

SENATE BILL 3

Introduced by B. Brown

1/07	Introduced
1/08	Referred to Taxation
1/08	Fiscal Note Requested
1/08	Fiscal Note Received
1/08	First Reading
1/09	Fiscal Note Printed
1/10	Hearing
1/14	Committee Report--Bill Not Passed
1/14	Adverse Committee Report Adopted

1 SENATE BILL NO. 3
2 INTRODUCED BY Bob Brown
3 BY REQUEST OF THE DEPARTMENT OF REVENUE
4
5 A BILL FOR AN ACT ENTITLED: "AN ACT ELIMINATING THE
6 AUTHORITY OF THE DEPARTMENT OF REVENUE TO ESTABLISH AND
7 MAINTAIN STATE EMPLOYEE-OPERATED LIQUOR STORES AFTER
8 DECEMBER 31, 1992; PHASING OUT EXISTING STATE
9 EMPLOYEE-OPERATED LIQUOR STORES PRIOR TO DECEMBER 31, 1992;
10 EXEMPTING THE PHASEOUT OF STATE EMPLOYEE-OPERATED LIQUOR
11 STORES FROM THE PRIVATIZATION PLAN REVIEW REQUIREMENTS OF
12 TITLE 2, CHAPTER 8, PART 3, MCA; PROVIDING AUTHORITY FOR
13 STATE AGENCY LIQUOR STORES TO APPLY FOR AND RECEIVE RETAIL
14 OFF-PREMISES CONSUMPTION BEER AND TABLE WINE LICENSES;
15 PROVIDING REDUCTION-IN-FORCE RIGHTS FOR DISPLACED LIQUOR
16 STORE EMPLOYEES; PROVIDING A METHOD OF STATE FINANCING FOR
17 AN EMPLOYEE-OWNED ENTERPRISE; AMENDING SECTIONS 2-17-101,
18 16-1-103, 16-1-105, 16-1-106, 16-1-202, 16-1-301, 16-1-302,
19 16-1-303, 16-1-304, 16-1-402, 16-2-101, 16-2-103, 16-2-104,
20 16-2-107, 16-2-108, 16-2-201, 16-2-203, 16-2-301, 16-2-302,
21 16-2-303, 16-3-103, 16-3-106, 16-3-307, 16-3-401, 16-3-402,
22 16-4-105, 16-4-401, 16-6-107, 16-6-303, 17-6-305, 17-6-308,
23 17-6-310, AND 17-6-318, MCA; AND PROVIDING AN IMMEDIATE
24 EFFECTIVE DATE."
25

1 WHEREAS, because of revenue shortfalls, the Board of
2 Regents has considered increasing tuition at the units of
3 the Montana University System for the 1992 fiscal year.
4 THEREFORE, it is the intent of the Legislature of the
5 State of Montana that the money received during the 1993
6 biennium as a result of this bill be used to avoid any
7 tuition increase by the Board of Regents in the 1992 fiscal
8 year.
9
10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
11 Section 1. Section 2-17-101, MCA, is amended to read:
12 *2-17-101. Allocation of space. (1) The department of
13 administration shall determine the space required by state
14 agencies other than the university system and shall allocate
15 space in buildings owned or leased by the state, based on
16 each agency's need. To efficiently and effectively allocate
17 space, the department periodically shall identify the
18 amount, location, and nature of space used by each agency.
19 (2) An agency requiring additional space shall notify
20 the department. The department, in consultation with the
21 agency, shall determine the amount and nature of the space
22 needed and locate space within a building owned or leased by
23 the state to meet the agency's requirements. If no space is
24 available in a building owned or leased by the state, the
25 department shall locate space to be leased in an appropriate

1 building or recommend alternatives to leasing, such as
 2 remodeling or exchanging space with another agency. A state
 3 agency may not lease, rent, or purchase property for
 4 quarters without prior approval of the department.

5 (3) (a) The location of the chambers for the house of
 6 representatives shall be determined in the sole discretion
 7 of the house of representatives. The location of the
 8 chambers of the senate shall be determined in the sole
 9 discretion of the senate.

10 (b) The department of administration, with the advice
 11 of the capitol building and planning committee, shall
 12 allocate other space for the use of the legislature,
 13 including but not limited to space for committee rooms and
 14 legislative offices.

15 (4) For state agencies located in a city other than
 16 Helena, the department of administration shall consolidate
 17 the offices of these agencies in a single, central location
 18 within the city whenever such consolidation would result in
 19 a cost savings to the state while permitting sufficient
 20 space and facilities for the agencies. The department may
 21 purchase, lease, or acquire, by exchange or otherwise, land
 22 and buildings in the city to achieve consolidation. State
 23 ~~retail~~ employee-operated liquor stores, state agency liquor
 24 stores, ~~liquor-retail--agencies,~~ and offices of the law
 25 enforcement services division and motor vehicle division of

1 the department of justice are exempted from consolidation."

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

3 "16-1-103. Policy as to retail sale of liquor. It is
 4 the policy of the state that it is necessary to further
 5 regulate and control the sale and distribution of alcoholic
 6 beverages within the state and to ensure the entire control
 7 of the sale of liquor in the department of revenue. It is
 8 advisable and necessary, in addition to ~~the-operation-of-the~~
 9 providing for state employee-operated liquor stores and
 10 state agency liquor stores ~~now-provided--by--law,~~ that the
 11 department be empowered and authorized to grant licenses to
 12 persons qualified under this code to sell liquor purchased
 13 by them at state employee-operated liquor stores or state
 14 agency liquor stores at retail posted price in accordance
 15 with this code and under rules promulgated by the department
 16 and under its strict supervision and control and to provide
 17 severe penalty for the sale of liquor except by and in state
 18 employee-operated liquor stores or state agency liquor
 19 stores and by persons licensed under this code. The
 20 restrictions, regulations, and provisions contained in this
 21 code are enacted by the legislature for the protection,
 22 health, welfare, and safety of the people of the state."

23 **Section 3.** Section 16-1-105, MCA, is amended to read:

24 "16-1-105. Divisions of code. This code is divided into
 25 six chapters. Chapter 1 relates to the authority of the

1 department of revenue to administer this code and the powers
 2 and functions of the department. Chapter 2 relates to the
 3 establishment of state agency liquor stores and the keeping
 4 and selling of liquors. Chapter 3 relates to the control of
 5 liquor, wine, and beer. Chapter 4 relates to license
 6 administration. Chapter 5, now repealed, related to
 7 identification cards. Chapter 6 relates to enforcement."

8 **Section 4.** Section 16-1-106, MCA, is amended to read:

9 "16-1-106. Definitions. As used in this code, the
 10 following definitions apply:

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

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

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

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

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

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

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

1 (i) in an incorporated city or town, the area within
 2 the incorporated city or town boundaries;

3 (ii) in an unincorporated area, the area within a 5-mile
 4 radius of the local post office or, if no local post office
 5 exists, the area within a 5-mile radius of the location of
 6 the local state employee-operated liquor store as it existed
 7 on [the effective date of this act]; and

8 (iii) in a consolidated local government, the area of
 9 the consolidated local government not incorporated.

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

13 ~~(7)~~(8) "Department" means the department of revenue.

14 (9) "Eligible state employee" means a state employee
 15 who worked an average of at least 20 hours per week in a
 16 state employee-operated liquor store during the 6 months
 17 immediately preceding [the effective date of this act] and
 18 who was employed as a liquor store manager, assistant
 19 manager, or clerk on [the effective date of this act].

20 (10) "Employee-owned enterprise" has the meaning given
 21 in 17-6-302.

22 (11) (a) "Grocery store" means a business that sells
 23 fresh dairy products, fresh meat, fresh produce, canned
 24 foods, or packaged foods.

25 (b) The term does not include a business with food and

1 beverage sales that are limited to canned or bottled
2 beverages, snack foods, or prepared foods.

3 ~~†8†~~(12) "Immediate family" means a spouse, dependent
4 children, or dependent parents.

5 ~~†9†~~(13) "Import" means to transfer beer or table wine
6 from outside the state of Montana into the state of Montana.

7 ~~†10†~~(14) "Industrial use" means a use described as
8 industrial use by the federal Alcohol Administration Act and
9 the federal rules and regulations of 27 CFR.

