must be posted in  
6 a conspicuous place on the premises ~~wherein~~ in which the  
7 business authorized under the license is conducted, and such  
8 the license ~~shall~~ must be exhibited upon request to any  
9 authorized representative of the department or to any peace  
10 officer of the state of Montana.

11        (3) Any A license issued under the provisions of this  
12 code ~~shall--be--considered~~ is a privilege personal to the  
13 licensee named in the license and ~~shall--be--good~~ is valid  
14 until the expiration of the license unless sooner revoked or  
15 suspended.

16        (4) A license may be transferred to the executor or  
17 administrator of the estate of any a deceased licensee when  
18 such the estate consists in whole or in part of the business  
19 of selling alcoholic beverages under a license, ~~and in such~~  
20 ~~event-the~~ The license may descend or be disposed of with the  
21 licensed business ~~to--which--it--is--applicable~~ under  
22 appropriate probate proceedings.

23        (5) ~~(a) In-the-event-of-a~~ A licensee may apply to the  
24 department for a transfer of the license to different  
25 premises if:

1 (i) there has been major loss or damage to the licensed  
2 premises by unforeseen natural causes or-in-case-of;

3 (ii) expiration of the lease of the licensed premises  
4 has expired or;

5 (iii) in--the--event--of in case of rented licensed  
6 premises, there has been an eviction or increase of rent by  
7 the landlord (~~in-case-of-rented-licensed-premises~~); or

8 (iv) in-case-of the licensee has proposed removal of the  
9 license to premises that are as substantially suited for the  
10 retail alcoholic beverages business as the premises proposed  
11 to be vacated,--the-licensee-may-apply-to-the-department--for  
12 a-transfer-of-the-license-to-different-premises.

13 (b) The department may, in-its-discretion after notice  
14 and opportunity for protest, permit a transfer in such the  
15 cases specified in subsection (5)(a) if it appears to the  
16 department that such a transfer is required to do justice to  
17 the licensee applying for the transfer and is justified by  
18 public convenience and necessity. The department shall-in-no  
19 event--nor--for-any-cause-permit may not allow a transfer to  
20 different premises where the sanitary, health, and service  
21 facilities are less satisfactory than such facilities which  
22 that exist or had existed at the premises from which the  
23 transfer is proposed to be made.

24 (6) Upon a bona fide sale of the business operated  
25 under any a license, the license may be transferred to a

1 qualified purchaser. No transfer of any a license as to a  
2 person or location shall-be is effective unless and--until  
3 approved by the department,--and--any. A licensee or  
4 transferee or proposed transferee who operates or attempts  
5 to operate under any a supposedly transferred license prior  
6 to the approval of such the transfer by the department,  
7 endorsed upon the license in writing, shall-be is considered  
8 as to be operating without a license and the license  
9 affected may be revoked or suspended by the department. The  
10 department may, within its discretion, permit a qualified  
11 purchaser to operate the business to be transferred pending  
12 final approval,--providing if there has not been a change in  
13 location and the application for transfer has been filed  
14 with the department.

15 (7) Except as provided in subsections (2) through (6)  
16 and 16-4-204, no license shall may be transferred or sold  
17 nor--shall--it--be or used for any place of business not  
18 described in the license,--provided,--however,--that--such. A  
19 license may be subject to mortgage and other valid liens, in  
20 which event the name of the mortgagee, upon application to  
21 and approval of the department, must be endorsed on the  
22 license."

23 **Section 8.** Section 16-4-405, MCA, is amended to read:

24 "16-4-405. Denial of license. (1) The department may  
25 deny the issuance of a retail alcoholic beverages license if

1 it determines that the premises proposed for licensing are  
2 off regular police beats and cannot be properly policed by  
3 local authorities.

4 (2) No A retail license may not be issued by the  
5 department for any a premises situated within any a zone of  
6 such a city or town where the sale of alcoholic beverages is  
7 prohibited by ordinance, a certified copy of which has been  
8 filed with the department.

9 (3) ~~Not--may--a~~ A license under this code may not be  
10 issued if the department finds from the evidence at the  
11 hearing held pursuant to 16-4-207(3) that:

12 (a) that the welfare of the people residing in the  
13 vicinity of the place premises for which such the license is  
14 desired will be adversely and seriously affected;

15 (b) there is not a public convenience and necessity  
16 justification;

17 (c) the applicant or the premises proposed for  
18 licensing fail to meet the eligibility or suitability  
19 criteria established by this code; or

20 (d) that the purposes of this code will not be carried  
21 out by the issuance of such the license."

