

1 SENATE BILL NO. 1
 2 INTRODUCED BY TURNAGE, REGAN
 3
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO RECODIFY AND
 5 GENERALLY REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS."
 6
 7 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:
 8 Section 1. Section 4-101, R.C.M. 1947, is renumbered
 9 section 4-1-101, and is amended to read as follows:
 10 ~~"4-101~~ 4-1-101. Citation of State-liquor-Control-Act--
 11 declaration of policy--subject matters of regulation under
 12 act. This act title may be cited as the "State-liquor
 13 Control-Act-of-Montana" "Montana Alcoholic Beverage Code".
 14 It is hereby declared to be the policy of the state of
 15 Montana to effectuate and ensure the entire control of the
 16 manufacture, sale and distribution of liquor within the
 17 state of Montana as that term is defined in this code in
 18 ~~section-4-102, Revised-Codes-of-Montana, 1947, as amended by~~
 19 ~~chapter--209, laws-of-the-thirty-first-legislative-assembly~~
 20 ~~of-Montana, in, and~~ subject to, the authority of the state
 21 of Montana through the Montana ~~liquor--control--board~~
 22 department of revenue, in accordance with the provisions--of
 23 ~~the-State-liquor-Control-Act-of-Montana-(Title-4, chapter-1,~~
 24 ~~sections--4-101--through--4-171, inclusive, Revised-Codes-of~~
 25 ~~Montana, 1947, as amended or supplemented)-and in accordance~~

1 ~~with-the-provisions-of-the-Retail-liquor-license-Act--(Title~~
 2 ~~4,--chapter--4,--sections--4-401--through--4-441, inclusive,~~
 3 ~~Revised-Codes-of-Montana, 1947, as amended or supplemented).~~
 4 ~~It-is-hereby-declared-to-be-the-policy-of-the-state--of~~
 5 ~~Montana--to--effectuate--and--ensure--that--the--control-and~~
 6 ~~regulation-by-the-state-of-Montana-of-the-manufacture,--sale~~
 7 ~~and--distribution--of--beer,--as-that-term-is-defined-in-the~~
 8 ~~Montana-Beer-Act-(Title-4, chapter-3, sections-4-301-through~~
 9 ~~4-356, inclusive, Revised-Codes-of-Montana, 1947, as amended~~
 10 ~~or-supplemented)-and-regulated-thereby,--and-containing--four~~
 11 ~~per--centum--(4%--of--alcohol--by--weight--or--less,--and-the~~
 12 ~~incidents-of-such-manufacture,--sale-and-distribution-of-such~~
 13 ~~beer,--shall--continue--subject--to,--and--be--effectuated~~
 14 ~~exclusively--under,--the-provisions-of-the-Montana-Beer-Act,~~
 15 ~~as-amended-or-supplemented,--and-not-under-the-provisions--of~~
 16 ~~the--State-liquor-Control-Act-of-Montana,--The-terms--"beer"~~
 17 ~~and--"malt-liquor"--whenever-used-as-a-subject--of--regulation~~
 18 ~~and--control--by--and--under-the-state-liquor-Control-Act-of~~
 19 ~~Montana-shall-refer-to,--and-be-construed-as-applicable--only~~
 20 ~~to,--beer,--ale,--porter,--stout--or--other--malt--liquors~~
 21 ~~containing-more-than-four-per--centum--(4%--of--alcohol--by~~
 22 ~~weight,--and--such-beer,--ale,--porter,--stout-and-malt-liquors~~
 23 ~~containing-more-than-four-per--centum--(4%--of--alcohol--by~~
 24 ~~weight,--are--hereby--classified-and-defined-as--"liquor"--and~~
 25 ~~shall-be-subject-to-regulation-and-control-under--the--terms~~

1 of--the--State--Liquor--Control--Act--of--Montana--as--amended--or
 2 supplemented--and--not--under--the--provisions--of--the--Montana
 3 Beer--Act--as--amended--or--supplemented--The--said--acts--herein
 4 referred--to--shall--be--deemed This code is an exercise of the
 5 police power of the state, in, and for the protection, of
 6 the welfare, health, peace, morals and safety of the people
 7 of the state and their provisions shall be construed for the
 8 accomplishment of such purposes."

9 Section 2. Section 4-103, R.C.M. 1947, is renumbered
 10 section 4-1-105, and is amended to read as follows:

11 "~~4-103~~ 4-1-105. Divisions of act code. This act code
 12 is divided into six parts chapters. Part-~~II~~ Chapter 1
 13 relates to the creation--of--a--board authority of the
 14 department of revenue to administer this act and the powers
 15 and functions of the board department. Part-~~III~~ Chapter 2
 16 relates to the establishment of state stores and the keeping
 17 and selling of liquors. Part-~~III~~ Chapter 3 relates to the
 18 formation--of--local--option--areas--and--the--holding--of
 19 election--therein control of liquor, wine, and beer. Part
 20 ~~IV~~ Chapter 4 relates to prohibitions--interdiction,
 21 penalties--and--procedure--on--prosecution--and--on--appeal license
 22 administration. Part-~~V~~ Chapter 5 relates to property
 23 acquired--by--the--board--and--the--financing--and--accounting--by
 24 the--board--and--application--of--the--profits identification
 25 cards. Part-~~VI~~ Chapter 6 relates to general--and

1 miscellaneous--matters enforcement."

2 Section 3. Section 4-107, R.C.M. 1947, is renumbered
 3 section 4-1-301, and is amended to read as follows:

4 "~~4-107~~ 4-1-301. General powers and duties of the board
 5 department. The board department of revenue shall have the
 6 powers and duties ~~herein specified and the administration of~~
 7 to administer the State--Liquor--Control--Act--of Montana and
 8 the--Montana--Beer--Code Alcoholic Beverage Code, including the
 9 general control, management and supervision of all state
 10 liquor stores, ~~but the board is authorized to delegate to~~
 11 ~~the--state--liquor--administrator--the--general--control,~~
 12 ~~management--and--supervision--of--all--state--liquor--stores,~~
 13 ~~including--the--power--to--purchase--supplies--for--same--and--the~~
 14 ~~power--to--hire--and--discharge--employees--of--the--board--subject,~~
 15 ~~however--to--such--regulations--and--restrictions--as--the--board~~
 16 ~~may impose upon the state liquor administrator."~~

17 Section 4. Section 4-109, R.C.M. 1947, is renumbered
 18 section 4-1-307, and is amended to read as follows:

19 "~~4-109~~ 4-1-307. Principal office of board department
 20 of revenue. The principal office of the board department of
 21 revenue shall be in the city of Helena."

22 Section 5. Section 4-112, R.C.M. 1947, is renumbered
 23 section 4-1-302, and is amended to read as follows:

24 "~~4-112~~ 4-1-302. Functions, powers and duties of board
 25 department of revenue. The board department of revenue shall

1 have the following functions, duties and powers:

2 (a) To buy, import, and have in its possession for
3 sale, and sell, liquors, in the manner set forth in this act code;
4

5 (b) To control the possession, sale and delivery of
6 liquors in accordance with the provisions of this act code;

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

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

12 (e) To buy or lease all plant and equipment it may
13 consider necessary and useful in carrying into effect the
14 objects and purposes of this act code;

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

23 (g) To determine the nature, form and capacity of all
24 packages to be used for containing liquor kept or sold under
25 this act code; ~~provided--that--all--spirituuous--and--vinous~~

1 ~~liquors---shall--be--purchased--and--sold--only--in--bottled~~
2 ~~containers-in-the-original-packages,-and-not-in--barrels--or~~
3 ~~bulky-it-being-the-intent-and-purpose-of-this-act-to-prevent~~
4 ~~the-rectification-or-dilution-of-such-liquors;~~

5 (h) To grant and issue licenses under and in pursuance
6 to this act code;

7 (i) Without in any way limiting, or being limited by
8 the foregoing, to do all such things as are deemed necessary
9 or advisable by the board department for the purpose of
10 carrying into effect the provisions of this act code, or the
11 regulations made thereunder."

