

SENATE BILL 458

Introduced by Thayer, et al.

3/08	Introduced
3/08	First Reading
3/08	Referred to Taxation
3/15	Fiscal Note Requested
3/21	Fiscal Note Received
3/25	Hearing
3/26	Fiscal Note Printed
3/27	Committee Report--Bill Not Passed
3/27	Adverse Committee Report Adopted

1 *Senate* BILL NO. *458*  
 2 INTRODUCED BY *Mr. [unclear]*  
 3 *BY REQUEST OF THE GOVERNOR*  
 4 *MERCER*  
 5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE  
 6 AUTHORITY OF THE DEPARTMENT OF REVENUE TO ESTABLISH AND  
 7 MAINTAIN STATE LIQUOR STORES AFTER DECEMBER 31, 1992;  
 8 PHASING OUT EXISTING STATE LIQUOR STORES BY DECEMBER 31,  
 9 1992; ELIMINATING THE AUTHORITY OF THE DEPARTMENT OF REVENUE  
 10 TO PURCHASE TABLE WINE; PROVIDING REDUCTION-IN-FORCE RIGHTS  
 11 FOR DISPLACED DEPARTMENT OF REVENUE EMPLOYEES; ESTABLISHING  
 12 A PACKAGE STORE LICENSE; PROVIDING FOR A PREFERENCE IN THE  
 13 ISSUANCE OF A PACKAGE STORE LICENSE; PROVIDING FOR A PACKAGE  
 14 STORE LICENSE FEE; ALLOWING FOR THE SALE OF LIQUOR BETWEEN  
 15 LICENSEES; PROVIDING FOR WHOLESALE LIQUOR MARKUP, PRICES,  
 16 AND TAXES; ELIMINATING THE PROHIBITION AGAINST RESELLING  
 17 LIQUOR AT A PRICE LESS THAN THE STATE LIQUOR STORE POSTED  
 18 PRICE WHILE MAINTAINING THE PROHIBITION AGAINST UNFAIR TRADE  
 19 PRACTICES; AMENDING SECTIONS 16-1-103, 16-1-106, 16-1-302,  
 20 16-1-304, 16-1-401, 16-1-402, 16-1-404, 16-2-101, 16-2-103,  
 21 16-2-108, 16-2-201, 16-2-203, 16-3-106, 16-3-307, 16-3-403,  
 22 16-4-203, 16-4-205, 16-4-401, 16-4-404, 16-4-501, AND  
 23 16-6-303, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."  
 24  
 25 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 NEW SECTION. Section 1. Package store license. (1) An  
 2 individual, partnership, or corporation that meets the  
 3 requirements of this code may be issued a package store  
 4 license. A package store licensee may purchase alcoholic  
 5 beverages from any person, including the state of Montana,  
 6 licensed or authorized to sell alcoholic beverages to an  
 7 all-beverages licensee within the provisions of this code. A  
 8 package store licensee may sell, at retail, all alcoholic  
 9 beverages purchased in accordance with this code for  
 10 off-premises consumption only.  
 11 (2) A licensed package store premises may not be  
 12 located in or contiguous to a food market unless the food  
 13 market is located in a community with a population of 3,000  
 14 or less, as established in the most recent federal decennial  
 15 census, and the food market had a state liquor store located  
 16 in or contiguous to it before January 1, 1991.  
 17 (3) The number of package store licenses in a community  
 18 may not exceed the number of state liquor stores that  
 19 existed in that community on [the effective date of this  
 20 act].  
 21 (4) A package store license may be issued only when all  
 22 of the state liquor stores in the community have been closed  
 23 in accordance with 16-2-101.  
 24 (5) A package store license is nontransferable and  
 25 nonassignable as to ownership, except as provided in

1 16-4-404. A package store license is transferable as to  
2 location within the community.

3 (6) A package store license is not subject to mortgage  
4 and other valid liens, including security interests.

5 (7) Notwithstanding the provisions of Title 23, chapter  
6 5, gaming machines or live card games may not be allowed on  
7 a licensed package store premises.

8 (8) The purchase and sale of alcoholic beverages  
9 pursuant to a package store license must be accomplished  
10 only by the package store licensee or an employee of the  
11 licensee.

12 (9) In awarding a package liquor store license as  
13 provided in subsection (4) that is available for the first  
14 time in a community pursuant to the closure of an  
15 employee-operated state liquor store, the following  
16 provisions apply:

17 (a) Absolute preference must be given to an  
18 employee-owned enterprise that applies for the license,  
19 claims the preference in writing, and has a stockholder who  
20 is an eligible state employee from a closed state liquor  
21 store or a state liquor store that is about to be closed in  
22 that community. This preference applies only to  
23 employee-owned enterprises that meet all other requirements  
24 of this code.

25 (b) If there are no employee-owned enterprise

1 applicants eligible for the preference in subsection (9)(a),  
2 absolute preference must be given to an eligible state  
3 employee from a closed state liquor store or a state liquor  
4 store that is about to be closed in that community who  
5 applies for the license and claims the preference in  
6 writing. This preference applies only to an eligible state  
7 employee who meets all other requirements of this code.

8 (c) If there are no employee-owned enterprise  
9 applicants who meet the requirements of subsection (9)(a) or  
10 eligible state employee applicants who meet the requirements  
11 of subsection (9)(b), absolute preference must be given to  
12 the landlord of the closed state liquor store or state  
13 liquor store that is about to be closed who applies for the  
14 license and claims the preference in writing. This  
15 preference applies only to the landlord who had a lease in  
16 effect with the department for the closed state liquor store  
17 or state liquor store that is about to be closed on [the  
18 effective date of this act]. This preference applies only to  
19 landlords of former liquor stores who meet all other  
20 requirements of this code.

21 (d) The preferences referred to in subsections (9)(b)  
22 and (9)(c) may be claimed by a partnership applicant if the  
23 majority of the partners are eligible for the preference.  
24 The preferences referred to in subsections (9)(b) and (9)(c)  
25 may be claimed by a corporate applicant if the majority of

1 stock of each class of stock is owned by stockholders who  
2 are eligible for the preference.

3 (e) The preference referred to in subsection (9)(c) may  
4 be claimed by an individual if the individual applicant was  
5 a partner in a partnership or stockholder in a corporation  
6 that is eligible for the preference.

7 (10) In awarding a package liquor store license that is  
8 available for the first time in a community pursuant to the  
9 closure of the agency-operated state liquor store, the  
10 following provisions apply:

11 (a) Absolute preference must be given to an  
12 employee-owned enterprise that applies for the license,  
13 claims the preference in writing, and has a stockholder who  
14 is the eligible agent from the closed state liquor store or  
15 state liquor store that is about to be closed. This  
16 preference applies only to employee-owned enterprises that  
17 meet all other requirements of this code.

18 (b) If there are no employee-owned enterprise  
19 applicants eligible for the preference referred to in  
20 subsection (10)(a), absolute preference must be given to the  
21 eligible agent from the closed state liquor store or state  
22 liquor store that is about to be closed who applies for the  
23 license and claims the preference in writing. This  
24 preference applies only to eligible agents who meet all  
25 other requirements of this code.

1 (c) The preference referred to in subsection (10)(b)  
2 may be claimed by a partnership applicant if the majority of  
3 the partners are eligible for the preference. The preference  
4 referred to in subsection (10)(b) may be claimed by a  
5 corporate applicant if the majority of each class of stock  
6 is owned by stockholders who are eligible for the  
7 preference.

8 (d) The preference referred to in subsection (10)(b)  
9 may be claimed by an individual if the individual applicant  
10 was a partner in a partnership or stockholder in a  
11 corporation that is eligible for the preference.

12 **Section 2.** Section 16-1-103, MCA, is amended to read:

13 **"16-1-103. Policy as to retail sale of liquor.** It is  
14 the policy of the state that it is necessary to further  
15 regulate and control the sale and distribution of alcoholic  
16 beverages within the state and to ensure the entire control  
17 of the sale of liquor in the department of revenue. It is  
18 advisable and necessary, in addition to the operation of the  
19 state liquor stores now provided by law, that the department  
20 be empowered and authorized to grant licenses to persons  
21 qualified under this code to sell liquor ~~purchased--by--them~~  
22 ~~at--state--liquor--stores--at--retail--posted-price~~ that was  
23 originally purchased through the state liquor warehouse in  
24 accordance with this code and under rules promulgated by the  
25 department and under its strict supervision and control and

1 to provide severe penalty for the sale of liquor except by  
2 and in state liquor stores and the state liquor warehouse  
3 and by persons licensed under this code. The restrictions,  
4 regulations, and provisions contained in this code are  
5 enacted by the legislature for the protection, health,  
6 welfare, and safety of the people of the state."