22 **Section 9.** Section 16-4-406, MCA, is amended to read:

23 "16-4-406. Renewal -- suspension or revocation --  
24 penalty. (1) The department may upon its own motion and  
25 shall upon a written, verified complaint of any a person

1 investigate the action and operation of any a brewer,  
2 wholesaler, or retailer licensed under this code.

3 (2) ~~ff~~ Subject to the opportunity for a hearing under  
4 the Montana Administrative Procedure Act, if the department,  
5 after investigation, ~~shall--have~~ has reasonable cause to  
6 believe that ~~any--such a~~ a licensee has violated ~~any-of-the~~  
7 provisions a provision of this code or ~~any-rules a~~ rule of  
8 the department, it may, in its discretion and in addition to  
9 the other penalties prescribed;

10 (a) reprimand a licensee;

11 (b) proceed to revoke the license of any-such the  
12 licensee or;

13 (c) it-may suspend the same license for a period of not  
14 to-exceed more than 3 months or;

15 (d) it-may refuse to grant a renewal of said the  
16 license upon-the after its expiration thereof; or

17 (e) impose a civil penalty not to exceed \$1,500,  
18 subject--to--the-opportunity-for-a-hearing-under-the-Montana  
19 Administrative-Procedure-Act.

20 (3) If the department, after investigation, has  
21 reasonable cause to believe that a licensee does not meet  
22 the eligibility criteria established by this code or rules  
23 of the department or that the premises are not suitable  
24 pursuant to the provisions of this code or rules of the  
25 department, it may, in its discretion, proceed to revoke the

1 license of the licensee or it may refuse to grant renewal of  
2 the license subject to the opportunity of the licensee to  
3 contest the action at a hearing under the Montana  
4 Administrative Procedure Act."

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

-End-



1 SENATE BILL NO. 206  
2 INTRODUCED BY HALLIGAN

3  
4 A BILL FOR AN ACT ENTITLED: "AN ACT REVISING THE LAWS  
5 RELATING TO THE ADMINISTRATION OF BEER AND WINE LICENSES,  
6 SPECIAL LICENSES, AND ALL-BEVERAGES LICENSES; LIMITING  
7 CONCURRENT APPLICATIONS FOR THE SAME PREMISES; PROHIBITING  
8 FOR 5 YEARS AN APPLICATION FOR A LICENSE IN THE VICINITY OF  
9 ONE THAT WAS DENIED BECAUSE-OF-ADVERSE-AND-SERIOUS-EFFECTS  
10 ON-THE-WELFARE-OF-THE-PEOPLE-RESIDING-IN--THE--VICINITY FOR  
11 CERTAIN REASONS; ALLOWING THE DEPARTMENT OF REVENUE TO PLACE  
12 SPECIAL RESTRICTIONS ON LICENSES; REQUIRING A DETERMINATION  
13 OF PUBLIC CONVENIENCE AND NECESSITY BEFORE TRANSFER OF  
14 LOCATION OF A LICENSE; REQUIRING THE DEPARTMENT TO  
15 INVESTIGATE MATTERS RELATING TO LICENSE APPLICATIONS;  
16 ALLOWING THE DEPARTMENT TO DENY A LICENSE BASED UPON A FALSE  
17 STATEMENT IN AN ORIGINAL OR RENEWAL APPLICATION OR MADE AT A  
18 HEARING ON AN APPLICATION; ALLOWING THE DEPARTMENT TO REVOKE  
19 A LICENSE OR REFUSE RENEWAL OF A LICENSE IF THE LICENSEE NO  
20 LONGER MEETS LICENSING CRITERIA; AND AMENDING SECTIONS  
21 16-1-302, 16-4-203, 16-4-207, 16-4-402, 16-4-404, 16-4-405,  
22 AND 16-4-406, MCA."