12 Section 6. Section 4-113, R.C.M. 1947, is renumbered
13 section 4-1-303, and is amended to read as follows:

14 "~~4-113~~ 4-1-303. Regulations may be made by board
15 department of revenue--scope of regulations. (1) The board
16 department of revenue may make such regulations, not
17 inconsistent with this act code, as to the board department
18 of revenue seem necessary, for carrying out the provisions
19 of this act code, and for the efficient administration
20 thereof.

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

1 (a) Regulating the equipment and management of state
2 stores and warehouses in which liquor is kept or sold and
3 prescribing the books and records to be kept therein;

4 (b) Prescribing the duties of the ~~officers, clerks and~~
5 ~~servants~~ employees of the ~~board~~ liquor division, and
6 regulating their conduct while in the discharge of their
7 duties;

8 (c) Governing the purchase of liquor and the
9 furnishing of liquor to state stores established under this
10 act code;

11 (d) Determining the classes, varieties and brands of
12 liquor to be kept for sale at any state store;

13 (e) Prescribing, subject to this act code, the days
14 and hours during which state liquor stores ~~and--hotels~~, and
15 ~~clubs~~ retail establishments ~~licensed-to-sell-beer-under-this~~
16 act shall be kept open for the sale of ~~liquor~~ alcoholic
17 beverages;

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

22 (g) Prescribing an official ~~serially-numbered~~ seal
23 which shall be attached to every package of liquor sold or
24 sealed under this act code;

25 (h) Prescribing forms to be used for the purpose of

1 this act code or of the regulations made thereunder, and the
2 terms and conditions in permits and licenses issued and
3 granted under this act code;

4 ~~{i}--Prescribing--the--kinds--and--quantities-of-liquor~~
5 ~~which-may-be-purchased-under-permits-of-any-class--including~~
6 ~~the-quantity-which-may-be-purchased--at--any--one--time--or~~
7 ~~within-any-specified-period-of-time;~~

8 ~~{j} (i)~~ Prescribing the form of records of purchase of
9 liquor, and the reports to be made thereon to the board, and
10 providing for inspection of the records so kept;

11 ~~{k} (j)~~ Prescribing the manner of giving and serving
12 notices required by this act code or the regulations
13 thereunder;

14 ~~{l} (k)~~ Prescribing the fees payable in respect of
15 permits and licenses issued under this act code for which no
16 fees are prescribed in this act code, and prescribing the
17 fees for anything done or permitted to be done under the
18 regulations made thereunder;

19 ~~{m}--Prescribing--subject-to--the--provisions--of--this~~
20 ~~act--any--advertisement--of-the-application--if-required-by~~
21 ~~the-board-and-the-conditions--and--qualifications--necessary~~
22 ~~for-the-obtaining-of-club-licenses-and-the-books-and-records~~
23 ~~to--be--kept--and--the--returns-to-be-made-by-clubs--and--the~~
24 ~~number-of-licensed-clubs-in-any-municipality--and--providing~~
25 ~~for-the-inspection-of-clubs;~~

1 ~~(n)~~ (1) Prescribing, subject to the provisions of this
2 ~~act code~~, the conditions and qualifications necessary for
3 the obtaining of a liquor or beer license, and the books and
4 records to be kept and the returns to be made by the
5 licensees and ~~the--number-of-such-licensed-premises-in-any~~
6 ~~municipality--and~~ providing for the inspection of such
7 licensed premises;

8 ~~(e)~~ (m) Specifying and describing the place and the
9 manner in which liquor or beer may be lawfully kept or
10 stored;

11 ~~(p)~~ (n) Specifying and regulating the time and periods
12 when, and the manner, methods and means by which, vendors
13 and brewers shall deliver liquor under this ~~act code~~, and
14 the time and periods when, and the manner, methods and means
15 by which liquor, under this ~~act code~~, may be lawfully
16 conveyed or carried;

17 ~~(q)~~ (o) Governing the conduct, management and
18 equipment of any premises licensed to sell liquor or beer
19 under this ~~act code~~;

20 ~~(r)--Subject-to--this--act,--to--make--regulations~~
21 ~~respecting--the--sale--and--consumption--of--beer--in--a--club,~~
22 ~~holding-a-club-license,~~

23 ~~(s)~~ (p) Providing for the imposition and collection of
24 ~~the-tax-to-be-collected-or-levied--under--section--4-147~~
25 ~~{4-317},~~ taxes and making regulations respecting returns, to

1 ~~be--made--by--a--brewery--and--respecting--the~~ accounting and
2 ~~payment--by--a--brewer~~ to the board, department of revenue of
3 the ~~tax, taxes~~ to-be-collected-by-him-under-said-section
4 ~~4-147-{4-317}~~.

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

12 Section 7. Section 4-114, R.C.M. 1947, is renumbered
13 section 4-2-101, and is amended to read as follows:

14 ~~"4-114~~ 4-2-101. Establishment of state liquor stores--
15 hours--kinds and prices of liquor. The ~~board~~ department of
16 revenue shall establish and maintain at the county seats and
17 such other places as the ~~board~~ department deems advisable,
18 one or more stores to be known as "state liquor stores," for
19 the sale of liquor in accordance with the provisions of this
20 ~~act code~~ and the regulations made thereunder; the stores
21 shall be classified according to the volume of business
22 which each store does each fiscal year; the volume of
23 business to be used in figuring each store's classification
24 shall be the volume of business done by the store to be
25 classified during the immediate past fiscal year; stores

1 shall be classified as follows: stores having done a
 2 business of four hundred and fifty thousand dollars
 3 (\$450,000) or over during the immediate past fiscal year
 4 shall be "Class A" stores; stores having done a business of
 5 one hundred and forty thousand dollars (\$140,000) and up to
 6 four hundred and fifty thousand dollars (\$450,000) during
 7 the immediate past fiscal year shall be "Class B" stores;
 8 and all stores having done a business of less than one
 9 hundred and forty thousand dollars (\$140,000) during the
 10 immediate past fiscal year shall be "Class C" stores; in
 11 opening new stores the board department shall estimate the
 12 volume of business which said store will do the first year
 13 and classify said store according to the estimate of
 14 business; the board department shall contract or employ the
 15 necessary help to operate said stores and shall designate
 16 the duties to be performed by the agent or employees; the
 17 board department may, from time to time, fix the prices at
 18 which the various classes, varieties and brands of liquor
 19 may be sold, and prices shall be the same at all state
 20 stores. Such state liquor stores shall be and remain open
 21 during such period of the day as the board department shall
 22 deem advisable, provided, however, that such stores shall be
 23 closed for the transaction of business between the close of
 24 normal business Saturday p.m. through up to the opening of
 25 normal business Tuesday a.m. as set by board department