7 **Section 3.** Section 16-1-106, MCA, is amended to read:  
8 "16-1-106. **Definitions.** As used in this code, the  
9 following definitions apply:

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

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

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

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

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

22 (6) "Brewer" means a person who produces malt  
23 beverages.

24 (7) (a) "Community" means:

25 (i) in an incorporated city, the area within the

1 incorporated city boundaries;

2 (ii) in an unincorporated city, the area within a 5-mile  
3 radius of the local post office or, if there is no local  
4 post office, the area within a 5-mile radius of the local  
5 state liquor store in the location where it existed on [the  
6 effective date of this act];

7 (iii) in a consolidated city-county government, the area  
8 of the consolidated city-county not otherwise incorporated.

9 (b) The boundaries referred to in subsection (7)(a) are  
10 not necessarily the same boundaries used to determine the  
11 population of a community.

12 ~~(7)~~(8) "Department" means the department of revenue.

13 (9) "Eligible agent" means a liquor store agent, or an  
14 individual who was a partner or stockholder in the entity  
15 having an agency agreement, who had an agency agreement in  
16 effect with the department on [the effective date of this  
17 act]. However, if there was no agency agreement in effect in  
18 a community on [the effective date of this act], the former  
19 liquor store agent in the community who had the most recent  
20 agency agreement with the department during the 6 months  
21 immediately preceding [the effective date of this act] is  
22 considered an eligible agent.

23 (10) "Eligible state employee" means a state employee  
24 who worked an average of at least 20 hours a week in state  
25 liquor stores during the 6 months immediately preceding [the

1 effective date of this act] and was employed as a liquor  
 2 store manager, assistant manager, or clerk on [the effective  
 3 date of this act].

4 (11) "Employee-owned enterprise" has the meaning given  
 5 in 90-5-303.

6 (12) "Food market" means a business that sells fresh  
 7 dairy products, fresh meat, fresh produce, canned foods, or  
 8 packaged foods. The term does not include a business whose  
 9 food and beverage sales are limited to canned or bottled  
 10 beverages or snack foods.

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

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

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

18 (16) "Liquor" means an alcoholic beverage except  
 19 beer and table wine.

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

1 carbohydrates, or products prepared therefrom from these  
 2 substances and with or without other wholesome products  
 3 suitable for human food consumption.

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

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

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

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

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

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

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

25 (25) "Storage depot" means a building or structure

1 owned or operated by a brewer ~~at-any-point~~ in the state of  
 2 Montana off and away from the premises of a brewery, and  
 3 which ~~structure~~ is equipped with refrigeration or cooling  
 4 apparatus for the storage of beer and from which a brewer  
 5 may sell or distribute beer as permitted by this code.

6 ~~†2†~~(26) "Subwarehouse" means a building or structure  
 7 owned or operated by a licensed beer wholesaler or table  
 8 wine distributor, located at a site in Montana other than  
 9 the site of ~~such~~ the beer wholesaler's or table wine  
 10 distributor's warehouse or principal place of business, and  
 11 used for the receiving, storage, and distribution of beer or  
 12 table wine as permitted by this code.

13 ~~†22†~~(27) "Table wine" means wine ~~as-defined-below-which~~  
 14 that contains not more than 16% alcohol by volume.

15 ~~†28†~~(28) "Vendor base price" means the price the state pays  
 16 a company that manufactured, distilled, rectified, bottled,  
 17 or processed liquor sold to the state, f.o.b. the state  
 18 liquor warehouse.

19 ~~†23†~~(29) "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  
 23 by this code.

24 ~~†30†~~(30) "Wholesale markup" means the amount that is 32.92%  
 25 of the vendor base price.

1 (31) "Wholesale price" is the price, fixed and  
 2 determined by the department, paid by licensees for liquor  
 3 purchased from the state liquor warehouse. The wholesale  
 4 price is the sum of the vendor base price, wholesale markup,  
 5 average cost of freight to all licensees, and any taxes  
 6 provided in this code.

7 ~~†24†~~(32) "Wine" means an alcoholic beverage made from or  
 8 containing the normal alcoholic fermentation of the juice of  
 9 sound, ripe fruit or other agricultural products without  
 10 addition or abstraction, except as may occur in the usual  
 11 cellar treatment of clarifying and aging, and that contains  
 12 more than 0.5% but not more than 24% of alcohol by volume.  
 13 Wine may be ameliorated to correct natural deficiencies,  
 14 sweetened, and fortified in accordance with applicable  
 15 federal regulations and the customs and practices of the  
 16 industry. Other alcoholic beverages not defined as above but  
 17 made in the manner of wine and labeled and sold as wine in  
 18 accordance with federal regulations are also wine."

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

20 "16-1-302. **Functions, powers, and duties of department.**  
 21 The department shall have the following functions, duties,  
 22 and powers:

23 (1) to buy, import, ~~have--in-its-possession-for-sale~~  
 24 possess, and sell liquors ~~and-table-wine~~ in the manner set  
 25 forth in this code;

1 (2) to possess and sell table wine in the manner set  
2 forth in this code;

3 (3) to control the possession, sale, and delivery of  
4 liquors alcoholic beverages in accordance with the  
5 provisions of this code;

6 (4) to determine the municipalities within which  
7 state liquor stores shall be established throughout the  
8 state and the situation of the stores within every such  
9 municipality;

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

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

15 (7) to employ store managers and also every officer,  
16 investigator, clerk, or other employee required for the  
17 operation or carrying out of this code and to dismiss the  
18 same, fix their salaries or remuneration, assign them their  
19 title, define their respective duties and powers, and to  
20 engage the service of experts and persons engaged in the  
21 practice of a profession, if deemed considered expedient;

22 (8) to determine the nature, form, and capacity of  
23 all packages to be used for containing liquor kept or sold  
24 under this code;

25 (9) to grant and issue licenses under and in

1 pursuance to this code;

2 (10) without in any way limiting or being limited by  
3 the foregoing, to do all such things as are deemed  
4 considered necessary or advisable by the department for the  
5 purpose of carrying into effect the provisions of this code  
6 or the rules made-thereunder promulgated under this code."

7 **Section 5.** Section 16-1-304, MCA, is amended to read:

8 **"16-1-304. Prohibited acts within division.** (1) (a) No  
9 officer-or-employee Officers and employees of the liquor  
10 division, including those engaged in the sale of liquor  
11 alcoholic beverages at the various state liquor or--table  
12 wine stores, may not be directly or indirectly interested or  
13 engaged in any other business or undertaking dealing in  
14 liquor or table wine, whether as owner, part owner, partner,  
15 member of syndicate, shareholder, agent, or employee and  
16 whether for his own benefit or in a fiduciary capacity for  
17 some other person.

18 (b) This prohibition does not restrict a liquor  
19 division employee who is about to be terminated from state  
20 employment because of the closure of state liquor stores  
21 from being a stockholder in an employee-owned enterprise  
22 organized for the purpose of obtaining and operating package  
23 store licenses.

24 (2) No-member-or-employee-of-the--division--or--any An  
25 employee of the state may not solicit or receive directly or



1 indirectly any commission, remuneration, or gift whatsoever  
 2 from any person or corporation having sold, selling, or  
 3 offering liquor or table wine for sale to the ~~state or~~  
 4 division department pursuant to this code.

5 (3) ~~No A~~ person selling to, ~~or~~ offering for sale to, or  
 6 purchasing liquor or table wine from the ~~state--liquor~~  
 7 division department may not either directly or indirectly  
 8 offer to pay any commission, profit, or remuneration or make  
 9 any gift to any ~~member-or-employee-of-the-division,--to--any~~  
 10 employee of the state, or to anyone on behalf of ~~such-member~~  
 11 or an employee of the state.