10 ~~†11†~~(15) "Liquor" means an alcoholic beverage except
11 beer and table wine.

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

21 ~~†13†~~(17) "Package" means a container or receptacle used
22 for holding an alcoholic beverage.

23 ~~†14†~~(18) "Posted price" means the retail price of liquor
24 and table wine as fixed and determined by the department and
25 in addition thereto an excise and license tax as provided in

1 this code.

2 ~~†15†~~(19) "Proof gallon" means a U.S. gallon of liquor at
3 60 degrees on the Fahrenheit scale that contains 50% of
4 alcohol by volume.

5 ~~†16†~~(20) "Public place" means a place, building, or
6 conveyance to which the public has or may be permitted to
7 have access and any place of public resort.

8 ~~†17†~~(21) "Rules" means rules published by the department
9 pursuant to this code.

10 (22) "State agency liquor store" means a retail store
11 operated under an agency agreement in accordance with this
12 code for the purpose of selling liquor and table wine.

13 (23) "State employee-operated liquor store" means a
14 retail store that is operated by the department and that
15 employs state employees to sell liquor and table wine in
16 accordance with this code.

17 ~~†18†~~(24) "State liquor ~~faciity~~ warehouse" means a
18 faciity the building owned or under control of the
19 department for the purpose of receiving, storing,
20 transporting, or selling alcoholic beverages at wholesale.

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

24 ~~†20†~~(25) "Storage depot" means a building or structure
25 that is owned or operated by a brewer ~~at-any-point~~ in the

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

6 ~~(21)~~(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 ~~(23)~~(28) "Table wine distributor" means a person
 16 importing into or purchasing in Montana table wine for sale
 17 or resale to retailers licensed in Montana.

18 ~~(24)~~(29) "Warehouse" means a building or structure
 19 located in Montana and owned or operated by a licensed beer
 20 wholesaler or table wine distributor for the receiving,
 21 storage, and distribution of beer or table wine as permitted
 22 by this code.

23 ~~(25)~~(30) "Wine" means an alcoholic beverage made from or
 24 containing the normal alcoholic fermentation of the juice of
 25 sound, ripe fruit or other agricultural products without

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

10 **Section 5.** Section 16-1-202, MCA, is amended to read:

11 "16-1-202. Preparations not subject to code. (1)
 12 Subject to the provisions of this section, nothing in this
 13 code shall, by reason only that such preparation contains
 14 alcohol, prevent the manufacture, sale, purchase, or
 15 consumption of any:

16 (a) extract, essence, or tincture or other preparation
 17 containing alcohol ~~which~~ that is prepared according to a
 18 formula of the United States Pharmacopoeia or according to a
 19 formula approved of by the department; or

20 (b) proprietary or patent medicine prepared according
 21 to a formula approved of by the department.

22 (2) The department, if of the opinion that any ~~such~~
 23 proprietary or patent medicine, extract, essence, tincture,
 24 or preparation ~~which~~ that contains alcohol or any other
 25 preparation of a solid, semisolid, or liquid nature

1 containing alcohol which, or any extract from which, can be
 2 used as a beverage or as the ingredient of any beverage, may
 3 prohibit the its sale thereof by retail within the state or
 4 the its possession of-the-same for sale by retail within the
 5 state, except by a state agency liquor store or by persons
 6 duly licensed by the department to keep and sell the same
 7 proprietary or patent medicine, extract, essence, tincture,
 8 or preparation by retail in accordance with this code and
 9 the regulations made-thereunder promulgated pursuant to this
 10 code.

11 (3) The department shall notify the manufacturer or
 12 vendor of such the proprietary or patent medicine, extract,
 13 essence, tincture, or preparation of the prohibition."

14 **Section 6.** Section 16-1-301, MCA, is amended to read:

15 "16-1-301. **Administration of code.** The department shall
 16 have has the powers and duties to administer the Montana
 17 Alcoholic Beverage Code, including the general control,
 18 management, and supervision of all state agency liquor
 19 stores."

20 **Section 7.** Section 16-1-302, MCA, is amended to read:

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

24 (1) to buy, import, have--in-its-possession-for-sale
 25 possess, and sell ~~liquors~~ liquor and table wine in the

1 manner set forth in this code;

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

5 (3) to determine the municipalities where state agency
 6 liquor stores are to be established throughout the state and
 7 the situation of the stores within these municipalities;

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

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

13 (6) (a) to employ store managers ~~and-also~~ only for the
 14 time necessary to close state employee-operated liquor
 15 stores;

16 (b) to employ every officer, investigator, clerk, or
 17 other employee required for the operation or carrying out of
 18 this code and to dismiss them, fix their salaries or
 19 remuneration, assign them their title, and define their
 20 respective duties and powers; and

21 (c) to engage the service of experts and persons
 22 engaged in the practice of a profession, if considered
 23 appropriate;

24 (7) to determine the nature, form, and capacity of all
 25 packages to be used for containing liquor kept or sold under

1 this code;

2 (8) to grant and issue licenses ~~under-and-in-pursuance~~
3 pursuant to this code;

4 (9) to place special restrictions on the use of a
5 particular license, which must be endorsed upon the face of
6 the license, if the special restrictions are made pursuant
7 to a hearing held in connection with the issuance of the
8 license or if the special restrictions are agreed to by the
9 licensee;

10 (10) without limiting or being limited by the foregoing,
11 to do all things considered necessary or advisable by the
12 department for the purpose of carrying into effect the
13 provisions of this code or the rules made under the
14 provisions of this code."

15 **Section 8.** Section 16-1-303, MCA, is amended to read:

16 "16-1-303. **Department rules.** (1) The department may
17 make such rules ~~not-inconsistent~~ consistent with this code
18 as to the department ~~seem~~ considers necessary for carrying
19 out the provisions of this code and for the efficient
20 administration ~~thereof~~ of this code.

21 (2) Without ~~thereby~~ limiting the generality of the
22 provisions contained in subsection (1) ~~hereof~~, it is
23 declared that the power of the department to make rules in
24 the manner set out in ~~that~~ subsection (1) ~~shall--extend~~
25 extends to and ~~include~~ includes the following:

1 (a) regulating the equipment and management of state
2 agency liquor stores and warehouses the state liquor
3 warehouse in which liquor or table wine is kept or sold and
4 prescribing the books and records to be kept ~~therein~~ in
5 state agency liquor stores and the state liquor warehouse;

6 (b) prescribing the duties of the employees of the
7 liquor division and regulating their conduct while in the
8 discharge of their duties;

9 (c) governing the purchase of liquor and table wine and
10 the furnishing of liquor and table wine to state agency
11 liquor stores established under this code;

12 (d) determining the classes, varieties, and brands of
13 liquor and table wine to be kept for sale at any state
14 agency liquor store;

15 (e) prescribing, subject to this code, the hours during
16 which state agency liquor stores ~~shall~~ must be kept open for
17 the sale of alcoholic beverages;

18 (f) providing for the issuing and distributing of price
19 lists showing the price to be paid by purchasers for each
20 class, variety, or brand of liquor and table wine kept for
21 sale under this code;

22 (g) prescribing forms to be used for the purpose of
23 this code or of the rules ~~made--thereunder~~ promulgated
24 pursuant to this code and the terms and conditions in
25 permits and licenses issued and granted under this code;

1 (h) prescribing the form of records of purchase of
2 liquor and table wine and the reports to be made thereon to
3 the division and providing for inspection of the records so
4 kept;

5 (i) prescribing the manner of giving and serving
6 notices required by this code or the rules thereunder
7 promulgated pursuant to this code;

8 (j) prescribing the fees payable in respect of permits
9 and licenses issued under this code for which no fees are
10 prescribed in this code and prescribing the fees for
11 anything done or permitted to be done under the rules ~~made~~
12 thereunder promulgated pursuant to this code;

13 (k) prescribing, subject to the provisions of this
14 code, the conditions and qualifications necessary for the
15 obtaining of alcoholic beverage licenses and the books and
16 records to be kept and the returns to be made by the
17 licensees and providing for the inspection of such licensed
18 premises;

19 (l) specifying and describing the place and the manner
20 in which alcoholic beverages may be lawfully kept or stored;

21 (m) specifying and regulating the time and periods when
22 and the manner, methods, and means by which vendors and
23 brewers shall deliver alcoholic beverages under this code
24 and the time and periods when and the manner, methods, and
25 means by which alcoholic beverages, under this code, may be

1 lawfully conveyed or carried;

2 (n) governing the conduct, management, and equipment of
3 any premises licensed to sell alcoholic beverages under this
4 code; and

5 (o) providing for the imposition and collection of
6 taxes and making rules respecting returns, accounting, and
7 payment of the taxes to the department.