23  
24 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

25 NEW SECTION. **Section 1.** Limits on concurrent

1 applications. (1) An application for the issuance of a new  
2 license or for the transfer of an existing license may not  
3 be considered by the department if a previous application  
4 for the same premises is pending. An application is  
5 considered pending if a final decision:

6 (a) has not been made by the department; or

7 (b) has been made by the department but:

8 (i) a petition for judicial review can still be filed  
9 or has been filed; or

10 (ii) an appeal to the Montana supreme court can still be  
11 filed or has been filed.

12 (2) This section does not prevent the department from  
13 considering more than one application for the same location  
14 pursuant to competition for a last available license.

15 NEW SECTION. **Section 2.** Denial of application based on  
16 effects-on-people-residing-in-vicinity-----five-year --  
17 FIVE-YEAR moratorium. (1) If an application for the issuance  
18 of a new license or for the transfer of an existing license  
19 has been denied because-of-a-finding-that-the-welfare-of-the  
20 people-residing-in-the-vicinity-of-the-premises-proposed-for  
21 licensing-would-be-adversely-and-seriously-affected FOR ANY  
22 REASON PROVIDED IN 16-4-405, the department may not consider  
23 an application or issue any retail license, special permit,  
24 or special license for those premises for 5 years UNLESS THE  
25 DEPARTMENT, USING THE CRITERIA DESCRIBED IN SUBSECTION (3),

1 DETERMINES THAT THE PROPOSED USE IS SIGNIFICANTLY  
 2 SUBSTANTIALLY DIFFERENT FROM THE USE THAT WAS REJECTED. The  
 3 prohibition period commences on the date of the final agency  
 4 decision or, if judicially reviewed, on the date of a final  
 5 ~~judicial decision that determines or affirms the adverse and~~  
 6 ~~serious effect on the welfare of the people residing in the~~  
 7 ~~vicinity of the premises proposed for licensing~~ THE JUDICIAL  
 8 DECISION IS FINAL.

9 (2) If an application is withdrawn after a hearing has  
 10 been held in which testimony is received regarding the  
 11 ~~adverse and serious effect on the welfare of the people~~  
 12 ~~residing in the vicinity of the premises proposed for~~  
 13 ~~licensing~~ ANY REASON FOR DENIAL PROVIDED IN 16-4-405, the  
 14 effect of the withdrawal is the same as if a final decision  
 15 had been made ~~that found that the welfare of the people~~  
 16 ~~residing in the vicinity of the premises proposed for~~  
 17 ~~licensing would be adversely and seriously affected~~ DENYING  
 18 THE APPLICATION FOR ANY REASON PROVIDED IN 16-4-405. The  
 19 5-year prohibition against considering an application or  
 20 issuing a license for that vicinity commences on the date of  
 21 the withdrawal.

22 (3) THE DEPARTMENT SHALL DETERMINE WHETHER A PROPOSED  
 23 USE IS SUBSTANTIALLY DIFFERENT BY CONSIDERING:

- 24 (A) THE CAPACITY OF THE PROPOSED USE;
- 25 (B) THE NATURE OF THE ESTABLISHMENT;

1 (C) THE PRESENCE AND CHARACTER OF ANY ENTERTAINMENT;  
 2 AND  
 3 (D) THE CHARACTERISTICS OF THE NEIGHBORHOOD.

4 **Section 3.** Section 16-1-302, MCA, is amended to read:  
 5 "16-1-302. Functions, powers, and duties of department.  
 6 The department ~~shall have~~ has the following functions,  
 7 duties, and powers:

8 (1) to buy, import, have in its possession for sale,  
 9 and sell liquors and table wine in the manner set forth in  
 10 this code;

11 (2) to control the possession, sale, and delivery of  
 12 liquors in accordance with the provisions of this code;

13 (3) to determine the municipalities ~~within which~~ where  
 14 state liquor stores ~~shall be~~ are to be established throughout  
 15 the state and the situation of the stores within ~~every~~ such  
 16 municipality these municipalities;

17 (4) to lease, furnish, and equip any building or land  
 18 required for the operation of this code;

19 (5) to buy or lease all plants and equipment it may  
 20 consider necessary and useful in carrying into effect the  
 21 objects and purposes of this code;

22 (6) to employ store managers and also every officer,  
 23 investigator, clerk, or other employee required for the  
 24 operation or carrying out of this code and to dismiss ~~the~~  
 25 ~~same~~ them, fix their salaries or remuneration, assign them