12 (4) The prohibition contained in subsection (3) of this  
 13 section does not prohibit the division department from  
 14 receiving samples of liquor or table wine for the purpose of  
 15 chemical testing, subject to the following limitations:

16 (a) Each manufacturer, distiller, compounder,  
 17 rectifier, importer, or wholesale distributor or any other  
 18 person, firm, or corporation proposing to sell any liquor or  
 19 table wine to the ~~Montana-liquor-division~~ department shall  
 20 submit, without cost to the division department prior to the  
 21 original purchase, an analysis of each brand and may submit  
 22 a representative sample not exceeding 25 fluid ounces of  
 23 such merchandise to the division department.

24 (b) When a brand of liquor or table wine has been  
 25 accepted for testing by the division department, the

1 division department shall forward the sample, unopened and  
 2 in its entirety, to a qualified chemical laboratory for  
 3 analysis.

4 (c) The division department shall maintain written  
 5 records of all samples received. The records shall must show  
 6 the brand name, amount and from whom received, date  
 7 received, the laboratory or chemist to whom forwarded, the  
 8 ~~division's~~ department's action on the brand, and the person  
 9 to whom delivered or other final disposition of the sample.

10 (5) ~~No--liquor--wine,--or--other--alcoholic--beverage~~  
 11 Alcoholic beverages may not be withdrawn from the regular  
 12 state liquor warehouse inventory or from the state liquor  
 13 stores ~~of-the-Montana-liquor-division~~ for any purpose other  
 14 than sale at the prevailing state wholesale or retail prices  
 15 or for destroying damaged or defective merchandise. The  
 16 division department shall maintain a written record  
 17 including the type, brand, container size, number of bottles  
 18 or other units, signatures of witnesses, and method of  
 19 destruction or other disposition of damaged or defective  
 20 merchandise from the state liquor warehouse or state store  
 21 merchandise liquor stores."

22 **Section 6.** Section 16-1-401, MCA, is amended to read:

23 "16-1-401. Liquor excise tax. (1) The department is  
 24 hereby authorized and directed to charge, receive, and  
 25 collect at the time of the sale and delivery of any liquor

1 by a state liquor store as authorized under any provision of  
 2 the laws of the state of Montana an excise tax at the rate  
 3 of:

4 (a) 16% of the retail selling price on all liquor sold  
 5 and delivered in the state by a company that manufactured,  
 6 distilled, rectified, bottled, or processed, and sold more  
 7 than 200,000 proof gallons of liquor nationwide in the  
 8 calendar year preceding imposition of the tax pursuant to  
 9 this section;

10 (b) 13.8% of the retail selling price on all liquor  
 11 sold and delivered in the state by a company that  
 12 manufactured, distilled, rectified, bottled, or processed,  
 13 and sold not more than 200,000 proof gallons of liquor  
 14 nationwide in the calendar year preceding imposition of the  
 15 tax pursuant to this section.

16 (2) The department is authorized and directed to  
 17 charge, receive, and collect at the time of the sale and  
 18 delivery of any liquor by the state liquor warehouse as  
 19 authorized under the laws of the state of Montana an excise  
 20 tax at the rate of:

21 (a) 22.81% of the vendor base price on all liquor sold  
 22 and delivered in the state by a company that manufactured,  
 23 distilled, rectified, bottled, or processed and sold more  
 24 than 200,000 proof gallons of liquor nationwide in the  
 25 calendar year preceding imposition of the tax pursuant to

1 this section; or

2 (b) 19.67% of the vendor base price on all liquor sold  
 3 and delivered in the state by a company that manufactured,  
 4 distilled, rectified, bottled, or processed and sold 200,000  
 5 proof gallons or less of liquor nationwide in the calendar  
 6 year preceding imposition of the tax pursuant to this  
 7 section.

8 ~~(2)~~(3) The department shall retain the amount of ~~such~~  
 9 ~~the~~ excise tax received in a separate account and shall  
 10 deposit with the state treasurer, to the credit of the  
 11 general fund, ~~such the~~ sums collected and received not later  
 12 than the 10th day of each and every month."

13 **Section 7.** Section 16-1-402, MCA, is amended to read:

14 **"16-1-402. Payment of excise tax by carriers.** (1) Every  
 15 airline or railroad operating in the state of Montana and  
 16 selling liquor purchased outside this state for consumption  
 17 within this state shall pay to the department the excise  
 18 taxes and state markup which would be applicable to such  
 19 liquor if purchased from ~~the a~~ state liquor store or the  
 20 state liquor warehouse.

21 (2) The amount of ~~such~~ excise taxes and state markup  
 22 payable ~~shall~~ must be determined by multiplying the  
 23 following factors:

- 24 (a) the average liquor used per departure;  
 25 (b) the number of departures from Montana on which

1 liquor is served;

2 (c) the ratio of Montana revenue passenger miles to  
3 system revenue passenger miles; and

4 (d) the applicable excise tax and state markup rates.

5 (3) From ~~said the above~~ product, the carrier shall  
6 subtract the amount of excise taxes and state markup on  
7 purchases of liquor made within this state."

8 **Section 8.** Section 16-1-404, MCA, is amended to read:

9 "16-1-404. License tax on liquor -- amount --  
10 distribution of proceeds. (1) The department is hereby  
11 authorized and directed to charge, receive, and collect at  
12 the time of sale and delivery of any liquor by the state  
13 liquor store under any-provisions-of the laws of the state  
14 of Montana a license tax of:

15 (a) 10% of the retail selling price on all liquor sold  
16 and delivered in the state by a company that manufactured,  
17 distilled, rectified, bottled, or processed, and sold more  
18 than 200,000 proof gallons of liquor nationwide in the  
19 calendar year preceding imposition of the tax pursuant to  
20 this section;

21 (b) 8.6% of the retail selling price on all liquor sold  
22 and delivered in the state by a company that manufactured,  
23 distilled, rectified, bottled, or processed, and sold not  
24 more than 200,000 proof gallons of liquor nationwide in the  
25 calendar year preceding imposition of the tax pursuant to

1 this section.

2 (2) The department is authorized and directed to  
3 charge, receive, and collect at the time of sale and  
4 delivery of any liquor by the state liquor warehouse a  
5 license tax of:

6 (a) 14.25% of the vendor base price on all liquor sold  
7 and delivered in the state by a company that manufactured,  
8 distilled, rectified, bottled, or processed and sold more  
9 than 200,000 proof gallons of liquor nationwide in the  
10 calendar year preceding imposition of the tax pursuant to  
11 this section; or

12 (b) 12.25% of the vendor base price on all liquor sold  
13 and delivered in the state by a company that manufactured,  
14 distilled, rectified, bottled, or processed and sold 200,000  
15 proof gallons or less of liquor nationwide in the calendar  
16 year preceding imposition of the tax pursuant to this  
17 section.

18 ~~(2)~~(3) The license tax ~~shall~~ must be charged and  
19 collected on all liquor brought into the state and taxed by  
20 the department. The retail selling price ~~shall~~ must be  
21 computed by adding to the cost of ~~said the~~ liquor the state  
22 markup as designated by the department. The license tax  
23 ~~shall~~ must be figured in the same manner as the state excise  
24 tax and shall be in addition to ~~said the~~ state excise tax.  
25 The department shall retain in a separate account the amount

1 of the license tax ~~so~~ received. Thirty percent of these  
 2 revenues are statutorily appropriated, as provided in  
 3 17-7-502, to the department and ~~shall~~ must be allocated to  
 4 the counties according to the amount of liquor purchased in  
 5 each county to be distributed to the incorporated cities and  
 6 towns, as provided in subsection ~~{3}~~ {4}. Four and one-half  
 7 percent of these revenues are statutorily appropriated, as  
 8 provided in 17-7-502, and ~~shall~~ must be allocated to the  
 9 counties according to the amount of liquor purchased in each  
 10 county, and this money may be used for county purposes. The  
 11 remaining revenues ~~shall~~ must be deposited in the state  
 12 special revenue fund to the credit of the department of  
 13 institutions for the treatment, rehabilitation, and  
 14 prevention of alcoholism. Provided, however, in the case of  
 15 purchases of liquor by a retail liquor licensee for use in  
 16 his business, the department shall ~~make---such~~ adopt  
 17 regulations ~~as-are~~ necessary to apportion that proportion of  
 18 license tax ~~so~~ generated to the county where the licensed  
 19 establishment is located, for use as provided in 16-1-405.  
 20 That proportion of the license tax is statutorily  
 21 appropriated, as provided in 17-7-502, to the department,  
 22 which shall pay quarterly to each county treasurer the  
 23 proportion of the license tax due each county to be  
 24 allocated to the incorporated cities and towns of the  
 25 county.