1 regulation and including legal holidays ~~and election--days.~~
 2 Section 8. Section 4-116, R.C.M. 1947, is renumbered
 3 section 4-2-106, and is amended to read as follows:
 4 "~~4-116~~ 4-2-106. Provisions concerning sale of liquor
 5 ~~and--beer-by-vendors.~~ A vender store manager may sell to any
 6 person such liquor as that person is entitled to purchase in
 7 conformity with the provisions of this act code and the
 8 regulations made thereunder, provided that no delivery shall
 9 take place until the purchaser has paid the purchase price."
 10 Section 9. Section 4-117, R.C.M. 1947, is renumbered
 11 section 4-2-201, and is amended to read as follows:
 12 "~~4-117~~ 4-2-201. No reduction for quantity sales of
 13 liquor. No reductions shall be made by the Montana-liquor
 14 ~~control-board~~ department for sales of liquor in quantity."
 15 Section 10. Section 4-120, R.C.M. 1947, is renumbered
 16 section 4-2-107, and is amended to read as follows:
 17 "~~4-120~~ 4-2-107. Liquor not to be consumed on premises
 18 of state store. No officer, clerk or servant of the board
 19 department, employed in the state store, shall allow any
 20 liquor to be consumed on the premises of a state store, nor
 21 shall any person consume any liquor on such premises."
 22 Section 11. Section 4-121, R.C.M. 1947, is renumbered
 23 section 4-2-104, and is amended to read as follows:
 24 "~~4-121~~ 4-2-104. When sales of liquor forbidden. No
 25 sale or delivery of liquor shall be made on or from the

1 premises of any state liquor store, nor shall any store be
2 open for the sale of liquor

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

4 ~~{b}--on--any--day--on--which--polling--takes--place--at--any~~
5 ~~national--or--state--election--held--in--the--electoral--district--in~~
6 ~~which--the--store--is--situated;~~

7 ~~{c}--on--any--day--on--which--polling--takes--place--at--any~~
8 ~~municipal--election--held--in--the--municipality--in--which--the~~
9 ~~store--is--situated;~~

10 ~~{d}~~ (b) during such other period and on such other days
11 as the board department may direct."

12 Section 12. Section 4-122, R.C.M. 1947, is renumbered
13 section 4-2-103, and is amended to read as follows:

14 "4-122 4-2-103. Conveyance of liquors--opening liquor
15 during transit forbidden. It shall be lawful to carry or
16 convey liquor to any state store, and to and from any
17 warehouse or depot established by the board department for
18 the purposes of this act code, and when permitted so to do
19 by this act code and the regulations made thereunder, and in
20 accordance therewith, it shall be lawful for any common
21 carrier, or other person, to carry or convey liquor sold by
22 a vendor from a state store, or beer, when lawfully sold by
23 a brewer, from the premises wherein such beer was
24 manufactured, or from premises where the beer may be
25 lawfully kept and sold, to any place to which the same may

1 be lawfully delivered under this act code, and the
2 regulations made thereunder;

3 Provided that no such common carrier or any other
4 person, shall open, or break, or allow to be opened or
5 broken, any package or vessel containing liquor, or drink or
6 use, or allow to be drunk or used, any liquor therefrom,
7 while being so carried or conveyed."

8 Section 13. Section 4-139, R.C.M. 1947, is renumbered
9 section 4-1-205, and is amended to read as follows:

10 "4-139 4-1-205. Hospitals---and---sanitariums Licensed
11 hospital or health care facility -- restrictions --
12 violations. Any person in charge of an institution regularly
13 conducted as a hospital--or--sanitarium--for--the--care--of
14 persons--in--ill--health--or--as--a--home--devoted--exclusively--to
15 the--care--of--aged--people licensed hospital or health care
16 facility, may administer liquor purchased by him to any
17 patient or inmate of the institution who-is-in-need-of-the
18 same--either-by-way-of-external-application-or-otherwise-for
19 emergency-medical-purposes, and may charge for the liquor so
20 administered; but no liquor shall be administered by any
21 person under this section except to bona fide patients or
22 inmates of the institution of which he is in charge and--in
23 cases--of--actual--need, and every person in charge of an
24 institution who administers liquor in evasion or violation
25 of this act code shall be guilty of an offense against this

1 act code."

2 Section 14. Section 4-140, R.C.M. 1947, is renumbered
3 section 4-1-202, and is amended to read as follows:

4 "~~4-140~~ 4-1-202. Application of act code. (1) Nothing
5 in this act code shall prevent any brewer, distiller, or
6 other person duly licensed, under the provisions of any
7 statute of the United States of America, for the manufacture
8 of liquor, from having or keeping liquor in a place and in
9 the manner authorized by or under any such statute.

10 It is hereby declared to be the policy of the state of
11 Montana that the manufacture of liquor including the
12 distillation, rectification, bottling and processing as
13 these terms are defined under the provisions of the laws of
14 the United States shall be authorized and permitted by any
15 brewer, distiller, rectifier or other person duly licensed
16 under any provision of any statute of the United States of
17 America in a place and in the manner authorized by or under
18 any statute of the United States provided the Montana state
19 ~~liquor--control--board~~ department of revenue may make such
20 regulations as the ~~board--deem~~ department deems necessary
21 with respect thereto, not inconsistent with this act code,
22 or with the statutes of the United States of America or
23 regulations issued under the provisions of the federal
24 Alcohol Administration Act, title 27, United States Code
25 sections 201 through 212 inclusive or regulations issued

1 under the provisions of the Internal Revenue Code, title 26,
2 United States Code, sections 5001 through ~~section~~ 5693,
3 inclusive.

4 (2) Nothing in this act code shall prevent--

5 (a) The sale of liquor by any person to the ~~board~~
6 department;

7 (b) The purchase, importation and sale of liquor by
8 the ~~board~~ department for the purposes of and in accordance
9 with this act code."

10 Section 15. Section 4-141, R.C.M. 1947, is renumbered
11 section 4-1-203, and is amended to read as follows:

12 "~~4-141~~ 4-1-203. Preparations not subject to act code.

13 (1) Subject to the provisions of this section, nothing in
14 this act code shall, by reason only that such preparation
15 contains alcohol, prevent the manufacture, sale, purchase or
16 consumption--

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

22 (b) of any proprietary or patent medicine prepared
23 according to a formula approved of by the ~~board~~ department.

24 (2) The ~~board~~ department, if of opinion that any such
25 proprietary or patent medicine, extract, essence, tincture

1 or preparation which contains alcohol, or any other
 2 preparation of a solid, semisolid or liquid nature
 3 containing alcohol which, or any extract from which, can be
 4 used as a beverage or as the ingredient of any beverage, may
 5 prohibit the sale thereof by retail within the state, or the
 6 possession of the same for sale by retail within the state,
 7 except by a state liquor store, or by persons duly licensed
 8 by the board department to keep and sell the same by retail
 9 in accordance with this act and the regulations made
 10 thereunder.

11 (3) The board department shall notify the manufacturer
 12 or vendor of such proprietary or patent medicine, extract,
 13 essence, tincture or preparation, of the said prohibition
 14 and from and after the date of such notification any person
 15 within the state selling or keeping for sale any such
 16 proprietary or patent medicine, extract, essence, tincture
 17 or preparation so prohibited as aforesaid shall be guilty of
 18 an offense under this act code."