1 their title, define their respective duties and powers, and  
2 to engage the service of experts and persons engaged in the  
3 practice of a profession, if ~~deemed--expedient~~ considered  
4 appropriate;

5 (7) to determine the nature, form, and capacity of all  
6 packages to be used for containing liquor kept or sold under  
7 this code;

8 (8) to grant and issue licenses under and in pursuance  
9 to this code;

10 (9) to place special restrictions on the use of a  
11 particular license, which must be endorsed upon the face of  
12 the license, if the special restrictions are made pursuant  
13 to a hearing held in connection with the issuance of the  
14 license or if the special restrictions are agreed to by the  
15 licensee;

16 ~~†9†~~(10) without ~~in-any-way~~ limiting or being limited by  
17 the foregoing, to do all such things ~~as--are--deemed~~  
18 considered necessary or advisable by the department for the  
19 purpose of carrying into effect the provisions of this code  
20 or the rules made ~~thereunder~~ under the provisions of this  
21 code."

22 **Section 4.** Section 16-4-203, MCA, is amended to read:

23 "16-4-203. Determination of public convenience and  
24 necessity. Any An original license issued pursuant to  
25 16-4-104, 16-4-201, or 16-4-202 subsequent--to--April--30,

1 ~~1974,~~ or the transfer of location of a license ~~shall~~ may be  
2 issued approved only upon if the department ~~having-first~~ has  
3 ~~determined, upon a hearing held pursuant to the Montana~~  
4 ~~Administrative Procedure Act,~~ UPON A HEARING HELD PURSUANT  
5 TO THE MONTANA ADMINISTRATIVE PROCEDURE ACT, that the  
6 issuance or transfer of ~~such the~~ license is justified by  
7 public convenience and necessity. IF THERE IS NO OPPOSITION  
8 TO THE APPLICATION FOR ISSUANCE OR TRANSFER OF THE LICENSE,  
9 A HEARING IS NOT REQUIRED."

10 **Section 5.** Section 16-4-207, MCA, is amended to read:

11 "16-4-207. Notice of application -- investigation --  
12 publication -- protest. (1) When an application has been  
13 filed with the department for a license to sell alcoholic  
14 beverages at retail or to transfer a retail license, the  
15 department shall investigate the application as provided in  
16 16-4-402. If after the investigation the department does not  
17 discover a basis to deny the application, the department  
18 shall promptly publish in a newspaper of general circulation  
19 in the city, town, or county from which the application  
20 comes a notice that the applicant has made application for a  
21 retail license and that protests against the issuance of a  
22 license to the applicant by a person who has extended credit  
23 to the transferor or residents of the county from which the  
24 application comes or adjoining Montana counties may be  
25 mailed to a named administrator in the department of revenue

1 within 10 days after the final notice is published. Notice  
2 of application for a new license shall must be published  
3 once a week for 4 consecutive weeks. Notice of application  
4 for transfer of a license shall must be published once a  
5 week for 2 consecutive weeks. Notice may be substantially in  
6 the following form:

7 NOTICE OF APPLICATION FOR RETAIL

8 ALL-BEVERAGES LICENSE

9 Notice is hereby given that on the .... day of .....,  
10 19... , one (name of applicant) filed an application for a  
11 retail all-beverages license with the Montana department of  
12 revenue, to be used at (describe location of premises where  
13 beverages are to be sold). ~~and-protests-by-a~~ A person who  
14 has extended credit to the transferor or and residents of  
15 ..... counties, ~~if--any--there--be,~~ may protest against the  
16 issuance of such the license. Protests may be mailed to  
17 ....., department of revenue, Helena, Montana, on or before  
18 the .... day of ....., 19...

19 Dated ..... Signed .....

20 ADMINISTRATOR

21 (2) Each applicant shall, at the time of filing his  
22 application, pay to the department an amount sufficient to  
23 cover the costs of publishing the notice.

24 (3) If the administrator receives no written protests,  
25 the department may issue or transfer the license without

1 holding a public hearing. If written protests by a person  
2 who has extended credit to the transferor or residents of  
3 the county from which the application comes or adjoining  
4 Montana counties against the issuance or transfer of the  
5 license are received, the department shall hold a public  
6 hearing ~~at-its-office-in-Helena.~~"

7 **Section 6.** Section 16-4-402, MCA, is amended to read:

8 "16-4-402. **Application -- investigation.** (1) Prior to  
9 the issuance of any a license under this chapter, the  
10 applicant shall file with the department an application in  
11 writing, signed by the applicant and containing such  
12 information and statements relative to the applicant and the  
13 premises where the alcoholic beverage is to be sold as may  
14 be required by the department. The application shall must be  
15 verified by the affidavit of the person making ~~the--same~~ it  
16 before a person authorized to administer oaths.