1 ~~{3}~~{4} The license tax proceeds allocated to the county  
 2 under subsection ~~{2}~~ {3} for use by cities and towns ~~shall~~  
 3 must be distributed by the county treasurer to the  
 4 incorporated cities and towns within 30 days of receipt from  
 5 the department. The distribution of funds to the cities and  
 6 towns ~~shall~~ must be based on the proportion that the gross  
 7 sale of liquor in each city or town is to the gross sale of  
 8 liquor in all of the cities and towns of the county.

9 ~~{4}~~{5} The license tax proceeds that are allocated to  
 10 the department of institutions for the treatment,  
 11 rehabilitation, and prevention of alcoholism ~~shall~~ must be  
 12 credited quarterly to the department of institutions. The  
 13 legislature may appropriate a portion of the license tax  
 14 proceeds to support alcohol programs. The remainder ~~shall~~  
 15 must be distributed as provided in 53-24-206."

16 **Section 9.** Section 16-2-101, MCA, is amended to read:

17 "16-2-101. Establishment and closure of state liquor  
 18 stores -- kinds and prices of liquor and table wine --  
 19 operation of state liquor warehouse. (1) (a) The Through  
 20 December 31, 1992, the department shall may establish and  
 21 maintain one or more stores, to be known as "state liquor  
 22 stores", as the department finds feasible for the sale of  
 23 liquor and table wine in accordance with the provisions of  
 24 this code and the rules ~~made-thereunder~~ adopted under this  
 25 code. A state liquor store may be maintained after December

1 31, 1992, only for the purpose of closing the store and not  
 2 for the purpose of selling liquor or table wine. A state  
 3 liquor store maintained only for the purpose of closing is  
 4 considered closed for the purpose of this code.

5 (b) The department shall enter into an agency agreement  
 6 or employ the necessary help to operate said state liquor  
 7 stores and shall designate the duties to be performed by the  
 8 agent or employees.

9 (c) (i) A department employee who on [the effective  
 10 date of this act] was paid for an average of at least 20  
 11 hours a week in a capacity directly related to the operation  
 12 of state liquor stores during the 6 months immediately  
 13 preceding [the effective date of this act] is entitled to  
 14 reduction-in-force rights. Reduction-in-force rights last  
 15 from [the effective date of this act] through 1 year after  
 16 an employee terminates employment. Acceptance of a permanent  
 17 position in a state agency terminates reduction-in-force  
 18 rights.

19 (ii) Reduction-in-force rights include but are not  
 20 limited to a hiring preference for any state position for  
 21 which the employee is qualified and noncompetitive transfer  
 22 to another open department position for which the employee  
 23 is qualified at the same or a lower salary.

24 (c)(d) Once established, a A state liquor store shall  
 25 may not be closed, converted to an agency store, or sold by

1 the department unless:

2 (i) ~~the store is returning less than a 10% profit to~~  
 3 ~~the state; or~~

4 (ii) ~~the closure or sale is approved by the legislature;~~  
 5 (i) all the department employees who are eligible for  
 6 the reduction-in-force rights provided in subsection (1)(c)  
 7 no longer work at the store and the liquor store lease with  
 8 the department has expired;

9 (ii) the agency agreement for the state liquor store has  
 10 terminated; or

11 (iii) the closing occurs after December 31, 1992.

12 (e) The revenue oversight committee must be informed of  
 13 all plans for closure of a state liquor store.

14 (2) The department may from time to time fix the prices  
 15 at which the various classes, varieties, and brands of  
 16 liquor and table wine may be sold by the department. and  
 17 Retail prices shall must be the same at all state liquor  
 18 stores. Wholesale prices must be the same to all licensees.

19 (3) ~~(a) State liquor stores must be considered for~~  
 20 ~~closure, conversion, or sale only when a store lease~~  
 21 ~~expires. Prior to the expiration of a lease, the department~~  
 22 ~~may conduct a financial profitability analysis using the~~  
 23 ~~criteria in subsection (1)(c)(i). In computing profit levels~~  
 24 ~~of state-operated stores, the costs of the licensing bureau~~  
 25 ~~and the legal and enforcement division, other than~~

1 ~~inspection costs directly attributable to liquor stores, may~~  
 2 ~~not be included as expenses. The revenue oversight committee~~  
 3 ~~must be informed of all plans for conversion, sale, or~~  
 4 ~~closure of state liquor stores.~~

5 (b)(3) No An agency stores agency-operated state liquor  
 6 store shall may not be located in or adjacent to grocery  
 7 stores in communities with populations over 3,000. This  
 8 provision is applicable only to agency agreements entered  
 9 into after May 11, 1987.

10 (4) Agency Agency-operated state liquor stores must  
 11 receive commissions based on adjusted gross sales as  
 12 follows:

13 (a) a 10% commission for agencies in communities with  
 14 less than 3,000 in population;

15 (b) a commission established by competitive bidding for  
 16 agencies in communities with 3,000 or more in population.

17 (5) The department shall maintain sufficient inventory  
 18 of liquor in the state liquor warehouse in-order to meet a  
 19 monthly service level of at least 97%.

20 (6) Liquor or table wine ordered by a licensee from the  
 21 state liquor warehouse will be delivered f.o.b. the  
 22 licensee's premises. A licensee may pick up liquor or table  
 23 wine directly from the state liquor warehouse at the same  
 24 price as if delivered to the licensee's premises."

25 **Section 10.** Section 16-2-103, MCA, is amended to read:

1 "16-2-103. Duplicate invoices of sales required. (1)  
 2 (a) The state liquor store or the state liquor warehouse  
 3 shall must, upon each sale of liquor or table wine to any  
 4 licensee, issue a duplicate invoice of the liquor or table  
 5 wine purchased, as provided by the department, a copy of  
 6 which shall must be delivered to the licensee and one copy  
 7 retained at such the state liquor store or the state liquor  
 8 warehouse.

9 (b) A licensee shall, upon each sale of liquor to any  
 10 other licensee, issue a duplicate invoice of the liquor  
 11 purchased. One of the duplicate invoices must be delivered  
 12 to the purchasing licensee, and the other duplicate invoice  
 13 must be retained by the selling licensee.

14 (2) The invoice shall must show the date of purchase,  
 15 name of employee individual making the sale, the quantity of  
 16 each kind of liquor or table wine purchased, the price paid  
 17 therefor, the name of the licensee, and the number of the  
 18 license, with-such-other and any other information as-may-be  
 19 required by the department.

20 (3) The purchasing licensee shall keep and retain his  
 21 duplicate invoice of all purchases made by him from the  
 22 state liquor store, state liquor warehouse, or other  
 23 licensee, which--shall--at--all--times--be The licensee's  
 24 invoices are subject to inspection at all times by the duly  
 25 authorized officers, agents, and employees of the

1 department."

2 **Section 11.** Section 16-2-108, MCA, is amended to read:

3 "16-2-108. **Disposition of money received.** All money  
4 received from the sale of liquor and table wine at the state  
5 liquor stores or the state liquor warehouse must be  
6 deposited in the enterprise fund in the state treasury to  
7 the credit of the department. The department may purchase  
8 liquor ~~and table wine~~ from money deposited to its account in  
9 the enterprise fund. The department shall pay from its  
10 account in the enterprise fund its administrative expenses,  
11 subject to the limits imposed by legislative appropriation.  
12 ~~No~~ An obligation created or incurred by the department may  
13 not be a debt or claim against the state of Montana but must  
14 be payable by the department solely from funds derived from  
15 the operation of state liquor stores or the state liquor  
16 warehouse. The department shall pay into the state treasury  
17 to the credit of the enterprise fund the receipts from all  
18 taxes and license and permit fees collected by it. Taxes,  
19 license and permit fees, and the net proceeds from the  
20 operation of state liquor stores and the state liquor  
21 warehouse must be transferred to the general fund."

22 **Section 12.** Section 16-2-201, MCA, is amended to read:

23 "16-2-201. **Reduction for quantity sales of liquor.**  
24 Reduction of 5% of the retail price of liquor sold at the  
25 state liquor store or 5% of the wholesale price of liquor

1 sold from the state liquor warehouse ~~must~~ shall be made by  
2 the department for sales of liquor to any person purchasing  
3 liquor in unbroken case lots. No other reduction ~~shall~~ may  
4 be made by the department for quantity sales of liquor."