19 Section 16. Section 4-150, R.C.M. 1947, is renumbered
 20 section 4-1-201, and is amended to read as follows:

21 "~~4-150~~ 4-1-201. Sale of liquor, ~~unlawful~~
 22 ~~when--foreign-substance-in-liquor--forbidden--~~possession of
 23 liquor, when unlawful. (1) Except as provided by this act
 24 code, no person shall, within the state, by himself, his
 25 clerk, servant, or agent, expose or keep for sale, or

1 directly or indirectly or upon any pretense, or upon any
 2 device, sell, or offer to sell, or in consideration of the
 3 purchase or transfer of any property, or for any other
 4 consideration, or at the time of the transfer of any
 5 property, give to any other person any liquor.

6 ~~(2)-No-person-shall-have,keep-or--sell--any--beer,--or~~
 7 ~~malt--liquor,--to-which-has-been-added-any-foreign-substance-~~

8 ~~(3)~~ (2) No person shall have or keep any liquor within
 9 the state which has not been purchased from a the state
 10 ~~vender~~ of the Montana ~~liquor--control--board--or--from-a~~
 11 ~~druggist-authorized-to-sell--the--same~~; provided, however,
 12 that nothing in this act code shall prohibit any person
 13 entering this state from any other state, or from any
 14 foreign country, from having in his possession not to exceed
 15 ~~one--(1)~~ three (3) wine gallon gallons of alcoholic liquor or
 16 beer, which liquor or beer shall have been purchased in
 17 another state or foreign country but no person claiming to
 18 have so entered the state, shall at any time, have in his
 19 possession more than ~~one--(1)~~ three (3) wine gallon gallons
 20 of intoxicating liquor which shall not have been purchased
 21 from a state liquor store. This subsection shall not apply
 22 to the board department or to the keeping or having of
 23 liquor by brewers, distillers and other persons duly
 24 licensed by the United States for the manufacture of such
 25 liquor; nor to the keeping or having of any proprietary or

patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this act code.

~~(4)~~ (3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the board department, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee."

Section 17. Section 4-152, R.C.M. 1947, is renumbered section 4-2-105, and is amended to read as follows:

~~"4-152~~ 4-2-105. Place and time of selling liquor. No ~~vender~~ store manager, and no person acting as the clerk or servant of or in any capacity for any ~~vender manager~~, shall sell liquor in any other place or at any other time or otherwise than as authorized by this act code and the regulations."

Section 18. Section 4-153, R.C.M. 1947, is renumbered section 4-1-304, and is amended to read as follows:

~~"4-153~~ 4-1-304. ~~Board---members~~ Liquor division employees not to be interested in liquor sales--unlawful to give or receive gift, commission or remuneration. (1) No ~~member officer~~ or employee of the board liquor division shall be directly or indirectly interested or engaged in any

other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee, and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the board division or any employee of the state shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the state or board division in pursuance of this act code.

(3) No person selling or offering for sale to, or purchasing liquor from, the state ~~or--the--board~~ liquor division, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the board division or to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the board division from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation proposing to sell any spirituous liquors to the Montana liquor ~~control--board~~

1 division shall submit, without cost to the board division
 2 prior to the original purchase, an analysis of each brand
 3 and may submit a representative sample not exceeding
 4 twenty-five (25) fluid ounces of such merchandise to the
 5 board.

6 (b) It shall be the duty of the board division, when a
 7 brand of liquor has been accepted for testing by the board
 8 division, to forward the sample, unopened and in its
 9 entirety, to a qualified chemical laboratory for analysis.

10 (c) The board division shall maintain written records
 11 of all samples received; such records shall show the brand
 12 name, amount and from whom received, date received, the
 13 laboratory or chemist to whom forwarded, the board's
 14 division's action on the brand, and the person to whom
 15 delivered or other final disposition of the sample.

16 (5) No liquor, wine, or other spirituous beverage
 17 shall be withdrawn from the regular warehouse inventory or
 18 from the state liquor stores of the Montana liquor ~~control~~
 19 board division, for any purpose whatsoever other than by
 20 sale at the prevailing state retail prices, or for
 21 destroying damaged or defective merchandise. The board
 22 division shall maintain a written record including the type,
 23 brand, and container size; number of bottles or other units;
 24 signatures of witnesses; and method of destruction or other
 25 disposition of damaged or defective warehouse or state store

1 merchandise."

2 Section 19. Section 4-154, R.C.M. 1947, is renumbered
 3 section 4-6-101, and is amended to read as follows:

4 "~~4-154~~ 4-6-101. Transfer of ~~liquor~~ alcoholic beverages
 5 except as provided by ~~act~~ code unlawful. Except as provided
 6 in this act code, no person shall, within the state, by
 7 himself, his clerk, servant, or agent, attempt to purchase,
 8 or directly or indirectly or upon any pretense or upon any
 9 device, purchase, or in consideration of the sale or
 10 transfer of any property, or for any other consideration, or
 11 at the time of the transfer of any property, take or accept
 12 from any other person any ~~liquor~~ alcoholic beverage."

13 Section 20. Section 4-156, R.C.M. 1947, is renumbered
 14 section 4-6-106, and is amended to read as follows:

15 "~~4-156~~ 4-6-106. Consumption of ~~liquor~~ alcoholic
 16 beverage on druggists' premises prohibited. No person,
 17 within the state of Montana, shall consume any ~~liquor~~
 18 alcoholic beverage on any premises where ~~liquor~~ an alcoholic
 19 beverage is kept for sale by a druggist, nor shall any
 20 druggist permit any ~~liquor~~ alcoholic beverage to be consumed
 21 on such premises."

22 Section 21. Section 4-158, R.C.M. 1947, is renumbered
 23 section 4-3-102, and is amended to read as follows:

24 "~~4-158~~ 4-3-102. Liquor container must have been sealed
 25 with official seal--~~powers--and--duties-of-peace-officers~~."

1 ~~{1}~~ Except in the case of--

2 (a) liquor imported by the state, or by the ~~board~~
3 ~~department~~; or

4 (b) liquor had and kept by a person, and in a place and
5 manner referred to in section 4-~~140~~ 4-1-202; or

6 (c) beer and malt liquor, lawfully had or kept under
7 this act code; or

8 (d) any liquor kept for sale by a druggist under
9 ~~section--4-134~~ this code no liquor shall be kept or had by
10 any person within the state unless the package, not
11 including a decanter or other receptacle containing the
12 liquor for immediate consumption, in which the liquor is
13 contained has, while containing that liquor, been sealed
14 with the official seal prescribed under this act code.

15 ~~{2}--Any-inspector-or-peace-officer-who-finds--liquor,~~
16 ~~which--he--has-reasonable-cause-to-believe-is-had-or-kept-by~~
17 ~~any-person-in-violation-of-the-provisions-of-this--act,--may~~
18 ~~without-warrant,--forthwith-seize-and-remove-the-same-and-the~~
19 ~~packages-in-which-the-liquor-is-kept,--and-upon-conviction-of~~
20 ~~the--person-for-a-violation-of-any-provision-of-this-section~~
21 ~~the-liquor-and-all-packages-containing-the--same--shall,--in~~
22 ~~addition--to--any-other-penalty-prescribed-by-this-act,--ipso~~
23 ~~facto-be-forfeited-to-the-state-of-Montana."~~

24 Section 22. There is a new section to be numbered
25 4-6-205, R.C.M. 1947, which reads as follows:

1 4-6-205. Unlawful alcoholic beverage -- seizure --
2 forfeiture. Any investigator or peace officer who finds an
3 alcoholic beverage, which he has reasonable cause to believe
4 is had or kept by any person in violation of the provisions
5 of this code, may forthwith seize and remove the same and
6 the packages in which the alcoholic beverage is kept, and
7 upon conviction of the person for a violation of any
8 provision of this section the alcoholic beverage and all
9 packages containing the same shall, in addition to any other
10 penalty prescribed by this code, ipso facto be forfeited to
11 the state of Montana.