17 (2) (a) Upon receipt of a completed application for a  
18 license under this code, accompanied by the necessary  
19 license fee or letter of credit as provided in  
20 16-4-501(7)(f), the department shall within 30 days make a  
21 thorough investigation of all matters ~~pertaining--thereto~~  
22 relating to the application. and The department shall  
23 determine whether:

24 (i) such the applicant is qualified to receive a  
25 license and;

1        (ii) his premises are suitable for the carrying on of  
2 the business; and

3        (iii) whether the requirements of this code and the  
4 rules promulgated by the department are met and complied  
5 with.

6        (b) This subsection (2) does not apply to a catering  
7 endorsement provided in 16-4-204(2) or a special permit  
8 provided in 16-4-301.

9        (3) Upon proof that any an applicant made a false  
10 statement in any part of the original application, in any  
11 part of an annual renewal application, or in any hearing  
12 conducted pursuant to an application, the application for  
13 the license may be denied, and if issued, the license may be  
14 revoked."

15        **Section 7.** Section 16-4-404, MCA, is amended to read:

16        "16-4-404. Protest period -- contents of license --  
17 posting -- privilege -- transfer. (1) No license may be  
18 issued until on or after the date set in the notice for  
19 hearing protests.

20        (2) Every license issued under this code shall set  
21 forth state the name of the person to whom it is issued, the  
22 location, by street and number or other appropriate specific  
23 description of location if no street address exists, of the  
24 premises where the business is to be carried on under said  
25 the license, and such other information as the department

1        ~~shall--deem~~ considers necessary. If the licensee is a  
2 partnership or if more than one person has any interest in  
3 the business operated under the license, the names of all  
4 persons in the partnership or interested in the business  
5 must appear on the license. Every license must be posted in  
6 a conspicuous place on the premises ~~wherein~~ in which the  
7 business authorized under the license is conducted, and ~~such~~  
8 the license shall must be exhibited upon request to any  
9 authorized representative of the department or to any peace  
10 officer of the state of Montana.

11        (3) Any A license issued under the provisions of this  
12 code ~~shall--be--considered~~ is a privilege personal to the  
13 licensee named in the license and ~~shall--be--good~~ is valid  
14 until the expiration of the license unless sooner revoked or  
15 suspended.

16        (4) A license may be transferred to the executor or  
17 administrator of the estate of any a deceased licensee when  
18 such the estate consists in whole or in part of the business  
19 of selling alcoholic beverages under a license, ~~and in such~~  
20 ~~event-the~~ The license may descend or be disposed of with the  
21 licensed business ~~to--which--it--is--applicable~~ under  
22 appropriate probate proceedings.

23        (5) (a) In-the-event-of-a A licensee may apply to the  
24 department for a transfer of the license to different  
25 premises if:

1 (i) there has been major loss or damage to the licensed  
2 premises by unforeseen natural causes ~~or-in-case-of;~~

3 (ii) expiration of the lease of the licensed premises  
4 has expired or;

5 (iii) in--the--event--of in case of rented licensed  
6 premises, there has been an eviction or increase of rent by  
7 the landlord ~~{in-case-of-rented-licensed-premises};~~ or

8 (iv) in-case-of the licensee has proposed removal of the  
9 license to premises that are as substantially suited for the  
10 retail alcoholic beverages business as the premises proposed  
11 to be vacated;~~the-licensee-may-apply-to-the-department--for~~  
12 ~~a-transfer-of-the-license-to-different-premises.~~

13 (b) The department may, in-its-discretion after notice  
14 and opportunity for protest, permit a transfer in such the  
15 cases specified in subsection (5)(a) if it appears to the  
16 department that such a transfer is required to do justice to  
17 the licensee applying for the transfer and is justified by  
18 public convenience and necessity. The department ~~shall-in-no~~  
19 ~~event--nor--for-any-cause-permit~~ may not allow a transfer to  
20 different premises where the sanitary, health, and service  
21 facilities are less satisfactory than such facilities which  
22 that exist or had existed at the premises from which the  
23 transfer is proposed to be made.