5 **Section 13.** Section 16-2-203, MCA, is amended to read:

6 "16-2-203. **Department sales** Sales to licensees. (1) The  
7 department may sell through its state liquor stores to  
8 licensees licensed under this code all kinds of liquor and  
9 table wine at the posted price ~~thereof-in~~ from the state  
10 liquor store in which the liquor and table wine are sold.  
11 All sales shall be upon a cash basis.

12 (2) Through December 31, 1992, the department may sell  
13 liquor and table wine through its state liquor warehouse to  
14 a licensee if the licensed premises is located more than 35  
15 miles from the nearest state liquor store or is located  
16 within 35 miles of a community in which at least one state  
17 liquor store has closed pursuant to 16-2-101. After December  
18 31, 1992, the department may sell liquor and table wine  
19 through its state liquor warehouse to all licensees  
20 qualified to purchase liquor or table wine.

21 (3) Through December 31, 1992, licensees may purchase  
22 liquor from another licensee if the purchasing licensee's  
23 premises is located more than 35 miles from the nearest  
24 state liquor store or is located within 35 miles of a  
25 community in which at least one state liquor store has

1 closed pursuant to 16-2-101. After December 31, 1992, any  
 2 licensee qualified to purchase liquor may purchase liquor  
 3 from another licensee qualified to sell liquor.

4 (4) All wholesale purchases must be paid in cash within  
 5 7 days from delivery. A check dated the day it was signed  
 6 that is honored upon presentation will be considered as  
 7 payment in cash."

8 **Section 14.** Section 16-3-106, MCA, is amended to read:

9 "16-3-106. Conveyance of liquors, table wines, and beer  
 10 alcoholic beverages -- opening alcoholic beverages during  
 11 transit forbidden. (1) It shall be is lawful for motor  
 12 carriers properly authoized under Title 69, chapter 12, to  
 13 carry or convey liquor or table wine alcoholic beverages to  
 14 and from any state liquor store, the state liquor warehouse,  
 15 and to and from any warehouse or depot established by the  
 16 department for the purposes of this code, and when permitted  
 17 to do so by this code and the rules made thereunder and in  
 18 accordance therewith, it shall be lawful for any common  
 19 carrier or other person to carry or convey liquor or table  
 20 wine sold by a vendor from a state store or beer, when  
 21 lawfully sold by a brewer, from the premises wherein such  
 22 beer was manufactured or from or other premises where the  
 23 beer alcoholic beverages may be lawfully kept and sold or to  
 24 any place to which the same alcoholic beverages may be  
 25 lawfully delivered under this code and the rules made

1 thereunder promulgated under this code.

2 (2) No common carrier or any other person shall open,  
 3 break, or allow to be opened or broken any package or vessel  
 4 containing an alcoholic beverage or drink, or use, or allow  
 5 to be drunk or used any alcoholic beverage therefrom while  
 6 being carried or conveyed."

7 **Section 15.** Section 16-3-307, MCA, is amended to read:

8 "16-3-307. Sale of liquor at less than posted price  
 9 unlawful alcoholic beverages in unfair manner. It shall be  
 10 is unlawful for any licensee under the provisions of this  
 11 code to resell any liquor purchased by such licensee from a  
 12 state liquor store or the state of Montana for a sum less  
 13 than the posted price established by the store and paid by  
 14 the licensee therefor to sell alcoholic beverages in a  
 15 manner inconsistent with the Montana Unfair Trade Practices  
 16 and Consumer Protection Act, Title 30, chapter 14."

17 **Section 16.** Section 16-3-403, MCA, is amended to read:

18 "16-3-403. To whom table wine distributor may sell. (1)  
 19 A table wine distributor may sell and deliver table wine  
 20 purchased or acquired by him to:  
 21 (a) another table wine distributor, retailer, or common  
 22 carrier which that holds a license issued by the department  
 23 of revenue;  
 24 (b) the department; and  
 25 (c) or a commission agent of the department.



1 (2) It ~~shall--be~~ is unlawful for any table wine  
2 distributor to sell, deliver, or give away any table wine to  
3 be consumed on ~~such~~ the distributor's premises or to give,  
4 sell, deliver, or distribute any table wine purchased or  
5 acquired by him to the public."

6 **Section 17.** Section 16-4-203, MCA, is amended to read:

7 "16-4-203. Determination of public convenience and  
8 necessity. (1) Any original license issued pursuant to  
9 16-4-201, ~~(section 1)~~, or 16-4-202 ~~subsequent to--April--30,~~  
10 ~~1974--~~ may be issued only upon the department having  
11 first determined, upon a hearing held pursuant to the  
12 Montana Administrative Procedure Act, that the issuance of  
13 ~~such~~ the license is justified by public convenience and  
14 necessity.

15 (2) When more than one qualified applicant applies for  
16 a license and no preference or equal preference is claimed,  
17 the applicant who will best serve public convenience and  
18 necessity must be granted the license."

19 **Section 18.** Section 16-4-205, MCA, is amended to read:

20 "16-4-205. Limit one all-beverages license to person --  
21 exceptions -- business in name of licensee. (1) (a) No A  
22 person ~~shall~~ may not be issued more than one all-beverages  
23 license in any year, with the exception of a secured party  
24 issued an additional all-beverages license as the result of  
25 a default. ~~Such-a~~ A secured party shall transfer ownership

1 of any additional all-beverages license within 180 days of  
2 issuance.

3 (b) An employee-owned enterprise may be issued more  
4 than one package store license as provided in this code.

5 (2) No A business may not be carried on under any  
6 license issued under this chapter except in the name of the  
7 licensee."

8 **Section 19.** Section 16-4-401, MCA, is amended to read:

9 "16-4-401. License as privilege -- criteria for  
10 decision on application. (1) A license under this code is a  
11 privilege which the state may grant to an applicant and is  
12 not a right to which any applicant is entitled.

13 (2) Except as provided in subsection ~~(6)~~ (7), in the  
14 case of a license that permits on-premises consumption, the  
15 department must find in every case in which it makes an  
16 order for the issuance of a new license or for the approval  
17 of the transfer of a license that:

18 (a) in the case of an individual applicant:

19 (i) the applicant will not possess an ownership  
20 interest in more than one establishment licensed under this  
21 chapter for on-premises consumption all-beverages sales or  
22 any establishment licensed under this chapter for  
23 off-premises consumption all-beverages sales;

24 (ii) the applicant or any member of his immediate family  
25 is without financing from or any affiliation to a

1 manufacturer, importer, bottler, or distributor of alcoholic  
 2 beverages;

3 (iii) the applicant is a resident of the state and is  
 4 qualified to vote in a state election;

5 (iv) the applicant's past record and present status as a  
 6 purveyor of alcoholic beverages and as a businessman and  
 7 citizen demonstrate that he is likely to operate his  
 8 establishment in compliance with all applicable laws of the  
 9 state and local governments; and

10 (v) the applicant is not under the age of 19 years; and

11 (b) in the case of a corporate applicant:

12 (i) the owners of at least 51% of the outstanding stock  
 13 meet the requirements of subsection (2)(a)(iii);

14 (ii) each owner of 10% or more of the outstanding stock  
 15 meets the requirements for an individual applicant listed in  
 16 subsection (2)(a) ~~of this section~~;

17 (iii) the corporation is authorized to do business in  
 18 Montana; and

19 (iv) in the case of a corporation not listed on a  
 20 national stock exchange, each owner of stock meets the  
 21 requirements of subsection (2)(a)(i); and

22 (c) in the case of any other business entity as  
 23 applicant:

24 (i) if the applicant consists of more than one  
 25 individual, all must meet the requirements of subsection

1 (2)(a); and

2 (ii) if the applicant consists of more than one  
 3 corporation, all must meet the requirements of subsection  
 4 (2)(b).