12 Section 23. Section 4-160, R.C.M. 1947, is renumbered
13 section 4-6-103, and is amended to read as follows:

14 "~~4-160~~ 4-6-103. Sales-to-intoxicated-persons Providing
15 alcoholic beverage prohibited. (1) No ~~vender~~ store manager,
16 beer retail licensee, ~~or-club-licensee~~, nor any employee of
17 a ~~vender~~ store manager, beer or retail licensee, ~~or-club~~
18 licensee, ~~shall~~ may sell any liquor alcoholic beverage, or
19 permit any liquor alcoholic beverage to be sold, to any
20 person apparently under the influence of ~~liquor~~ an alcoholic
21 beverage.

22 (2) No person may give an alcoholic beverage to a
23 person apparently under the influence of alcohol."

24 Section 24. Section 4-161, R.C.M. 1947, is renumbered
25 section 4-6-104, and is amended to read as follows:

~~"4-161~~ 4-6-104. Age limit for sale of ~~liquor~~ alcoholic beverages. Except in the case of ~~liquor~~ an alcoholic beverage given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply ~~liquor~~ an alcoholic beverage to any person under the age of eighteen (18) years, or permit any person under that age to consume ~~liquor~~ an alcoholic beverage."

Section 25. Section 4-203, R.C.M. 1947, is renumbered section 4-6-203, and is amended to read as follows:

~~"4-203~~ 4-6-203. Search warrants--issuance. ~~††~~ Upon information on oath by any ~~inspector~~ investigator appointed under this ~~act~~ code or by any peace officer showing reasonable cause to believe that ~~liquor--is~~ alcoholic beverages are unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any ~~justice court~~ court by warrant ~~under--his--hand~~ to authorize and empower the ~~inspector~~ investigator or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening of the building or premises or any part thereof, or any

closet, cupboard, box, or other receptacle therein which might contain ~~liquor~~ alcoholic beverages."

Section 26. Section 4-209, R.C.M. 1947, is renumbered section 4-6-207, and is amended to read as follows:

~~"4-209~~ 4-6-207. Seizure of ~~liquor~~ alcoholic beverage and conveyance--forfeiture of conveyance and ~~liquor~~ alcoholic beverage to state. Whenever an ~~inspector--of~~ investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description ~~liquor~~ an alcoholic beverage which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this ~~act~~ code, he may forthwith seize the ~~liquor~~ alcoholic beverage and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which ~~such--liquor~~ the alcoholic beverage is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such ~~liquors~~ alcoholic beverages contrary to any of the provisions of this ~~act~~ code in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence

imposed under authority of law, declare the liquor alcoholic beverage or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana."

Section 27. Section 4-210, R.C.M. 1947, is renumbered section 4-6-208, and is amended to read as follows:

"~~4-210~~ 4-6-208. Force may be used in seizure of liquor alcoholic beverages, when--retention of seized liquor alcoholic beverage--forfeiture--hearing. (1) Where liquor alcoholic beverage is found by any inspector investigator or peace officer on any premises or in any place in such quantities as to satisfy the inspector investigator or peace officer that such liquor alcoholic beverage is being had or kept contrary to any of the provisions of this act code, it shall be lawful for the inspector investigator or peace officer to forthwith seize and remove, by force if necessary, any liquor alcoholic beverage so found, and the packages in which the liquor alcoholic beverage was had or kept and immediately turn said liquor alcoholic beverage over to the Montana liquor--control--board department of revenue.

(2) The Montana liquor--control--board department of

revenue shall commence an action in the district court of the county in which the liquor alcoholic beverage is found and seized against said liquor alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The said-liquor alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana liquor--control--board department of revenue claims the right to the possession of said--liquor the alcoholic beverage and shall demand that all persons who claim any right to the possession of said--liquor the alcoholic beverage shall show the nature of their claim or claims and that the court declare said-liquor the alcoholic beverage contraband and that the court order said-liquor alcoholic beverage be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where said--liquor the alcoholic beverage was seized if a newspaper is published in said county.

(5) In all actions brought under this act code, proof

1 of the absence of the official seal of the Montana ~~liquor~~
 2 ~~control--board~~ department of revenue upon the bottle, jug,
 3 package, container or containers of ~~such-liquor~~ an alcoholic
 4 beverage on which a seal is required shall be prima facie
 5 evidence that ~~said--liquor~~ the alcoholic beverage is
 6 contraband liquor and prima facie evidence of unlawful
 7 possession thereof in the defendants and each of them and in
 8 all other persons excepting the Montana ~~liquor-control-board~~
 9 department of revenue, and the court shall order all such
 10 liquor alcoholic beverage contraband and forfeited to the
 11 state of Montana."

12 Section 28. Section 4-211, R.C.M. 1947, is renumbered
 13 section 4-6-209, and is amended to read as follows:

14 "~~4-211~~ 4-6-209. Disposal of forfeited ~~liquor~~ alcoholic
 15 beverage--report by officers of seizure. (1) In every case
 16 in which a court makes any order for the forfeiture of
 17 liquor alcoholic beverages under any of the provisions of
 18 this act, and in every case in which any claimant to ~~liquor~~
 19 an alcoholic beverage under the provisions of section ~~4-210~~
 20 4-6-207, fails to establish his claim and right thereto, the
 21 liquor alcoholic beverage in question and the packages in
 22 which the ~~liquor~~ alcoholic beverage is kept shall forthwith
 23 be delivered to the board department. The board department
 24 shall thereupon, determine the market value of all forfeited
 25 liquor alcoholic beverage which is found to be suitable for

1 sale in the state liquor stores, and the board department
 2 shall pay the amount so determined to the state treasurer,
 3 after deducting therefrom the expenses necessarily incurred
 4 by the board department for transporting the forfeited
 5 ~~liquor~~ alcoholic beverage to the state liquor warehouses,
 6 and the ~~liquor~~ alcoholic beverage suitable for sale shall be
 7 taken into stock by the board department and sold under the
 8 provisions of this act code. All forfeited ~~liquor~~ alcoholic
 9 beverage which is found to be unsuitable for sale in state
 10 liquor stores shall be destroyed under competent supervision
 11 as may from time to time be directed by the board
 12 department.

13 (2) In every case in which ~~liquor~~ an alcoholic beverage
 14 is seized by a peace officer it shall be his duty to
 15 forthwith make or cause to be made to the board department a
 16 report in writing, of the particulars of such seizure."

17 Section 29. Section 4-212, R.C.M. 1947, is renumbered
 18 section 4-6-210, and is amended to read as follows:

19 "~~4-212~~ 4-6-210. Inspection of carriers' records--when
 20 authorized. For the purpose of obtaining information
 21 concerning any matter relating to the administration or
 22 enforcement of this act code, the board department or any
 23 person appointed by it in writing for the purpose may
 24 inspect the freight and express books and records, and all
 25 waybills, bills of lading, receipts, and documents in the

possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 30. Section 4-213, R.C.M. 1947, is renumbered section 4-6-211, and is amended to read as follows:

"~~4-213~~ 4-6-211. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the ~~board~~ department or by a person so appointed by it shall be guilty of an offense against this act code."