8 (3) Whenever it is provided in this code that any act,
9 matter, or thing may be done if permitted or authorized by
10 the rules or may be done in accordance with the rules or as
11 provided by the rules, the department, subject to the
12 restrictions set out in subsection (1) hereof, ~~shall have~~
13 has the power to make rules respecting such the act, matter,
14 or thing."

15 **Section 9.** Section 16-1-304, MCA, is amended to read:

16 **"16-1-304. Prohibited acts within division.** (1) ~~No~~
17 ~~officer-or-employee~~ (a) An officer or employee of the liquor
18 division, including those engaged in the sale of ~~liquor~~
19 alcoholic beverages at the various state employee-operated
20 liquor ~~or--table--wine~~ stores, may not be directly or
21 indirectly interested or engaged in any other business or
22 undertaking dealing in liquor or table wine, whether as
23 owner, part owner, partner, member of syndicate,
24 shareholder, agent, or employee and whether for his own
25 benefit or in a fiduciary capacity for some other person.

1 (b) The prohibition contained in subsection (1)(a) does
 2 not restrict a liquor division employee who is about to be
 3 terminated from state employment because of the closure of a
 4 state employee-operated liquor store from being a
 5 stockholder in an employee-owned enterprise organized for
 6 the purpose of obtaining and operating a state agency liquor
 7 store.

8 (2) ~~No member or employee of the division or any~~ An
 9 employee of the state may not solicit or receive directly or
 10 indirectly any commission, remuneration, or gift whatsoever
 11 from any person or corporation having sold, selling, or
 12 offering liquor or table wine for sale to the ~~state or~~
 13 division department pursuant to this code.

14 (3) No ~~A~~ person selling to, or offering for sale to, or
 15 purchasing liquor or table wine from the ~~state liquor~~
 16 division department may not either directly or indirectly
 17 offer to pay any commission, profit, or remuneration or make
 18 any gift to any ~~member or employee of the division, to any~~
 19 employee of the state, or to anyone on behalf of ~~such member~~
 20 or an employee of the state.

21 (4) The prohibition contained in subsection (3) ~~of this~~
 22 section does not prohibit the division department from
 23 receiving samples of liquor or table wine for the purpose of
 24 chemical testing, subject to the following limitations:

25 (a) Each manufacturer, distiller, compounder,

1 rectifier, importer, or wholesale distributor or any other
 2 person, firm, or corporation proposing to sell any liquor or
 3 table wine to the ~~Montana liquor division~~ department shall
 4 submit, without cost to the ~~division~~ department prior to the
 5 original purchase, an analysis of each brand and may submit
 6 a representative sample not exceeding 25 fluid ounces of
 7 such merchandise to the ~~division~~ department.

8 (b) When a brand of liquor or table wine has been
 9 accepted for testing by the ~~division~~ department, the
 10 ~~division~~ department shall forward the sample, unopened and
 11 in its entirety, to a qualified chemical laboratory for
 12 analysis.

13 (c) The ~~division~~ department shall maintain written
 14 records of all samples received. The records shall must show
 15 the brand name, the amount and from whom received, the date
 16 received, the laboratory or chemist to whom forwarded, the
 17 ~~division's~~ department's action on the brand, and the person
 18 to whom the sample was delivered or other final disposition
 19 of the sample.

20 (5) ~~No liquor, wine, or other alcoholic beverage~~
 21 Alcoholic beverages may not be withdrawn from the regular
 22 state liquor warehouse inventory or from the state agency
 23 liquor stores of the Montana liquor division for any purpose
 24 other than sale at the prevailing state retail prices or for
 25 destroying damaged or defective merchandise. The ~~division~~

1 department shall maintain a written record ~~including that~~
 2 includes the type, brand, container size, number of bottles
 3 or other units, signatures of witnesses, and method of
 4 destruction or other disposition of damaged or defective
 5 merchandise from the state liquor warehouse or state store
 6 merchandise agency liquor stores.

7 (6) The ~~division~~ department may not require a company
 8 that manufactured, distilled, rectified, bottled, or
 9 processed and sold less than 200,000 proof gallons of liquor
 10 nationwide in the previous calendar year to maintain minimum
 11 amounts of liquor or wine in the state liquor warehouse
 12 while the distiller or winery retains ownership of the
 13 product.

14 (7) The ~~division~~ department may not require a company
 15 that bottled and sold less than 100,000 wine gallons of
 16 table wine nationwide in the previous calendar year to
 17 maintain minimum amounts of table wine in the state liquor
 18 warehouse while the company retains ownership of the
 19 product."

20 **Section 10.** Section 16-1-402, MCA, is amended to read:

21 "16-1-402. **Payment of excise tax by carriers.** (1) Every
 22 airline or railroad operating in the state of Montana and
 23 selling liquor purchased outside this state for consumption
 24 within this state shall pay to the department the excise
 25 taxes and state markup ~~which that~~ would be applicable to

1 such the liquor if purchased from the state liquor warehouse
 2 or a state agency liquor store.

3 (2) The amount of ~~such~~ excise taxes and state markup
 4 payable ~~shall be~~ is determined by multiplying the following
 5 factors:

- 6 (a) the average liquor used per departure;
 7 (b) the number of departures from Montana on which
 8 liquor is served;
 9 (c) the ratio of Montana revenue passenger miles to
 10 system revenue passenger miles; and
 11 (d) the applicable excise tax and state markup rates.

12 (3) From ~~said the product~~ calculated in subsection (2),
 13 the carrier shall subtract the amount of excise taxes and
 14 state markup on purchases of liquor made within this state."

15 **Section 11.** Section 16-2-101, MCA, is amended to read:

16 "16-2-101. **Establishment and closure of state liquor**
 17 **stores -- reduction-in-force rights of eligible state**
 18 **employees -- kinds and prices of liquor and table wine.**

19 (1) (a) (i) The department ~~shall~~ may establish and maintain
 20 one or more stores, operated under agency agreements, to be
 21 known as "state agency liquor stores", as the department
 22 finds feasible for the sale of liquor and table wine in
 23 accordance with the provisions of this code and the rules
 24 ~~made-thereunder-~~ promulgated pursuant to this code.

25 (ii) A state employee-operated liquor store may be

1 maintained after December 31, 1992, only for the purpose of
 2 closing down the store and not for the purpose of selling
 3 liquor or table wine. A state employee-operated liquor store
 4 maintained only for the purpose of closing down is
 5 considered closed for the purposes of this code.

6 (b) The department ~~shall~~ may, without being required to
 7 observe the requirements of Title 2, chapter 8, part 3,
 8 enter into an agency agreement-or-employ-the-necessary--help
 9 agreements to operate said state agency liquor stores and
 10 shall designate the duties to be performed by the agent--or
 11 employees agents.

12 (c) (i) An eligible state employee is entitled to
 13 reduction-in-force rights. Reduction-in-force rights last
 14 from [the effective date of this act] until 1 year after the
 15 employee terminates employment. Acceptance of a permanent
 16 position with a state agency terminates the employee's
 17 reduction-in-force rights.

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

23 ~~(c)(d)~~ Once-established, a A store shall may not be
 24 closed, converted from a state employee-operated liquor
 25 store to an a state agency liquor store,--or--sold--by--the

1 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 state employee-operated liquor store
 8 and the store lease with the department has expired; or

9 (ii) the conversion occurs after December 31, 1992.

10 (e) The revenue oversight committee must be informed of
 11 all plans for converting state employee-operated liquor
 12 stores to state agency liquor stores.

13 (2) The department ~~may-from--time--to--time~~ shall, as
 14 provided by rule, fix the prices at which the various
 15 classes, varieties, and brands of liquor and table wine may
 16 be sold,--and by the department and its agents. The retail
 17 prices for the various classes, varieties, and brands of
 18 liquor and table wine sold by the department or purchased
 19 from a state agency liquor store shall must be the retail
 20 price established by the department and must be the same at
 21 all state agency liquor stores.