5 (3) In the case of a license that permits only  
 6 off-premises consumption of beer or table wine, the  
 7 department must find in every case in which it makes an  
 8 order for the issuance of a new license or for the approval  
 9 of the transfer of a license that:

10 (a) in the case of an individual applicant:

11 (i) the applicant will not possess an ownership  
 12 interest in more than one establishment licensed under this  
 13 chapter for on-premises consumption all-beverages sales;

14 (ii) the applicant or any member of his immediate family  
 15 is without financing from or any affiliation to a  
 16 manufacturer, importer, bottler, or distributor of alcoholic  
 17 beverages;

18 (iii) the applicant has not been convicted of a felony  
 19 or, if the applicant has been convicted of a felony, his  
 20 rights have been restored;

21 (iv) the applicant's past record and present status as a  
 22 purveyor of alcoholic beverages and as a businessman and  
 23 citizen demonstrate that he is likely to operate his  
 24 establishment in compliance with all applicable laws of the  
 25 state and local governments; and

1 (v) the applicant is not under the age of 19 years; and  
 2 (b) in the case of a corporate applicant:  
 3 (i) the owners of at least 51% of the outstanding stock  
 4 meet the requirements of subsection (3)(a)(iii);  
 5 (ii) each owner of 10% or more of the outstanding stock  
 6 meets the requirements for an individual listed in  
 7 subsection (3)(a) ~~of this section~~; and  
 8 (iii) the corporation is authorized to do business in  
 9 Montana; and  
 10 (c) in the case of any other business entity as  
 11 applicant:  
 12 (i) if the applicant consists of more than one  
 13 individual, all must meet the requirements of subsection  
 14 (3)(a); and  
 15 (ii) if the applicant consists of more than one  
 16 corporation, all must meet the requirements of subsection  
 17 (3)(b).  
 18 (4) In the case of a package store license, the  
 19 department shall find in every case for the issuance of a  
 20 license that:  
 21 (a) in the case of an individual applicant:  
 22 (i) the applicant will not possess an ownership  
 23 interest in an establishment licensed under this code for  
 24 on-premises consumption sales;  
 25 (ii) the applicant or any member of his immediate family

1 is not receiving financing from and does not have any  
 2 affiliation with a manufacturer, importer, bottler, or  
 3 distributor of alcoholic beverages;  
 4 (iii) the applicant has not been convicted of a felony  
 5 or if the applicant has been convicted of a felony, his  
 6 rights have been restored;  
 7 (iv) the applicant's past record and present status as a  
 8 purveyor of alcoholic beverages and as a businessman and  
 9 citizen demonstrate that he is likely to operate his  
 10 establishment in compliance with all applicable laws of the  
 11 state and local governments; and  
 12 (v) the applicant is not under 19 years of age;  
 13 (b) in the case of a corporate applicant other than an  
 14 employee-owned enterprise:  
 15 (i) the owners of at least 51% of the outstanding stock  
 16 meet the requirements of subsection (4)(a)(iii);  
 17 (ii) each owner of 10% or more of the outstanding stock  
 18 meets the requirements for an individual applicant listed in  
 19 subsection (4)(a); and  
 20 (iii) the corporation is authorized to do business in  
 21 Montana;  
 22 (c) in the case of an employee-owned enterprise  
 23 applicant:  
 24 (i) the employee-owned enterprise was incorporated  
 25 prior to January 1, 1993, and was organized for the purpose

1 of obtaining and operating package store licenses;  
 2 (ii) each owner of 10% or more of the outstanding stock  
 3 meets the requirements for an individual applicant listed in  
 4 subsection (4)(a);  
 5 (iii) if applying for a package store license that is  
 6 being issued for the first time pursuant to the closure of  
 7 the state liquor store, the owners of at least 51% of the  
 8 outstanding stock must be eligible state employees or  
 9 eligible agents; and  
 10 (iv) if applying for a package store license that has  
 11 been previously issued, the employee-owned enterprise must  
 12 hold at least one initial package store license as referred  
 13 to in subsection (4)(c)(iii);  
 14 (d) in the case of a corporation or an employee-owned  
 15 enterprise not listed on a national stock exchange, each  
 16 owner of stock must meet the requirements of subsection  
 17 (4)(a)(i); or  
 18 (e) in the case of any other business entity applicant:  
 19 (i) if the applicant consists of more than one  
 20 individual, all individuals meet the requirements for an  
 21 individual applicant listed in subsection (4)(a);  
 22 (ii) if the applicant consists of more than one  
 23 corporation, all corporations meet the requirements of  
 24 subsection (4)(b); and  
 25 (iii) if the applicant consists of more than one

1 employee-owned enterprise, all enterprises meet the  
 2 requirements of subsection (4)(c).  
 3 (4)(5) In the case of a license that permits the  
 4 manufacture, importing, or wholesaling of an alcoholic  
 5 beverage, the department must find in every case in which it  
 6 makes an order for the issuance of a new license or for the  
 7 approval of the transfer of a license that:  
 8 (a) in the case of an individual applicant:  
 9 (i) the applicant has no ownership interest in any  
 10 establishment licensed under this chapter for retail  
 11 alcoholic beverages sales;  
 12 (ii) the applicant has not been convicted of a felony  
 13 or, if the applicant has been convicted of a felony, his  
 14 rights have been restored;  
 15 (iii) the applicant's past record and present status as  
 16 a purveyor of alcoholic beverages and as a businessman and  
 17 citizen demonstrate that he is likely to operate his  
 18 establishment in compliance with all applicable laws of the  
 19 state and local governments;  
 20 (iv) the applicant is not under the age of 19 years; and  
 21 (v) an applicant for a wholesale license is neither a  
 22 manufacturer of an alcoholic beverage nor is owned or  
 23 controlled by a manufacturer of an alcoholic beverage; and  
 24 (b) in the case of a corporate applicant:  
 25 (i) the owners of at least 51% of the outstanding stock

1 meet the requirements of subsection ~~(4)(a)(ii)~~ (5)(a)(ii);

2 (ii) each owner of 10% or more of the outstanding stock  
3 meets the requirements for an individual listed in  
4 subsection ~~(4)(a)-of-this-section~~ (5)(a);

5 (iii) an applicant for a wholesale license is neither a  
6 manufacturer of an alcoholic beverage nor is owned or  
7 controlled by a manufacturer of an alcoholic beverage; and

8 (iv) the corporation is authorized to do business in  
9 Montana; and

10 (c) in the case of any other business entity as  
11 applicant:

12 (i) if the applicant consists of more than one  
13 individual, all must meet the requirements of subsection  
14 ~~(4)(a)~~ (5)(a); and

15 (ii) if the applicant consists of more than one  
16 corporation, all must meet the requirements of subsection  
17 ~~(4)(b)~~ (5)(b).

18 ~~(5)(6)~~ In the case of a corporate applicant, including  
19 an employee-owned enterprise, the requirements of  
20 subsections (2)(b), (3)(b), 4(b), 4(c), 4(d), and ~~(4)(b)~~  
21 (5)(b) apply separately to each class of stock.

22 ~~(6)(7)~~ The provisions of subsection (2) do not apply to  
23 an applicant for or holder of a license pursuant to  
24 16-4-302."

25 **Section 20.** Section 16-4-404, MCA, is amended to read:

1 "16-4-404. Protest period -- contents of license --  
2 posting -- privilege -- transfer. (1) No A license may not  
3 be issued until on or after the date set in the notice for  
4 hearing protests.

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

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

1 (4) A license, other than a package store license, may  
 2 be transferred to the executor or administrator of the  
 3 estate of any deceased licensee when such the estate  
 4 consists in whole or in part of the business of selling  
 5 alcoholic beverages under a license, ~~and in such event the~~  
 6 The license may descend or be disposed of with the business  
 7 to which it is applicable under appropriate probate  
 8 proceedings.

9 (5) In the event of a major loss or damage to licensed  
 10 premises by unforeseen natural causes, ~~or in case of~~  
 11 expiration of lease of the licensed premises, ~~or in the~~  
 12 ~~event of~~ eviction or increase of rent by the landlord (in  
 13 case of rented licensed premises), ~~or in case of~~ proposed  
 14 removal of license to premises as substantially suited for  
 15 the retail alcoholic beverages business as the premises  
 16 vacated, the licensee may apply to the department for a  
 17 transfer of the license to different premises. The  
 18 department may in its discretion permit a transfer in such  
 19 cases if it appears to the department that such a transfer  
 20 is required to do justice to the licensee applying for the  
 21 transfer. The department ~~shall in no event nor for any cause~~  
 22 may not permit a transfer to different premises where the  
 23 sanitary, health, and service facilities are less  
 24 satisfactory than such the facilities which exist or had  
 25 existed at the premises from which the transfer is proposed

1 to be made.