Section 31. Section 4-214, R.C.M. 1947, is renumbered section 4-6-303, and is amended to read as follows:

"~~4-214~~ 4-6-303. Description of offense--sufficiency of. In describing the offense respecting the sale or keeping for sale or other disposal of ~~liquor~~ alcoholic beverages, or the having, keeping, giving, purchasing or the consumption of ~~liquor~~ alcoholic beverages in any information, summons, conviction, warrant, or proceeding under this act code, it shall be sufficient to state the

sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of ~~liquor~~ alcoholic beverages, simply without stating the name or kind of such ~~liquor~~ alcoholic beverage or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of ~~liquor~~ alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity."

Section 32. Section 4-215, R.C.M. 1947, is renumbered section 4-6-304, and is amended to read as follows:

"~~4-215~~ 4-6-304. Description of offense--sufficiency--defenses need not be negatived. The description of any offense under this act code, in the words of this act code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this act code, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified nor negatived shall be required on the part of the informant

1 or complainant."

2 Section 33. Section 4-216, R.C.M. 1947, is renumbered
3 section 4-6-305, and is amended to read as follows:

4 "4-216 4-6-305. Sufficiency of evidence. In any
5 prosecution under this act code for the sale or keeping for
6 sale or other disposal of liquor alcoholic beverages, or the
7 having, keeping, giving, purchasing, or consuming of liquor
8 alcoholic beverages, it shall not be necessary that any
9 witness should depose to the precise description or quantity
10 of the liquor alcoholic beverages sold, disposed of, kept,
11 had, given, purchased, or consumed, or the precise
12 consideration (if any) received therefor, or to the fact of
13 the sale or other disposal having taken place with his
14 participation or to his own personal or certain knowledge;
15 but conviction may be based upon circumstantial evidence
16 reasonably tending to establish the guilt of the accused
17 beyond a reasonable doubt."

18 Section 34. Section 4-217, R.C.M. 1947, is renumbered
19 section 4-6-306, and is amended to read as follows:

20 "4-217 4-6-306. Proof of violation--sufficiency. In
21 proving the sale, disposal, gift, or purchase, gratuitous or
22 otherwise, or consumption of liquor alcoholic beverages, it
23 shall not be necessary in any prosecution to show that any
24 money actually passed or any liquor alcoholic beverages was
25 actually consumed, if the court hearing the case is

1 satisfied that a transaction in the nature of a sale,
2 disposal, gift, or purchase actually took place, or that any
3 consumption of liquor alcoholic beverages was about to take
4 place; and proof of consumption or intended consumption of
5 liquor alcoholic beverages on premises on which such
6 consumption is prohibited, by some person not authorized to
7 consume liquor an alcoholic beverage thereon, shall be
8 evidence that such liquor alcoholic beverage was sold or
9 given to or purchased by the person consuming, or being
10 about to consume, or carrying away the same, as against the
11 occupant of the said premises."

12 Section 35. Section 4-218, R.C.M. 1947, is renumbered
13 section 4-6-307, and is amended to read as follows:

14 "4-218 4-6-307. Analyst's report as prima facie
15 evidence of contents. In any prosecution under this act
16 code, or the regulations made thereunder, production by a
17 police officer, policeman, constable, inspector or peace
18 officer, of a certificate or report signed or purporting to
19 be signed by a United States or state analyst as to the
20 analysis or ingredients of any liquor alcoholic beverage or
21 other fluid or any preparation, compound, or substance, such
22 certificate or report shall be prima facie evidence of the
23 facts stated in such certificate or report and of the
24 authority of the person giving or making the same without
25 any proof of appointment or signature."

1 Section 36. Section 4-219, R.C.M. 1947, is renumbered
2 section 4-6-308 and is amended to read as follows:

3 "4-219 4-6-308. Presumption of intoxicating ~~liquor~~
4 beverage arises, when. The court trying a case shall, in the
5 absence of proof to the contrary, be at liberty to infer
6 that the ~~liquor~~ alcoholic beverage in question is
7 intoxicating from the fact that a witness described it as
8 intoxicating, or by a name which is commonly applied to an
9 intoxicating ~~liquor~~ beverage."

10 Section 37. Section 4-220, R.C.M. 1947, is renumbered
11 section 4-6-309, and is amended to read as follows:

12 "4-220 4-6-309. Inferences from facts of act code
13 claimed to be violation. Upon the hearing of any charge of
14 selling or purchasing ~~liquor~~ an alcoholic beverage, or of
15 unlawfully having or keeping ~~liquor~~ an alcoholic beverage,
16 contrary to any of the provisions of this act code, the
17 court trying the case shall have the right to draw
18 inferences of fact from the kind and quantity of ~~liquor~~
19 alcoholic beverages found in the possession of the person
20 accused, or in any building, premises, vehicle, motorcar,
21 automobile, vessel, boat, canoe, conveyance, or place
22 occupied or controlled by him, and from the frequency with
23 which ~~liquor~~ the alcoholic beverage is received thereat or
24 therein or is removed therefrom, and from the circumstances
25 under which it is kept or dealt with."

1 Section 38. Section 4-224, R.C.M. 1947, is renumbered
2 section 4-6-302, and is amended to read as follows:

3 "4-224 4-6-302. Appeals. An appeal shall lie from any
4 conviction or order made in the prosecution of any offense
5 against any of the provisions of this act code and the
6 practice and procedure on any appeal from any such
7 conviction or order, and all proceedings thereon shall be
8 governed by the law applicable to appeal in criminal cases."

9 Section 39. Section 4-225, R.C.M. 1947, is renumbered
10 section 4-6-201, and is amended to read as follows:

11 "4-225 4-6-201. ~~Inspectors~~ Investigators and
12 prosecuting officers may be employed by ~~board,~~ department of
13 revenue. The ~~board~~ department of revenue may appoint one or
14 more ~~inspectors~~ investigators or prosecuting officers, who,
15 under its direction, shall perform such duties as it may
16 require, and who shall be paid such salaries, fees and
17 expenses as the said ~~board~~ department of revenue may fix."

18 Section 40. Section 4-226, R.C.M. 1947, is renumbered
19 section 4-1-306, and is amended to read as follows:

20 "4-226 4-1-306. Property and moneys acquired belong to
21 state--expenses of. administration, how paid. All property,
22 whether real or personal, all moneys acquired, administered,
23 possessed or received by the ~~board~~ department and all
24 profits earned in the administration of this act code, shall
25 be the property of the state, and all expenses, debts and

1 liabilities incurred by the board department in connection
 2 with the administration of this act code, shall be paid by
 3 the board department from the moneys received by the board
 4 department under such administration."

5 Section 41. Section 4-229, R.C.M. 1947, is renumbered
 6 section 4-1-406, and is amended to read as follows:

7 "4-229 4-1-406. Disposition of money received. All
 8 moneys received from the sale of liquor at the state liquor
 9 stores shall be deposited in the revolving fund in the state
 10 treasury to the credit of the board department of revenue.
 11 The board department is hereby authorized to purchase liquor
 12 from moneys deposited to its account in the revolving fund.
 13 The board department shall transfer from its account in the
 14 revolving fund to its account in the earmarked revenue fund
 15 such moneys which are necessary to pay its administrative
 16 expense, subject to the limits imposed by legislative
 17 appropriation. No obligation created or incurred by the
 18 board department shall ever be, or become, a debt or claim
 19 against the state of Montana, but shall be payable by the
 20 board department solely from funds derived from the
 21 operation of state liquor stores. The board department
 22 shall pay into the state treasury to the credit of the
 23 general fund the receipts from all taxes and licenses by it
 24 collected, and also the net proceeds from the operation of
 25 state liquor stores."