24 (6) Upon a bona fide sale of the business operated  
25 under any a license, the license may be transferred to a

1 qualified purchaser. No transfer of any a license ~~as to a~~  
2 person or location ~~shall-be~~ is effective unless ~~and--until~~  
3 approved by the department,~~--and--any.~~ A licensee or  
4 transferee or proposed transferee who operates or attempts  
5 to operate under any a supposedly transferred license prior  
6 to the approval of such the transfer by the department,  
7 endorsed upon the license in writing, ~~shall-be~~ is considered  
8 as to be operating without a license and the license  
9 affected may be revoked or suspended by the department. The  
10 department may, within its discretion, permit a qualified  
11 purchaser to operate the business to be transferred pending  
12 final approval,~~providing~~ if there has not been a change in  
13 location and the application for transfer has been filed  
14 with the department.

15 (7) Except as provided in subsections (2) through (6)  
16 and 16-4-204, no license ~~shall~~ may be transferred or sold  
17 ~~nor--shall--it--be~~ or used for any place of business not  
18 described in the license,~~provided,however,--that--such.~~ A  
19 license may be subject to mortgage and other valid liens, in  
20 which event the name of the mortgagee, upon application to  
21 and approval of the department, must be endorsed on the  
22 license."

23 **Section 8.** Section 16-4-405, MCA, is amended to read:

24 "16-4-405. Denial of license. (1) The department may  
25 deny the issuance of a retail alcoholic beverages license if

1 it determines that the premises proposed for licensing are  
2 off regular police beats and cannot be properly policed by  
3 local authorities.

4 (2) No A retail license may not be issued by the  
5 department for any a premises situated within any a zone of  
6 such a city or town where the sale of alcoholic beverages is  
7 prohibited by ordinance, a certified copy of which has been  
8 filed with the department.

9 (3) ~~Nor--may--a~~ A license under this code may not be  
10 issued if the department finds from the evidence at the  
11 hearing held pursuant to 16-4-207(3) that:

12 (a) that the welfare of the people residing in the  
13 vicinity of the place premises for which such the license is  
14 desired will be adversely and seriously affected;

15 (b) there is not a public convenience and necessity  
16 justification;

17 (c) the applicant or the premises proposed for  
18 licensing fail to meet the eligibility or suitability  
19 criteria established by this code; or

20 (d) that the purposes of this code will not be carried  
21 out by the issuance of such the license."

22 **Section 9.** Section 16-4-406, MCA, is amended to read:

23 **"16-4-406. Renewal -- suspension or revocation --**  
24 **penalty. (1)** The department may upon its own motion and  
25 shall upon a written, verified complaint of any a person

1 investigate the action and operation of any a brewer,  
2 wholesaler, or retailer licensed under this code.

3 (2) If Subject to the opportunity for a hearing under  
4 the Montana Administrative Procedure Act, if the department,  
5 after investigation, ~~shall--have~~ has reasonable cause to  
6 believe that ~~any--such a~~ a licensee has violated ~~any-of-the~~  
7 provisions a provision of this code or ~~any-rules a~~ rule of  
8 the department, it may, in its discretion and in addition to  
9 the other penalties prescribed;

10 (a) reprimand a licensee;

11 (b) proceed to revoke the license of any-such the  
12 licensee or;

13 (c) it-may suspend the same license for a period of not  
14 to-exceed more than 3 months or;

15 (d) it-may refuse to grant a renewal of said the  
16 license upon-the after its expiration thereof; or

17 (e) impose a civil penalty not to exceed \$1,500;  
18 subject--to--the-opportunity-for-a-hearing-under-the-Montana  
19 Administrative-Procedure-Act.

20 (3) If the department, after investigation, has  
21 reasonable cause to believe that a licensee does not meet  
22 the eligibility criteria established by this code or rules  
23 of the department or that the premises are not suitable  
24 pursuant to the provisions of this code or rules of the  
25 department, it may, in its discretion, proceed to revoke the

1 license of the licensee or it may refuse to grant renewal of  
2 the license subject to the opportunity of the licensee to  
3 contest the action at a hearing under the Montana  
4 Administrative Procedure Act."

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

-End-