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

18 (7) Except as provided in subsections (2) through (6)  
 19 and 16-4-204, no a license ~~shall~~ may not be transferred or  
 20 sold nor ~~shall~~ may it be used for any place of business not  
 21 described in the license.

22 (8) (a) A package store license may be transferred upon  
 23 approval and consent of the department between qualified  
 24 business entities if persons other than the persons  
 25 composing the licensee are not part of or do not own stock

1 in the business entity to which the license is to be  
 2 transferred. However, a package store license may not be  
 3 transferred to or from an employee-owned enterprise.

4 (b) A corporation other than an employee-owned  
 5 enterprise that has been issued a package store license or a  
 6 corporate stockholder of a corporate licensee may not  
 7 transfer or sell any stock to an individual or person who is  
 8 not a current stockholder.

9 (9) provided, however, that such license A license  
 10 other than a package store license may be subject to  
 11 mortgage and other valid liens, in which event the name of  
 12 the mortgagee, upon application to and approval of the  
 13 department, must be endorsed on the license."

14 **Section 21.** Section 16-4-501, MCA, is amended to read:

15 "16-4-501. License and permit fees. (1) Each beer  
 16 licensee licensed to sell either beer or table wine only, or  
 17 both beer and table wine, under the provisions of this code,  
 18 shall pay an annual license fee as follows:

19 (a) each brewer and each beer importer, wherever  
 20 located, whose product is sold or offered for sale within  
 21 the state, \$500; for each storage depot, \$400;

22 (b) each beer wholesaler, \$400; each table wine  
 23 distributor, \$400; each subwarehouse, \$400;

24 (c) each beer retailer, \$200;

25 (d) for a license to sell beer at retail for

1 off-premises consumption only, the same as a retail beer  
 2 license; for a license to sell table wine at retail for  
 3 off-premises consumption only, either alone or in  
 4 conjunction with beer, \$200;

5 (e) any unit of a nationally chartered veterans'  
 6 organization, \$50.

7 (2) The permit fee under 16-4-301(1) is computed at the  
 8 rate of \$15 a day for each day beer and table wine are sold  
 9 at those events lasting 2 or more days but ~~in no case shall~~  
 10 ~~the fee may not~~ be less than \$30.

11 (3) The permit fee under 16-4-301(2) is \$10 for the  
 12 sale of beer and table wine only or \$20 for the sale of all  
 13 alcoholic beverages.

14 (4) Passenger carrier licenses ~~shall~~ may be issued upon  
 15 payment by the applicant of an annual license fee ~~in the sum~~  
 16 of \$300.

17 (5) The annual license fee for a license to sell wine  
 18 on the premises, when issued as an amendment to a beer-only  
 19 license pursuant to 16-4-105, is \$200.

20 (6) The annual fee for resort retail all-beverages  
 21 licenses within a given resort area ~~shall be~~ is \$2,000 for  
 22 each license.

23 (7) Each licensee licensed under the quotas of 16-4-201  
 24 shall pay an annual license fee as follows:

25 (a) except as provided in this section, for each

1 license outside of incorporated cities and incorporated  
 2 towns or in incorporated cities and incorporated towns with  
 3 a population of less than 2,000, \$250 for a unit of a  
 4 nationally chartered veterans' organization and \$400 for all  
 5 other licensees;

6 (b) except as provided in this section, for each  
 7 license in incorporated cities with a population of more  
 8 than 2,000 and less than 5,000 or within a distance of 5  
 9 miles thereof, measured in a straight line from the nearest  
 10 entrance of the premises to be licensed to the nearest  
 11 boundary of the city, \$350 for a unit of a nationally  
 12 chartered veterans' organization and \$500 for all other  
 13 licensees;

14 (c) except as provided in this section, for each  
 15 license in incorporated cities with a population of more  
 16 than 5,000 and less than 10,000 or within a distance of 5  
 17 miles thereof, measured in a straight line from the nearest  
 18 entrance of the premises to be licensed to the nearest  
 19 boundary of the city, \$500 for a unit of a nationally  
 20 chartered veterans' organization and \$650 for all other  
 21 licensees;

22 (d) for each license in incorporated cities with a  
 23 population of 10,000 or more or within a distance of 5 miles  
 24 thereof, measured in a straight line from the nearest  
 25 entrance of the premises to be licensed to the nearest

1 boundary of the city, \$650 for a unit of a nationally  
 2 chartered veterans' organization and \$800 for all other  
 3 licensees;

4 (e) the distance of 5 miles from the corporate limits  
 5 of any incorporated cities and incorporated towns is  
 6 measured in a straight line from the nearest entrance of the  
 7 premises to be licensed to the nearest boundary of the city  
 8 or town; and where the premises of the applicant to be  
 9 licensed are situated within 5 miles of the corporate  
 10 boundaries of two or more incorporated cities or  
 11 incorporated towns of different populations, the license fee  
 12 chargeable by the larger incorporated city or incorporated  
 13 town applies and must be paid by the applicant. When the  
 14 premises of the applicant to be licensed are situated within  
 15 an incorporated town or incorporated city and any portion of  
 16 the incorporated town or incorporated city is without a  
 17 5-mile limit, the license fee chargeable by the smaller  
 18 incorporated town or incorporated city applies and must be  
 19 paid by the applicant.

20 (f) an applicant for the issuance of an original  
 21 license to be located in areas described in subsection (d)  
 22 of this subsection shall provide an irrevocable letter of  
 23 credit from a financial institution that guarantees that  
 24 applicant's ability to pay a \$20,000 license fee. A  
 25 successful applicant shall pay a one-time original license



1 fee of \$20,000 for a license issued. The one-time license  
2 fee of \$20,000 may not apply to any transfer or renewal of a  
3 license issued prior to July 1, 1974. All licenses, however,  
4 are subject to the annual renewal fee.

5 (8) The fee for one all-beverage license to a public  
6 airport is \$800. This license is nontransferable.

7 (9) The annual fee for a special beer and table wine  
8 license for a nonprofit arts organization under 16-4-303 is  
9 \$250.

10 (10) Each package store licensee shall pay an annual  
11 license fee of \$400.

12 ~~(10)~~(11) The license fees provided in this section are  
13 exclusive of and in addition to other license fees  
14 chargeable in Montana for the sale of alcoholic beverages.

15 ~~(11)~~(12) In addition to other license fees, the  
16 department of revenue may require a licensee to pay a late  
17 fee of 33 1/3% of any license fee delinquent on July 1 of  
18 the renewal year, 66 2/3% of any license fee delinquent on  
19 August 1 of the renewal year, and 100% of any license fee  
20 delinquent on September 1 of the renewal year.

21 ~~(12)~~(13) All license and permit fees collected under  
22 this section must be deposited as provided in 16-2-108."

23 **Section 22.** Section 16-6-303, MCA, is amended to read:

24 "16-6-303. Sale of liquor not purchased--from-state  
25 store originally purchased through state liquor warehouse

1 forbidden -- penalty. It is unlawful for any a licensee to  
2 sell or keep for sale or have on his premises for any  
3 purpose ~~whatever--any~~ liquor ~~except-that-purchased-from-the~~  
4 state-liquor-store that was not originally purchased through  
5 the state liquor warehouse, and any licensee found in  
6 possession of or selling and keeping for sale any liquor  
7 ~~which was-not-purchased-from-a-state-liquor-store-shall~~ that  
8 was not originally purchased through the state liquor  
9 warehouse shall, upon conviction, be punished by a fine of  
10 not less than \$500 or more than \$1,500, by imprisonment for  
11 not less than 3 months or more than 1 year, or by both ~~such~~  
12 a fine and imprisonment. If the department is satisfied that  
13 any ~~such~~ liquor not originally purchased through the state  
14 liquor warehouse was knowingly sold or kept for sale within  
15 the licensed premises by the licensee or by his agents,  
16 servants, or employees, the department shall immediately  
17 revoke the license."

18 NEW SECTION. **Section 23.** Codification instruction.  
19 [Section 1] is intended to be codified as an integral part  
20 of Title 16, chapter 4, part 3, and the provisions of Title  
21 16, chapters 1 through 4 and 6, apply to [section 1].