22 ~~(3)--(a)--State-liquor--stores--must--be--considered--for~~
 23 ~~closure,--conversion,--or--sale--only--when--a--store--lease~~
 24 ~~expires,--Prior-to-the-expiration-of-a-lease,--the-department~~
 25 ~~may-conduct-a-financial--profitability--analysis--using--the~~

~~criteria in subsection (1)(c)(i) in computing profit levels of state-operated stores, the costs of the licensing bureau and the legal and enforcement division, other than inspection costs directly attributable to liquor stores, may not be included as expenses. The revenue oversight committee must be informed of all plans for conversion, sale, or closure of state liquor stores.~~

~~(b)(3) No A state agency stores shall liquor store may not be located in or adjacent to grocery stores in communities with populations over 3,000. This provision is applicable only to agency agreements entered into after May 1, 1987.~~

~~(4) Agency State agency liquor stores must receive commissions based on adjusted gross sales as follows:~~

~~(a) a 10% commission on adjusted gross sales for agencies state agency liquor stores in communities with less than 3,000 in population when the state owns all of the liquor and table wine to be sold on the premises;~~

~~(b) a 12% commission on gross sales for state agency liquor stores in communities with less than 3,000 in population when the agent has purchased from the department the liquor to be sold on the premises; and~~

~~(b)(c) a commission on gross sales established by competitive bidding for agencies state agency liquor stores in communities with 3,000 or more in population.~~

(5) (a) An agent operating a state agency liquor store who is paid a commission in accordance with subsection (4)(b) or (4)(c) must be issued the commission through a discount on the retail selling price of liquor that is purchased from the department. The discount must equal the commission.

(b) Department sales of liquor and table wine products to an agent who is paid a commission in accordance with subsection (4)(b) or (4)(c) are final and are not consignment sales.

(c) The department may supply an agent with special orders for liquor in quantities of less than a full case when the agent makes a special order request provided that the agent pays a service charge for the purchase of quantities of less than a full case if the agent is under contract for commission payments in accordance with subsection (4)(b) or (4)(c).

(d) An agent shall pay the department for liquor within 30 calendar days of delivery.

(6) The department shall contract for agents to operate state agency liquor stores as follows:

(a) After December 31, 1992, each community may have no more than one agent under contract with the department at any time.

(b) (i) Each agent shall designate one primary location

1 to which the state liquor warehouse may ship liquor. An
 2 agent may have satellite stores in the community in addition
 3 to the primary location if the total number of stores,
 4 including the primary location and the satellite stores,
 5 does not exceed the number of state employee-operated liquor
 6 store locations that existed in the community on December 1,
 7 1990.

8 (ii) In addition to the primary location referred to in
 9 subsection (6)(b)(i), an agent may designate and operate one
 10 storage facility to store liquor received from the state
 11 liquor warehouse for retail sale and to distribute liquor to
 12 licensees for retail sale.

13 (c) Contracts entered into under this subsection (6)
 14 are not subject to the term limitation provisions of
 15 18-4-313. An agency contract signed after [the effective
 16 date of this act]:

17 (i) must be for a 10-year term, renewable at the
 18 department's discretion for additional 10-year terms;

19 (ii) must allow the agent to sell or assign the contract
 20 to another party upon written approval from the department;

21 (iii) may be amended only in writing and with the
 22 agreement of both the department and the agent; and

23 (iv) may be terminated early only if the agent does not
 24 perform under the terms of the contract.

25 (d) (i) In awarding an agency contract available in a

1 community for the first time pursuant to the conversion of a
 2 state employee-operated liquor store, absolute preference
 3 must be given to an employee-owned enterprise that bids for
 4 the agency contract, that claims the preference in writing,
 5 that has a stockholder who is an eligible state employee
 6 from a converted or about-to-be-converted state
 7 employee-operated liquor store in that community, and that
 8 bids an amount that is equal to or less than the maximum
 9 allowable bid published by the department in its invitation
 10 for bids. This preference applies only to employee-owned
 11 enterprises that meet all other requirements of this code.

12 (ii) If there are no applicants eligible for the
 13 preference under subsection (6)(d)(i), absolute preference
 14 must be given to eligible state employees from converted or
 15 about-to-be-converted state employee-operated liquor stores
 16 in that community who bid for the agency contract, who claim
 17 the preference in writing, and who bid an amount that is
 18 equal to or less than the maximum allowable bid published by
 19 the department in its invitation for bids. This preference
 20 applies only to eligible state employees who meet all other
 21 requirements of this code.

22 (iii) If there are no applicants eligible for the
 23 preferences under subsection (6)(d)(i) or (6)(d)(ii),
 24 absolute preference must be given to the landlord of the
 25 converted or about-to-be-converted state employee-operated

1 liquor store if the landlord applies for the license, claims
 2 the preference in writing, and bids an amount that is equal
 3 to or less than the maximum allowable bid published by the
 4 department in its invitation for bids. This preference
 5 applies only to a landlord who had a lease in effect with
 6 the department for the state employee-operated liquor store
 7 on [the effective date of this act]. This preference applies
 8 only to state employee-operated liquor store landlords who
 9 meet all other requirements of this code.

10 (iv) A preference referred to in subsection (6)(d)(ii)
 11 or (6)(d)(iii) may be claimed by a partnership applicant if
 12 the majority of the partners are eligible for the
 13 preference. A preference referred to in subsection
 14 (6)(d)(ii) or (6)(d)(iii) may be claimed by a corporate
 15 applicant if the majority of stock of each class of stock is
 16 owned by stockholders who are eligible for the preference.

17 (v) The preference referred to in subsection (6)(d)(iv)
 18 may be claimed by an individual applicant if the individual
 19 is either a partner in a partnership or a stockholder in a
 20 corporation either of which is eligible for the preference.

21 ~~{5}~~(7) The department shall maintain sufficient
 22 inventory in the state liquor warehouse in order to meet a
 23 monthly service level of at least 97%."

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

25 "16-2-103. Duplicate invoices of sales required. (1)

1 ~~The A~~ state agency liquor store or a state employee-operated
 2 liquor store shall, upon each sale of liquor or table wine
 3 to any licensee, issue a duplicate invoice of the liquor or
 4 table wine purchased, as provided by the department, a one
 5 copy of which shall must be delivered to the licensee and
 6 one copy of which must be retained at ~~such~~ the state agency
 7 liquor store or the state employee-operated liquor store.

8 (2) The invoice shall must show the date of purchase,
 9 the name of ~~employee~~ the individual making the sale, the
 10 quantity of each kind of liquor or table wine purchased, the
 11 price paid therefor, the name of the licensee, and the
 12 number of the license, ~~with--such--other~~ and any other
 13 information ~~as-may-be~~ required by the department.

14 (3) The licensee shall keep and retain his the
 15 duplicate invoice invoices of all purchases made by-him from
 16 the a state agency liquor store, ~~which-shall-at-all-times-be~~
 17 or a state employee-operated liquor store. The invoices are
 18 subject to inspection at all times by the duly authorized
 19 officers, agents, and employees of the department."

20 **Section 13.** Section 16-2-104, MCA, is amended to read:

21 "16-2-104. Hours. ~~{1}~~ State agency liquor stores shall
 22 may not be and remain open during-such-period-of-the-day-as
 23 the-department-shall-deem-advisable.--The--stores--shall--be
 24 closed-for-the-transaction-of-business-on-legal-holidays-and
 25 between-the-close-of-normal-business-Saturday-p-m--up-to-the

~~opening of normal business Tuesday a.m. as set by department rate, and the sale or delivery of liquor or table wine may not be made between the hours of 2 a.m. and 8 a.m.~~

~~(2) No sale or delivery of liquor or table wine shall be made on or from the premises of any state liquor store nor shall any store be open for the sale of liquor or table wine:~~

~~(a) on any holiday recognized by state law;~~

~~(b) during such other period and on such other days as the department may direct."~~

Section 14. Section 16-2-107, MCA, is amended to read:

"16-2-107. No open alcoholic beverage container or alcoholic beverage consumption on premises of--state--store. No An officer, clerk, or agent of the department employed in a state employee-operated liquor store or a state agency liquor store shall may not allow any alcoholic beverage container to be opened on the premises of ~~a state~~ the liquor store or allow any alcoholic beverage to be consumed on the premises of ~~a state~~ the liquor store, nor ~~shall may~~ any person open an alcoholic beverage container or consume any alcoholic beverage on such the premises."