1 Section 42. Section 4-233, R.C.M. 1947, is renumbered
 2 section 4-1-104, and is amended to read as follows:

3 "4-233 4-1-104. Intent and construction of act code.
 4 The purpose and intent of this act code are to prohibit
 5 transactions in liquor which take place wholly within the
 6 state of Montana except under state control as specifically
 7 provided by this act code, and every section and provision
 8 of this act code shall be construed accordingly. The
 9 provisions of this act code dealing with the importation,
 10 sale and disposition of liquor within the state through the
 11 instrumentality of a board department and otherwise provide
 12 the means by which such state control shall be made
 13 effective, and nothing in this act code shall be construed
 14 as forbidding, affecting or regulating any transaction which
 15 is not subject to the legislative authority of the state."

16 Section 43. Section 4-238, R.C.M. 1947, is renumbered
 17 section 4-6-401, and is amended to read as follows:

18 "4-238 4-6-401. Premises where liquor illegally sold
 19 common public nuisance. Any room, house, building, boat,
 20 vehicle, structure or place where intoxicating--liquor--is
 21 alcoholic beverages are knowingly manufactured, sold, or
 22 bartered, in violation of ~~the State Liquor Control Act of~~
 23 Montana this code or section 94-8-107 and all property
 24 knowingly kept and used in maintaining the same is hereby
 25 declared to be a ~~common nuisance~~, public nuisance and any

1 person who maintains such a ~~common~~ nuisance shall be guilty
 2 of a misdemeanor, and upon conviction thereof shall be fined
 3 not less than one hundred dollars (\$100.00), nor more than
 4 five hundred dollars ~~(\$500.00)~~ (\$500) and by imprisonment
 5 not less than thirty days, nor more than six months."

6 Section 44. Section 4-240, R.C.M. 1947, is renumbered
 7 section 4-1-401, and is amended to read as follows:

8 "~~4-240~~ 4-1-401. License tax on liquor -- amount --
 9 distribution of proceeds. The department of revenue is
 10 hereby authorized and directed to charge, receive and
 11 collect at the time of sale and delivery of any liquor under
 12 any provisions of the laws of the state of Montana a license
 13 tax of five percent (5%) of the retail selling price on all
 14 liquor so sold and delivered. Said tax shall be charged and
 15 collected on all liquor brought into the state and taxed by
 16 the department of revenue. The retail selling price shall
 17 be computed by adding to the cost of said liquor the state
 18 markup as designated by ~~said--board~~ the department. Said
 19 five percent (5%) license tax shall be figured in the same
 20 manner as the state excise tax and shall be in addition to
 21 said state excise tax. The department of revenue shall
 22 retain the amount of such five percent (5%) license tax so
 23 received in a separate account. Four-fifths (4/5) of these
 24 revenues shall be distributed to the counties according to
 25 the amount of liquor sold in each county. One-fifth (1/5)

1 of these revenues shall be deposited in the general fund.
 2 Provided, however, in the case of purchases of liquor by a
 3 retail liquor licensee for use in his business, the
 4 department shall make such regulations as are necessary to
 5 apportion that proportion of license tax so generated to the
 6 county where the licensed establishment is located, for use
 7 as provided in section ~~4-241~~ 4-1-402, R.C.M. 1947. The
 8 department of revenue shall pay quarterly to each county
 9 treasurer the proportion of the license tax due each county.

10 The county treasurer of each county shall retain
 11 one-fourth (1/4) of said license tax, and shall, within
 12 thirty (30) days after receipt thereof, apportion the
 13 remaining three-fourths (3/4) thereof to the treasurers of
 14 the incorporated cities and towns within his county, said
 15 apportionment to be based in each instance upon the
 16 proportion which the gross sale of liquor in such
 17 incorporated city or town bears to the gross sale of liquor
 18 in all of the incorporated cities and towns in his said
 19 county."

20 Section 45. Section 4-301, R.C.M. 1947, is renumbered
 21 section 4-1-102, and is amended to read as follows:

22 "~~4-301~~ 4-1-102. ~~Citation-----of-----act--declaration~~
 23 Declaration of policy--as to sale of beer. This act may be
 24 cited-as-the-"Montana-Beer-Act." It is hereby declared to
 25 be the policy of the state of Montana that the manufacture,

transportation, distribution, sale and possession of "beer," as that term is hereinafter defined in this act code and which contains not more than ~~four~~ seven per centum (4 7%) of alcohol by weight, shall be controlled and regulated ~~by-and under-the-provisions-of--the--"Montana--Beer--Act"--and--the--"Montana--Retail--Liquor--License--Act"~~ as provided under this code. Beer, porter, ale, stout and malt liquors containing more than ~~four~~ seven per centum (4 7%) of alcohol by weight and which are defined as "liquor" ~~by--the--"State--Liquor--Control--Act--of--Montana,"~~ shall be subject to the regulations and controls provided ~~by-the--"State--Liquor--Control--Act--of--Montana,"--(section-4-101-through-section-4-171--inclusive, Revised---Codes--of--Montana,--1947,--as--amended)--and--the regulations-and-controls-provided-by--the--"Montana--Retail--Liquor---License---Act"--(sections---4-401--through--4-441, inclusive,--Revised--Codes--of--Montana,--1947,--as--amended)~~ for liquor.

Section 46. Section 4-303, R.C.M. 1947, is renumbered section 4-3-304, and is amended to read as follows:

~~"4-303~~ 4-3-304. Closing hours for licensed retail beer establishments. Hereafter all licensed establishments wherein ~~beer-as-defined-by-subsection-(b)-of-section-4-302,~~ is alcoholic beverages are sold, offered for sale or given away at retail shall be closed during the following hours:

~~(a)-Sunday-from-two-A.M.--to-one-P.M.--~~

~~(b)~~ (a) On any ~~other~~ day between two A.M. and eight A.M.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of beer alcoholic beverages, then the sale of beer alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this act code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the owner and employees of such licensed establishments shall be excluded therefrom except as provided in section 4-3-305."

Section 47. Section 4-304, R.C.M. 1947, is renumbered section 4-3-305, and is amended to read as follows:

~~"4-304~~ 4-3-305. Sale of beer alcoholic beverages during closed hours forbidden--lawful business need not be closed. During the hours when the said licensed establishments where ~~beer-is~~ alcoholic beverages are sold at retail are required by this act code to be closed, it shall be unlawful to sell, offer for sale or give away beer such alcoholic beverages, and during such hours all persons save employees of such licensed establishments shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful business other than that of the sale of intoxicating liquor

1 or beer, then such other lawful business need not be closed,
2 but only the part thereof where such beer or liquor is
3 sold."

4 Section 48. Section 4-308, R.C.M. 1947, is renumbered
5 section 4-3-202, and is amended to read as follows:

6 "~~4-308~~ 4-3-202. Beer, when declared--nonintoxicating--
7 sales,--when-permitted,--Beer-containing-one-half-of-one-per
8 cent-(~~1/2~~ of ~~10~~),--or-more, of alcohol--by--volume,--and--not
9 more-than-three-and-two-tenths-per-cent-(~~3.2~~%)--of alcohol-by
10 weight,--is--hereby-declared-to-be-nonintoxicating,--and-such
11 beer--and--other--beer--containing--more--than--three--and
12 two-tenths--per-cent-(~~3.2~~%)--but-not-more-than-four-per-cent
13 (~~4~~%)--of alcohol-by-weight-may-be-manufactured-and/or-sold-or
14 transported-in-and-into-this-state-or-possession--therein--in
15 the--manner--and-under-the-conditions-prescribed-in-this-act
16 and-not-otherwise. The sale of beer by the Montana--liquor
17 control--board department is hereby prohibited,--save-and
18 except-ale,porter-and-stout-containing-more-than--four--per
19 cent-(~~4~~%)--of alcohol-by-weight."