22 NEW SECTION. **Section 24.** Severability. If a part of  
23 [this act] is invalid, all valid parts that are severable  
24 from the invalid part remain in effect. If a part of [this  
25 act] is invalid in one or more of its applications, the part

LC 0518/01

1 remains in effect in all valid applications that are  
2 severable from the invalid applications.

3 NEW SECTION. **Section 25.** Effective date. [This act] is  
4 effective on passage and approval.

-End-

STATE OF MONTANA - FISCAL NOTE

Form BD-15

In compliance with a written request, there is hereby submitted a Fiscal Note for SB0458, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

An act eliminating the authority of the Department of Revenue to establish and maintain state liquor stores after December 31, 1992; phasing out existing state liquor stores by December 31, 1992; eliminating the authority of the Department of Revenue to purchase table wine; providing reduction-in-force rights for displaced Department of Revenue employees; establishing a package store license; providing for a preference in the issuance of a package store license; providing for a package store license fee; allowing for the sale of liquor between licensees; providing for wholesale liquor markup, prices, and taxes; eliminating the prohibition against reselling liquor at a price less than the state liquor store posted price while maintaining the prohibition against unfair trade practices; and providing an immediate effective date.

ASSUMPTIONS:

1. The volume of liquor and table wine sold will be no different under the proposed legislation than under current law. The volume of liquor and table wine previously sold by state stores will shift to existing licensees and new package store licensees.
2. The state will no longer purchase table wine and will only sell table wine until the existing state-owned supply is exhausted.
3. Wholesale distribution of liquor direct to licensees will be phased in as state liquor stores are phased out, community by community.
4. Licensed retail package stores will replace all 125 state liquor stores, one-for-one, in the communities in which state liquor stores are currently located. Sixty-three package store licenses will be in place in FY92 and an additional 62 will be in place in the first half of FY93.
5. Every retail package store license will be issued for \$400 each fiscal year, plus a \$100 processing fee the first year.
6. Operating expenses in FY92 and FY93 will have the same relative distribution of total expenditures among responsibility centers and objects of expenditure as existed in FY90, except where expenses will be reduced due to the phased closure of state liquor stores or increased as will be the case for freight to stores and increased warehouse staff due to direct shipments to licensees. Seventy-five FTE will be associated with the store closings.
7. The wholesale price of liquor will be lower than the current retail price by the proportion that operating expenses are reduced due to closure of state liquor stores, partially offset by the proportion that freight to stores and warehouse staff are increased due to direct shipment to licensees, and by maintaining the FY90 level of profit. The wholesale price will be approximately 2.5% lower than the current retail price.
8. Licensees will receive a 5% case discount off the wholesale price for full case purchases. The purchase of repacked cases will be at the wholesale price.

(continued on next page)

  
ROD SUNDSTED, BUDGET DIRECTOR      3-26-91      DATE  
Office of Budget and Program Planning

  
GENE THAYER, PRIMARY SPONSOR      3/26/91      DATE

Fiscal Note for SB0458, as introduced

SB 458-1

ASSUMPTIONS-continued:

9. The wholesale markup as a percent of cost of goods F.O.B. state warehouse (32.92%) will yield the wholesale operating costs and the same level of profit as for FY90.
10. The wholesale excise tax as a percent of cost of goods F.O.B. state warehouse (22.81%), will yield the same annual amount of excise tax as does the current retail excise tax as a percent of the cost of goods F.O.B. state stores plus retail markup (16%).
11. The wholesale license tax as a percent of cost of goods F.O.B. state warehouse (14.25%), will yield the same annual amount of license tax as does the current retail license tax as a percent of the cost of goods F.O.B. state stores plus retail markup (10%).
12. The entire cost value of inventory maintained in a state liquor store will be transferred to the general fund within 6 months after a store is closed.
13. Liquor profit transfers are deposited in the state general fund.
14. Liquor excise tax receipts are deposited in the general fund.
15. Liquor license taxes are distributed 34.5% to local governments, and 65.5% to the Department of Institutions.
16. Wine taxes are distributed 59.26% to the general fund, 9.85% to local governments and 30.89% to the Department of Institutions.
17. Package store license fees would be deposited in the general fund.

FISCAL IMPACT:

see next page

SB 458-1

**FISCAL IMPACT:**

	FY92			FY93			FY94		
	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference	Current Law	Proposed Law	Difference
<b>EXPENDITURES</b>									
<b>Liquor Enterprise:</b>									
Personal Services	2,742,000	2,372,000	(370,000)	2,747,000	1,449,000	(1,298,000)	2,747,000	1,263,000	(1,484,000)
Operating Expenses	3,387,000	2,915,000	(472,000)	3,393,000	1,558,000	(1,835,000)	3,393,000	1,262,000	(2,131,000)
Cost of Goods Sold	24,935,000	25,080,000	145,000	24,993,000	25,539,000	546,000	24,993,000	25,616,000	623,000
Interfund Transfers	<u>14,479,000</u>	<u>15,843,000</u>	<u>1,364,000</u>	<u>14,468,000</u>	<u>17,192,000</u>	<u>2,724,000</u>	<u>14,468,000</u>	<u>14,518,000</u>	<u>50,000</u>
Total	45,543,000	46,210,000	667,000	45,601,000	45,738,000	137,000	45,601,000	42,659,000	(2,942,000)
<b>Funding:</b>									
Liquor Fund (06)	45,543,000	46,210,000	667,000	45,601,000	45,738,000	137,000	45,601,000	42,659,000	(2,942,000)
<b>Alcohol Tax Distributions:</b>									
Dept. of Institutions	2,680,000	2,680,000	0	2,673,000	2,673,000	0	2,673,000	2,673,000	0
Local Governments	<u>1,326,000</u>	<u>1,326,000</u>	<u>0</u>	<u>1,326,000</u>	<u>1,326,000</u>	<u>0</u>	<u>1,326,000</u>	<u>1,326,000</u>	<u>0</u>
Total	4,006,000	4,006,000	0	3,999,000	3,999,000	0	3,999,000	3,999,000	0
<b>Funding:</b>									
State Special Rev. (02)	4,006,000	4,006,000	0	3,999,000	3,999,000	0	3,999,000	3,999,000	0
<b>REVENUES:</b>									
<b>Liquor Fund (06):</b>									
Liquor Excise Tax	5,548,000	5,548,000	0	5,571,000	5,571,000	0	5,571,000	5,571,000	0
Liquor License Tax	3,468,000	3,468,000	0	3,482,000	3,482,000	0	3,482,000	3,482,000	0
Wine Tax	1,323,000	1,323,000	0	1,272,000	1,272,000	0	1,272,000	1,272,000	0
Package Store License Fees	0	32,000	32,000	0	56,000	56,000	0	50,000	50,000
Inventory Asset Transfer	0	1,332,000	1,332,000	0	2,668,000	2,668,000	0	0	0
Liquor Sales (net of taxes & discounts)	35,171,000	34,474,000	(697,000)	35,241,000	32,654,000	(2,587,000)	35,241,000	32,249,000	(2,992,000)
Other Income	<u>33,000</u>	<u>33,000</u>	<u>0</u>	<u>35,000</u>	<u>35,000</u>	<u>0</u>	<u>35,000</u>	<u>35,000</u>	<u>0</u>
Total	45,543,000	46,210,000	667,000	45,601,000	45,738,000	137,000	45,601,000	42,659,000	(2,942,000)
<b>General Fund (01):</b>	10,473,000	11,837,000	1,364,000	10,469,000	13,193,000	2,724,000	10,469,000	10,519,000	50,000
<b>State Special Rev. (02)</b>	4,006,000	4,006,000	0	3,999,000	3,999,000	0	3,999,000	3,999,000	0
<b>NET IMPACT</b>									
General Fund (01)	10,473,000	11,837,000	1,364,000	10,469,000	13,193,000	2,724,000	10,469,000	10,519,000	50,000
State Special Rev. (02)	0	0	0	0	0	0	0	0	0
Liquor Fund (06)	0	0	0	0	0	0	0	0	0
Total	10,473,000	11,837,000	1,364,000	10,469,000	13,193,000	2,724,000	10,469,000	10,519,000	50,000

**LONG RANGE EFFECTS OF PROPOSED LEGISLATION:**

The FY94 columns in the above table reflect the fiscal impact of SB0458 when fully implemented.

*SB 458 - 1*