Section 15. Section 16-2-108, MCA, is amended to read:

"16-2-108. Disposition of money received. All money received from the sale of liquor and table wine at the state employee-operated liquor stores, at state agency liquor

stores established prior to [the effective date of this act], or at the state warehouse must be deposited in the enterprise fund in the state treasury to the credit of the department. The department may purchase liquor and table wine from money deposited to its account in the enterprise fund. The department shall pay from its account in the enterprise fund its administrative expenses, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the department may be a debt or claim against the state of Montana but must be payable by the department solely from funds derived from ~~the operation of state employee-operated liquor stores,~~ state agency liquor stores, and the state liquor warehouse. The department shall pay into the state treasury to the credit of the enterprise fund the receipts from all taxes and license and permit fees collected by it. Taxes, license and permit fees, and the net proceeds from ~~the operation of state employee-operated liquor stores,~~ state agency liquor stores, and the state liquor warehouse must be transferred to the general fund."

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

"16-2-201. Reduction for quantity sales of liquor -- ~~commission -- reimbursement.~~ (1) Reduction A reduction of 5% of the retail price of liquor sold at the a state agency liquor store shall must be made by the department for sales of liquor to any person other than an agent purchasing

1 liquor in unbroken case lots. No other reduction ~~shall~~ may
2 be made by the department for quantity sales of liquor.

3 (2) Nothing in this section prohibits the department
4 from providing a commission to an agent through a discount
5 on the agent's purchase of liquor from the department in
6 accordance with 16-2-101(5).

7 (3) The department shall reimburse an agent who is paid
8 a commission in accordance with 16-2-101(5) for the 5%
9 reduction on unbroken case lot purchases when the agent
10 presents to the department an invoice signed by the agent
11 and the purchaser showing the quantity and retail price of
12 each item that was purchased, the date it was purchased, and
13 the amount of the reduction that was allowed."

14 **Section 17.** Section 16-2-203, MCA, is amended to read:

15 "16-2-203. Department sales to licensees. The
16 department may sell through state employee-operated liquor
17 stores or through its state agency liquor stores to
18 licensees licensed under this code all kinds of liquor and
19 table wine at the posted price thereof in the store in which
20 the liquor and table wine are sold. All retail sales shall
21 must be upon on a cash or credit-card basis."

22 **Section 18.** Section 16-2-301, MCA, is amended to read:

23 "16-2-301. Retail selling price on table wine -- tax on
24 certain table wine. (1) The retail selling price at which
25 table wine is sold either by the department, through a state

1 employee-operated liquor store or a state agency liquor
2 store, or by a commission agent who was appointed before
3 April 30, 1987, including subsequent renewals of such
4 appointment, and who elects to order table wine from the
5 department is computed by adding to the statewide weighted
6 average cost of table wine the tax and state markup as
7 designated by the department.

8 (2) The retail selling price at which table wine is
9 sold by a commission agent appointed by the department after
10 May 1, 1987, is as determined by the agent.

11 (3) In addition to the tax on wine assessed under
12 16-1-411, there is a tax of 1 cent a liter on table wine
13 sold by a table wine distributor to an agent as described in
14 subsection (2). This additional tax must be paid to the
15 department by the distributor in the same manner as the tax
16 under 16-1-411 is paid. The department shall deposit the tax
17 paid under this section in the general fund."

18 **Section 19.** Section 16-2-302, MCA, is amended to read:

19 "16-2-302. State distribution. The department may
20 import and distribute one or more named table wines to one
21 or more designated state employee-operated liquor stores or
22 to agency stores appointed on or before April 30, 1987,
23 including subsequent renewals of such appointments, in the
24 same manner as if the wine contained more than 16% alcohol
25 by volume."

1 **Section 20.** Section 16-2-303, MCA, is amended to read:

2 "16-2-303. Department prohibited from engaging in
3 unfair competition. (1) The department, in engaging in the
4 retail sale of table wine through state employee-operated
5 liquor stores, is subject to the provisions of Title 30,
6 chapter 14, parts 1 and 2, except those provisions relating
7 to enforcement and penalties.

8 (2) A person aggrieved by a violation of this section
9 by the department may maintain an action to enjoin the
10 alleged violation and for the recovery of damages in the
11 district court of the district where the conduct complained
12 of occurred or where the department's principal office is
13 located."

14 **Section 21.** Section 16-3-103, MCA, is amended to read:

15 "16-3-103. Unlawful sales solicitation or advertising
16 -- exceptions. (1) No A person within the state ~~shall~~ may
17 not:

18 (a) canvass for, receive, take, or solicit orders for
19 the purchase or sale of any liquor or act as agent or
20 intermediary for the sale or purchase of any liquor or hold
21 himself out as such an agent or intermediary unless
22 permitted to do so under rules ~~that-shall-be~~ promulgated by
23 the department to govern such agent or intermediary
24 activities;

25 (b) canvass for or solicit orders for the purchase or

1 sale of any beer or malt liquor except in the case of beer
2 proposed to be sold to beer licensees duly authorized to
3 sell beer under the provisions of this code; or

4 (c) exhibit, publish, or display or permit to be
5 exhibited, published, or displayed any form of advertisement
6 or any other announcement, publication, or price list of or
7 concerning liquor or where or from whom the same may be had,
8 obtained, or purchased unless permitted to do so by the
9 rules of the department and then only in accordance with
10 such rules.

11 (2) This section ~~shall~~ does not apply to:

12 (a) the department, any act of the department, or any
13 state agency liquor store;

14 (b) the receipt or transmission of a telegram or letter
15 by any telegraph agent or operator or post-office employee
16 in the ordinary course of his employment as such an agent,
17 operator, or employee; or

18 (c) the sale and serving of beer in the grandstand and
19 bleacher area of a county fairground or public sports arena
20 under a special permit issued pursuant to 16-4-301 or a
21 catering endorsement issued pursuant to 16-4-204."

22 **Section 22.** Section 16-3-106, MCA, is amended to read:

23 "16-3-106. Conveyance of liquors, table wines, and beer
24 -- opening alcoholic beverages during transit forbidden. (1)
25 It ~~shall--be~~ is lawful to carry or convey liquor or table

1 wine to any state agency liquor store or state
 2 employee-operated liquor store and to and from ~~any~~ the state
 3 liquor warehouse or any depot established by the department
 4 for the purposes of this code, and when permitted to do so
 5 by this code and the rules ~~made thereunder and in accordance~~
 6 therewith promulgated under this code, it ~~shall be~~ is lawful
 7 for any common carrier or other person to carry or convey
 8 liquor or table wine sold by a vendor from a state agency
 9 liquor store or a state employee-operated liquor store or to
 10 carry or convey beer, when lawfully sold by a brewer, from
 11 the premises ~~wherein such where the~~ beer was manufactured or
 12 from premises where the beer may be lawfully kept and sold
 13 to any place to which the same liquor, table wine, or beer
 14 may be lawfully delivered under this code and the rules ~~made~~
 15 thereunder promulgated under this code.

16 (2) No common carrier or any other person ~~shall~~ may
 17 open, break, or allow to be opened or broken any package or
 18 vessel containing an alcoholic beverage or drink or use or
 19 allow to be drunk or used any alcoholic beverage ~~therefrom~~
 20 while being carried or conveyed.

21 **Section 23.** Section 16-3-307, MCA, is amended to read:

22 **"16-3-307. Sale of liquor at less than posted price**
 23 **unlawful.** It ~~shall be~~ is unlawful for any licensee under the
 24 provisions of this code to resell any liquor purchased by
 25 such the licensee from a state agency liquor store or the

1 state of Montana for a sum less than the posted price
 2 established by the store department and paid by the licensee
 3 therefor."

4 **Section 24.** Section 16-3-401, MCA, is amended to read:

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

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

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

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

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

25 **Section 25.** Section 16-3-402, MCA, is amended to read:

1 **"16-3-402. Importation of wine -- records.** (1) With the
 2 exception of table wine purchased by the department and
 3 shipped to ~~its~~ the state liquor warehouse, all table wine
 4 manufactured outside of Montana and shipped into Montana
 5 ~~shall~~ must be consigned to and shipped to a licensed table
 6 wine distributor, and by him unloaded into his warehouse in
 7 Montana or subwarehouse in Montana. The distributor shall
 8 distribute ~~said~~ the table wine from ~~such~~ the warehouse or
 9 subwarehouse.

10 (2) The distributor shall keep records at his principal
 11 place of business of all table wine, including the name or
 12 kind received, on hand, sold, and distributed. The records
 13 may at all times be inspected by ~~any---member---or~~
 14 ~~representative-of~~ the department of-revenue.

15 (3) ~~Any--table~~ Table wine which that has been shipped
 16 into Montana and that has not been shipped to and
 17 distributed from a warehouse of a licensed table wine
 18 distributor or the ~~department-shall~~ state liquor warehouse
 19 must be seized by any peace officer or representative of the
 20 department and may be confiscated in the manner as provided
 21 for the confiscation of intoxicating liquor."

22 **Section 26.** Section 16-4-105, MCA, is amended to read:

23 **"16-4-105. Limit on retail beer licenses -- wine**
 24 **license amendments -- off-premises consumption.** (1) Except
 25 as otherwise provided by law, a license to sell beer at

1 retail or beer and wine at retail, in accordance with the
 2 provisions of this code and the rules of the department, may
 3 be issued to any person, firm, or corporation ~~who--is~~
 4 approved by the department as a fit and proper person, firm,
 5 or corporation to sell beer, except that:

6 (a) the number of retail beer licenses that the
 7 department may issue for premises situated within
 8 incorporated cities and incorporated towns and within a
 9 distance of 5 miles from the corporate limits of ~~such~~
 10 incorporated cities and incorporated towns ~~shall~~ must be
 11 determined on the basis of population prescribed in 16-4-502
 12 as follows:

13 (i) in incorporated towns of 500 inhabitants or less
 14 and within a distance of 5 miles from the corporate limits
 15 of such towns, not more than one retail beer license, which
 16 may not be used in conjunction with a retail all-beverages
 17 license;

18 (ii) in incorporated cities or incorporated towns of
 19 more than 500 inhabitants and not over 2,000 inhabitants and
 20 within a distance of 5 miles from the corporate limits of
 21 such cities or towns, one retail beer license for ~~each~~ every
 22 500 inhabitants, which may not be used in conjunction with
 23 retail all-beverages licenses;

24 (iii) in incorporated cities of over 2,000 inhabitants
 25 and within a distance of 5 miles from the corporate limits

1 of such cities, four retail beer licenses for the first
 2 2,000 inhabitants, two additional retail beer licenses for
 3 the next 2,000 inhabitants or major fraction thereof, and
 4 one additional retail beer license for ~~each every~~ additional
 5 2,000 inhabitants, which may not be used in conjunction with
 6 retail all-beverages licenses;

7 (b) the number of the inhabitants in ~~such~~ incorporated
 8 cities and incorporated towns, exclusive of the number of
 9 inhabitants residing within a distance of 5 miles from the
 10 corporate limits ~~thereof of the cities or towns, shall~~
 11 ~~govern governs~~ the number of retail beer licenses that may
 12 be issued for use within ~~such~~ the cities and towns and
 13 within a distance of 5 miles from the corporate limits
 14 ~~thereof of the cities or towns~~. If two or more incorporated
 15 municipalities are situated within a distance of 5 miles
 16 from each other, the total number of retail beer licenses
 17 that may be issued for use in both of ~~such the~~ incorporated
 18 municipalities and within a distance of 5 miles from their
 19 respective corporate limits ~~shall must~~ be determined on the
 20 basis of the combined populations of both ~~of--such~~
 21 municipalities and may not exceed the foregoing limitations.
 22 The distance of 5 miles from the corporate limits of any
 23 incorporated city or incorporated town ~~shall must~~ be
 24 measured in a straight line from the nearest entrance of the
 25 premises proposed for licensing to the nearest corporate

1 boundary of ~~such~~ the city or town.

2 (c) retail beer licenses of issue on March 7, 1947, and
 3 retail beer licenses issued under 16-4-110, which are in
 4 excess of the foregoing limitations ~~shall-be~~ are renewable,
 5 but no new licenses may be issued in violation of ~~such these~~
 6 limitations;

7 (d) ~~such~~ these limitations do not prevent the issuance
 8 of a nontransferable and nonassignable retail beer license
 9 to an enlisted men's, noncommissioned officers', or
 10 officers' club located on a state or federal military
 11 reservation on May 13, 1985, or to a post of a nationally
 12 chartered veterans' organization or a lodge of a recognized
 13 national fraternal organization if ~~such the~~ the veterans' or
 14 fraternal organization has been in existence for a period of
 15 5 years or more prior to January 1, 1949;

16 (e) the number of retail beer licenses that the
 17 department may issue for use at premises situated outside of
 18 any incorporated city or incorporated town and outside of
 19 the area within a distance of 5 miles from the corporate
 20 limits ~~thereof of the city or town~~ or for use at premises
 21 situated within any unincorporated town-~~shall~~ area must be
 22 as determined by the department in the exercise of its sound
 23 discretion, except that no retail beer license may be issued
 24 for any premises so situated unless the department
 25 determines that the issuance of ~~such the~~ the license is required

1 by public convenience and necessity.

2 (2) A person holding a license to sell beer for
3 consumption on the premises at retail may apply to the
4 department for an amendment to the license permitting the
5 holder to sell wine as well as beer. The division may issue
6 ~~such an~~ amendment if it finds, on a satisfactory showing by
7 the applicant, that the sale of wine for consumption on the
8 premises would be supplementary to a restaurant or
9 prepared-food business. A person holding a beer-and-wine
10 license may sell wine for consumption on or off the
11 premises. Nonretention of the beer license, for whatever
12 reason, ~~shall--mean~~ means automatic loss of the wine
13 amendment license.

14 (3) A retail license to sell beer or table wine, or
15 both, in the original packages for off-premises consumption
16 only may be issued to any person, firm, or corporation ~~who~~
17 ~~is~~ approved by the department as a fit and proper person,
18 firm, or corporation to sell beer or table wine, or both,
19 and whose premises proposed for licensing are operated as a
20 bona fide grocery store ~~or,~~ a drugstore licensed as a
21 pharmacy, or a state agency liquor store. The number of ~~such~~
22 licenses that the department may issue is not limited by the
23 provisions of subsection (1) ~~of this section~~ but ~~shall~~ must
24 be determined by the department in the exercise of its sound
25 discretion, and the department may in the exercise of its

1 sound discretion grant or deny any application for any ~~such~~
2 license or suspend or revoke any ~~such~~ license for cause."

3 **Section 27.** Section 16-4-401, MCA, is amended to read:

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

8 (2) Except as provided in subsection (6), in the case
9 of a license that permits on-premises consumption, the
10 department must shall find in every case in which it makes
11 an order for the issuance of a new license or for the
12 approval of the transfer of a license that:

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

14 (i) the applicant will not possess an ownership
15 interest in more than one establishment licensed under this
16 chapter for all-beverages sales;

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

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

23 (iv) the applicant's past record and present status as a
24 purveyor of alcoholic beverages and as a businessman and
25 citizen demonstrate that he is likely to operate his

1 establishment in compliance with all applicable laws of the
 2 state and local governments; and
 3 (v) the applicant is not under the age of 19 years; and
 4 (b) in the case of a corporate applicant:
 5 (i) the owners of at least 51% of the outstanding stock
 6 meet the requirements of subsection (2)(a)(iii);
 7 (ii) each owner of 10% or more of the outstanding stock
 8 meets the requirements for an individual applicant listed in
 9 subsection (2)(a) ~~of this section~~;
 10 (iii) the corporation is authorized to do business in
 11 Montana; and
 12 (iv) in the case of a corporation not listed on a
 13 national stock exchange, each owner of stock meets the
 14 requirements of subsection (2)(a)(i); and
 15 (c) in the case of any other business entity as
 16 applicant:
 17 (i) if the applicant consists of more than one
 18 individual, all must meet the requirements of subsection
 19 (2)(a); and
 20 (ii) if the applicant consists of more than one
 21 corporation, all must meet the requirements of subsection
 22 (2)(b).
 23 (3) In the case of a license that permits only
 24 off-premises consumption of beer or table wine, the
 25 department ~~must~~ shall find in every case in which it makes

1 an order for the issuance of a new license or for the
 2 approval of the transfer of a license that:
 3 (a) in the case of an individual applicant:
 4 (i) the applicant will not possess an ownership
 5 interest in more than one establishment licensed under this
 6 chapter for on-premises consumption all-beverages sales;
 7 (ii) the applicant is not operating a state agency
 8 liquor store;
 9 ~~(iii)~~ (iii) the applicant or any member of his immediate
 10 family is without financing from or any affiliation to a
 11 manufacturer, importer, bottler, or distributor of alcoholic
 12 beverages;
 13 ~~(iv)~~ (iv) the applicant has not been convicted of a
 14 felony or, if the applicant has been convicted of a felony,
 15 his rights have been restored;
 16 ~~(v)~~ (v) the applicant's past record and present status
 17 as a purveyor of alcoholic beverages and as a businessman
 18 and citizen demonstrate that he is likely to operate his
 19 establishment in compliance with all applicable laws of the
 20 state and local governments; and
 21 ~~(vi)~~ (vi) the applicant is not under the age of 19 years;
 22 and
 23 (b) in the case of a corporate applicant:
 24 (i) the owners of at least 51% of the outstanding stock
 25 meet the requirements of ~~subsection-(3)(a)(iii)~~ subsections

1 (3)(a)(ii) and (3)(a)(iv);

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

5 (iii) the corporation is authorized to do business in
6 Montana; and

7 (c) in the case of any other business entity as
8 applicant:

9 (i) if the applicant consists of more than one
10 individual, all must meet the requirements of subsection
11 (3)(a); and

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

15 (4) In the case of a license that permits the
16 manufacture, importing, or wholesaling of an alcoholic
17 beverage, the department ~~must~~ shall find in every case in
18 which it makes an order for the issuance of a new license or
19 for the approval of the transfer of a license that:

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

21 (i) the applicant has no ownership interest in any
22 establishment licensed under this chapter for retail
23 alcoholic beverages sales;

24 (ii) the applicant has not been convicted of a felony
25 or, if the applicant has been convicted of a felony, his

1 rights have been restored;

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

7 (iv) the applicant is not under the age of 19 years; and

8 (v) an applicant for a wholesale license is neither a
9 manufacturer of an alcoholic beverage nor is owned or
10 controlled by a manufacturer of an alcoholic beverage; ~~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 (4)(a)(ii);

14 (ii) each owner of 10% or more of the outstanding stock
15 meets the requirements for an individual listed in
16 subsection (4)(a) ~~of this section~~;

17 (iii) an applicant for a wholesale license is neither a
18 manufacturer of an alcoholic beverage nor is owned or
19 controlled by a manufacturer of an alcoholic beverage; and

20 (iv) the corporation is authorized to do business in
21 Montana; 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 (4)(a); and

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

5 (5) In the case of a corporate applicant, the
6 requirements of subsections (2)(b), (3)(b), and (4)(b) apply
7 separately to each class of stock.

8 (6) The provisions of subsection (2) do not apply to an
9 applicant for or holder of a license pursuant to 16-4-302."

10 **Section 28.** Section 16-6-107, MCA, is amended to read:

11 **"16-6-107. Disposal of forfeited alcoholic beverages --**
12 **report.** (1) In every case in which a court or hearing
13 examiner makes any order for the forfeiture of alcoholic
14 beverages under any of the provisions of this code and in
15 every case in which any a claimant to an alcoholic beverage
16 under the provisions of 16-6-105 or 16-6-106 fails to
17 establish his claim and right thereto to an alcoholic
18 beverage, the alcoholic beverage in question and the
19 packages in which the alcoholic beverage is kept ~~shall~~ must
20 be delivered to the department. The department shall
21 determine the market value of each forfeited alcoholic
22 beverage which that is found to be suitable for sale in the
23 state agency liquor stores and shall pay the ~~amount so~~
24 determined market value to the state treasurer after
25 deducting ~~therefrom~~ the expenses necessarily incurred by the

1 department for transporting the forfeited alcoholic beverage
2 to the state liquor ~~warehouses~~ warehouse. The alcoholic
3 beverage suitable for sale ~~shall~~ must be taken into stock by
4 the department and sold under the provisions of this code.
5 All alcoholic beverages found to be unsuitable for sale in
6 state agency liquor stores ~~shall~~ must be destroyed by the
7 department.

8 (2) In every case in which an alcoholic beverage is
9 seized by a peace officer, it ~~shall-be-his~~ is the officer's
10 duty to make or cause to be made to the department a report
11 in writing of the particulars of such the seizure."

12 **Section 29.** Section 16-6-303, MCA, is amended to read:

13 **"16-6-303. Sale of liquor not purchased from state**
14 agency liquor store or state employee-operated liquor store
15 **forbidden -- penalty.** It is unlawful for any licensee to
16 sell or keep for sale or have on his premises for any
17 purpose whatever any liquor except that purchased from the a
18 state agency liquor store or a state employee-operated
19 liquor store, and any licensee found in possession of or
20 selling and keeping for sale any liquor ~~which that~~ was not
21 purchased from a state agency liquor store or a state
22 employee-operated liquor store shall, upon conviction, be
23 punished by a fine of not less than \$500 or more than
24 \$1,500, by imprisonment for not less than 3 months or more
25 than 1 year, or by both such a fine and imprisonment. If the

1 department is satisfied that ~~any-such~~ liquor was knowingly
2 sold or kept for sale within the licensed premises by the
3 licensee or by his agents, servants, or employees, the
4 department shall immediately revoke the license."

5 **Section 30.** Section 17-6-305, MCA, is amended to read:

6 "17-6-305. Investment of up to twenty-five percent of
7 coal tax trust fund in Montana economy -- report by board.

8 (1) Subject to the provisions of 17-6-201(1), the board
9 shall endeavor to invest up to 25% of the permanent coal tax
10 trust fund established in 17-6-203(6) in the Montana
11 economy, with special emphasis on investments in new or
12 expanding locally owned enterprises and employee-owned
13 enterprises.

14 (2) In determining the probable income to be derived
15 from investment of this revenue, the long-term benefit to
16 the Montana economy must be considered.

17 (3) The legislature may provide additional procedures
18 to implement this section.

19 (4) The board shall report biennially to the
20 legislature on the investments made under this section."

21 **Section 31.** Section 17-6-308, MCA, is amended to read:

22 "17-6-308. Authorized investments. (1) Except as
23 provided in subsections (2) ~~and (3)~~ through (4) and subject
24 to the provisions of 17-6-201, the Montana permanent coal
25 tax trust fund must be invested as authorized by rules

1 adopted by the board.

2 (2) The board may make loans from the permanent coal
3 tax trust fund to the capital reserve account created
4 pursuant to 17-5-1515 to establish balances or restore
5 deficiencies in the account. The board may agree in
6 connection with the issuance of bonds or notes secured by
7 the account or fund to make the loans. Loans must be on
8 terms and conditions as the board determines and must be
9 repaid from revenues of the board realized from the exercise
10 of its powers under 17-5-1501 through 17-5-1518 and
11 17-5-1521 through 17-5-1529, subject to the prior pledge of
12 the revenues to the bonds and notes.

13 (3) The board shall allow the Montana board of science
14 and technology development provided for in 2-15-1818 to
15 administer \$7.5 million of the permanent coal tax trust fund
16 for seed capital project loans and \$5.1 million of the
17 permanent coal tax trust fund for research and development
18 project loans pursuant only to the provisions of Title 90,
19 chapter 3. This authority does not extend beyond June 30,
20 1994, for seed capital project loans and for research and
21 development project loans. Until the Montana board of
22 science and technology development makes a loan pursuant to
23 the provisions of Title 90, chapter 3, the funds under its
24 administration must be invested by the board of investments
25 pursuant to the provisions of 17-6-201.

1 (4) The board may make loans from the permanent coal
 2 tax trust fund to an employee-owned enterprise to allow the
 3 enterprise to bid on, acquire, or operate state government
 4 operations that have been or will be converted to private
 5 sector operations.

6 ~~(4)~~(5) The board shall adopt rules to allow a nonprofit
 7 corporation to apply for economic assistance. The rules must
 8 recognize that different criteria may be needed for
 9 nonprofit corporations than for for-profit corporations."

10 **Section 32.** Section 17-6-310, MCA, is amended to read:

11 "17-6-310. No Limits on direct loans. (1) The Except as
 12 provided in 17-6-308(4), the state may not use this--revenue
 13 the portion of the permanent coal tax trust fund designated
 14 for investment in the Montana economy to make direct loans.

15 (2) The Except as provided in 17-6-308(4), the
 16 permanent coal tax trust fund may not be used by the board
 17 of investments to make direct loans to individual borrowers.
 18 The purchase of debentures issued by a capital company and
 19 loans or portions of loans originated by a financial
 20 institution that are sold to the trust are not direct
 21 loans."

22 **Section 33.** Section 17-6-318, MCA, is amended to read:

23 "17-6-318. Job credit interest rate reduction for small
 24 business loan participations. (1) A borrower who uses the
 25 proceeds of a small business loan participation funded under

1 the provisions of this part or a direct loan to an
 2 employee-operated enterprise, as provided for in 17-6-308(4)
 3 to create jobs employing Montana residents is entitled to a
 4 job credit interest rate reduction for each job created over
 5 a 2-year period to employ a Montana resident. The date of
 6 the formal written interim or permanent loan application to
 7 the financial institution or the state will be used as a
 8 beginning date for counting the number of jobs created. The
 9 job credit interest rate reduction may not apply to a loan
 10 participation of more than 1% of the total of the permanent
 11 coal tax trust fund determined at the end of the last
 12 completed fiscal year. The job credit interest rate
 13 reduction is equal to 0.05% for each job created to employ a
 14 Montana resident up to a maximum interest rate reduction of
 15 2.5%.

16 (2) If the salary or wage of the job created:

17 (a) exceeds the average weekly wage, as defined in
 18 39-71-116, the amount of the job credit interest rate
 19 reduction may be increased proportionately for each
 20 increment of 25% above the average weekly wage to a maximum
 21 of two times the average weekly wage; or

22 (b) is less than the average weekly wage, as defined in
 23 39-71-116, the job credit interest rate reduction is reduced
 24 proportionately for each 25% increment below the average
 25 wage.

1 (3) A job credit interest rate reduction may not be
2 allowed for a job created by the borrower using the proceeds
3 of the loan for which the salary or wage is less than the
4 minimum wage provided for in 39-3-409.

5 (4) No job credit will be given unless one whole job is
6 created.

7 (5) To qualify for the job credit interest rate
8 reduction, the borrower shall provide satisfactory evidence
9 of the creation of jobs ~~and--make--application--in--writing,~~
10 ~~through--its--financial--institution,~~ to the board when the
11 loan is delivered to the board or not later than 45 days
12 after the first and second anniversary dates of the loan.
13 For a small business loan participation, written application
14 must be made through the borrower's financial institution."

15 NEW SECTION. Section 34. Severability. If a part of
16 [this act] is invalid, all valid parts that are severable
17 from the invalid part remain in effect. If a part of [this
18 act] is invalid in one or more of its applications, the part
19 remains in effect in all valid applications that are
20 severable from the invalid applications.

21 NEW SECTION. Section 35. Effective date. [This act] is
22 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 SB 3, as introduced.

DESCRIPTION OF PROPOSED LEGISLATION:

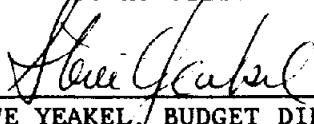
An act eliminating the authority of the Department of Revenue to establish and maintain state employee-operated liquor stores after December 31, 1992; phasing out existing state employee-operated liquor stores by December 31, 1992; exempting the phaseout of state employee-operated liquor stores from the privatization plan review requirements of Title 2, Chapter 8, Part 3, MCA; providing authority for state agency liquor stores to apply for and receive retail off-premises consumption beer and table wine licenses; providing reduction-in-force rights for displaced liquor store employees; providing a method of state financing for an employee-owned enterprise; and providing an immediate effective date.

ASSUMPTIONS:**Gross Sales**

1. The volume of liquor and table wine sold will be no different under the proposal than under current law. The volume of liquor and table wine previously sold by the mix of state liquor stores (i.e. state employee-operated stores and state agency-operated stores) will be maintained under the all-agency-stores operation.
2. The statewide retail price of liquor and table wine sold by state agency liquor stores will be no different under the proposal than under current law.
3. The pass through to state agency liquor store customers of liquor supplier product promotions and price reductions will be no different under the proposal than under current law.
4. The availability of any liquor product for which there is customer demand and for which a customer is willing to pay the state retail price will be no different under the proposal than under current law.
5. The requirement that all-beverages licensees must purchase liquor from a state liquor store (i.e. a state agency liquor store) will be no different under the proposal than under current law.

Full-case Purchase Discounts

6. The annual volume of 5% retail price reductions for full-case purchases by state agency liquor store customers will be no different under the proposal than under current law.


 STEVE YEAKEL, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

1/9/92


 BOB BROWN, PRIMARY SPONSOR DATE

1/9/91

ASSUMPTIONS-continued:

Cost of Goods

7. The annual cost of freight to state agency liquor stores will increase over current annual costs due to the proposed increase in the number of shipments to agents who own the product they sell from the current level of shipments once every other week to once-a-week shipments.
8. The increase in freight to state agency liquor stores will not cause an increase in the statewide retail price of liquor since other cost reductions and other income will more than off-set the freight costs.

Other Income

9. Agents who own the product they sell will order 80% of their slow-moving inventory through mixed-case orders rather than full case orders and pay a \$5.00 per case mixed-case surcharge in order to minimize inventory investment costs. The mixed-case surcharge will increase other income to the liquor enterprise.

Operating Expenses

10. By January 1, 1993 all the state liquor stores currently operated by state employees will be operated by no more than one agent per community and at least one retail outlet and no more than one receiving/storage facility per community.
11. Due to the absolute preference for current employees who form one or more employee-owned enterprises, the financial incentives for participating in an employee-owned enterprise, and the opportunity for increased income and financial stability, the agent or agents under the proposal for communities that currently have employee-operated liquor stores will be an employee-owned enterprise(s) comprised of all regular state employees currently working in state liquor stores.
12. Employee-owned enterprises in communities with a population of more than 3,000 will bid and be paid the maximum commission rate established by the department for each community.
13. Twenty-nine agencies out of the current 95 agencies will take the option of owning the inventory they sell in order to obtain the financial benefit of a commission increase from the current 10% of adjusted gross sales (gross sales less discounts) to the proposed 12% of gross sales.
14. The expenses of salaries, employee benefits, rent, utilities, repairs and maintenance associated with the operation of state liquor stores will be phased out in fiscal years 1992 and 1993 and eliminated thereafter as all state liquor stores are operated by agents.
15. The expenses of breakage, shortages and bad checks associated with state ownership of inventory in stores will phase out in fiscal years 1992 and 1993 and be eliminated thereafter as agencies in communities over 3,000 population and 29 agencies in communities with 3,000 or less pick up ownership of inventory in those stores.

ASSUMPTIONS-continued:

16. Commission payments will increase in fiscal years 1992 and 1993 and level out thereafter.
17. A one-time expense of \$169,000 for payout of state-employee accrued benefits will occur in fiscal years 1992 and 1993.

Liquor Excise and License Taxes

18. Liquor taxes that the state receives from the sale of liquor and table wine sold will be no different under the proposal than under current law.

Liquor Enterprise Profit

19. Net income from liquor enterprise operations will remain at current levels in fiscal years 1992 and 1993 due to any increases being off-set by one-time expenses associated with closing out state-employee operated stores and will increase by \$200,000 per year thereafter.

Transfer of Assets

20. The average monthly value of inventory at cost currently maintained in all state liquor stores located in communities with more than 3,000 population and in 29 communities with populations of 3,000 or less will be transferred to the general fund by the close of fiscal year 1993.
21. Slow-moving or overstocked items owned by the state will be sold closeout prices (but no less than state cost plus tax and normal profit - a 30% reduction on retail) or moved to another store still operating with inventory owned by the state. The expense of moving products will be absorbed by liquor division current operations.

FISCAL IMPACT:

The proposal will transfer \$4 million from the liquor enterprise fund to the general fund in FY 93