20 Section 49. Section 4-309, R.C.M. 1947, is renumbered
21 section 4-3-201, and is amended to read as follows:

22 "~~4-309~~ 4-3-201. Possession, manufacture or disposal of
23 beer in other manner than prescribed unlawful. It shall be
24 unlawful to manufacture or sell, or dispose of, or possess
25 for the purpose of sale, beer of any kind or character of an

1 alcoholic content greater than herein prescribed, or other
2 than in the manner permitted by this act code."

3 Section 50. Section 4-310, R.C.M. 1947, is renumbered
4 section 4-4-101, and is amended to read as follows:

5 "~~4-310~~ 4-4-101. Applications for sale or manufacture
6 of beer--qualifications of applicant. Any person, desiring
7 to manufacture, import or and sell beer under the provisions
8 of this act code, shall first apply to the board department
9 for a permit so to do and pay with such application the
10 license fee herein prescribed; the board department shall
11 require of such applicant satisfactory evidence that the
12 applicant is of good moral character and a law-abiding
13 person. Upon being satisfied from such application, or
14 otherwise, that such applicant is qualified as herein
15 provided, the board department shall issue such license to
16 such person, which license shall be at all times prominently
17 displayed in the place of business of such applicant. If
18 the board department shall find that such applicant is not
19 qualified, no license shall be granted and such license fee
20 shall be returned."

21 Section 51. Section 4-311, R.C.M. 1947, is renumbered
22 section 4-3-203, and is amended to read as follows:

23 "~~4-311~~ 4-3-203. Brewers' monthly report -- power of
24 board department to inspect books and premises. Every
25 brewer, licensed to do business in this state, shall, on or

before the fifteenth day of each month, make an exact return to the board department of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the board department, and the board department shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him."

Section 52. Section 4-313, R.C.M. 1947, is renumbered section 4-3-204, and is amended to read as follows:

"~~4-313~~ 4-3-204. Sale of beer by brewers--to whom. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any licensed wholesaler~~y--retailer~~
~~club--or--common--carrier--holding--and--having--a--license--under~~
~~this--act.~~"

Section 53. Section 4-317, R.C.M. 1947, is renumbered section 4-3-206, and is amended to read as follows:

"~~4-317~~ 4-3-206. Licenses of brewers--persons to whom brewers may sell beer--~~barrelage-tax~~. ~~(1)~~ Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section ~~4-341~~ 4-4-401 and upon presenting satisfactory evidence to the board department as required by section ~~4-319~~ 4-4-101, shall be

licensed by the board department in accordance with the provisions of this act code and such regulations as may be prescribed by the board department, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

~~(2)--In--addition--to--the--annual--license--tax--imposed--by~~
~~section--4-341,--a--tax--of--three--dollars--(\$3)--per--barrel--of~~
~~thirty--one--(31)--gallons--is--hereby--levied--and--imposed--on--each~~
~~and--every--barrel--of--beer--sold--by--any--duly--licensed--brewer~~
~~who--manufactures--beer--in--the--state--of--Montana,--which--said~~
~~barrelage--tax--shall--be--due--at--the--end--of--each--month--and~~
~~shall--be--payable--with--the--brewer's--monthly--return--or~~
~~statement--required--to--be--made--to--the--board--under--the~~
~~provisions--of--section--4-317."~~

Section 54. Section 4-317.1, R.C.M. 1947, is renumbered section 4-4-102, and is amended to read as follows:

"~~4-317.1~~ 4-4-102. Right of brewers to maintain and operate storage depots--annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer in the state of Montana, upon the payment to the board department

of an annual license fee, in addition to all other fees and taxes required to be paid by such brewer, of four hundred dollars (\$400.00) for each storage depot, to own, lease, maintain and operate, in any city or town in the state of Montana, a building for use as a storage depot, equipped with refrigeration and cooling apparatus, for receiving, handling, and storing beer therein and distributing and selling beer therefrom, as brewers are permitted to sell and distribute beer under the provisions of this act code."

Section 55. Section 4-317.7, R.C.M. 1947, is renumbered section 4-3-212, and is amended to read as follows:

"~~4-317~~ 4-3-212. Agreements filed with department of revenue. An exact copy of all agreements, contracts or franchises between a brewer and a wholesaler shall be filed with the department of revenue as a public document and shall be available to any of the parties to a dispute. The department, upon the instigation of any action in a court of record, shall file an exact certified copy of the agreement with the court for the court's consideration in determining any matter before it. Any contracts, agreements or franchises not upon record with the board department shall not be considered by any court as having any force or effect."

Section 56. Section 4-318, R.C.M. 1947, is renumbered

section 4-4-103, and is amended to read as follows:

"~~4-318~~ 4-4-103. Wholesalers' licenses--application for and issuance--subwarehouse--imported beer handled through warehouse or subwarehouse. Any person desiring to sell and distribute beer as a wholesaler under the provisions of this act code shall apply to the board department for a license to do so and tender with his application the license fee hereinafter provided for and the board department is hereby empowered, authorized and directed to issue ~~one---{1}~~ ~~wholesale-license-for-every-thirty-{30}-retail-beer-licenses~~ ~~figured--on-the-number-of-retail-beer-licenses-issued-in-the~~ ~~state~~ wholesale licenses to qualified applicants in accordance with the provisions of this act code; such license shall be at all times prominently displayed in the place of business of such wholesaler.

To qualify for a wholesaler's license the applicant shall ~~have-been~~ be a resident of Montana ~~for--a--period--of~~ ~~five--{5}--years-immediately-prior-to-making-application; or~~ ~~if-said-applicant-is-a-Montana-corporation-said--corporation~~ ~~shall--have--been--organized--for-a-period-of-five-{5}-years~~ ~~immediately-prior-to-making-application~~; provided, however, any individual or partnership which has been licensed as a beer wholesaler may, upon incorporation in accordance with the laws of the state of Montana, transfer such license to the corporation if a majority of the capital stock thereof

1 is held by said individual or the members of said
 2 partnership; or if applicant is a foreign corporation said
 3 corporation shall ~~have-been be~~ authorized to do business in
 4 Montana ~~for-a-period-of-five-(5)-years-immediately-prior--to~~
 5 ~~making--application;~~ and said applicant shall have a fixed
 6 place of business, sufficient capital, the facilities,
 7 storehouse, receiving house or warehouse for the receiving
 8 of, storage, handling and moving of beer in large and
 9 jobbing quantities for distribution and sale in original
 10 packages to other licensed wholesalers or licensed
 11 retailers. Each wholesaler shall be entitled to only one
 12 (1) wholesale license, which license shall be issued for his
 13 principal place of business in Montana; a duplicate license
 14 may be issued for one (1) subwarehouse only in Montana for
 15 each wholesale licensee, which said duplicate license shall
 16 at all times be prominently displayed at said subwarehouse;
 17 ~~licenses--already--issued--which--are--in--excess--of---said~~
 18 ~~limitations--and--which--are--of--issue--on--the-date-of-the~~
 19 ~~passage-and-approval-of-this-act,-shall-be-renewable,-but-no~~
 20 ~~new-wholesale-beer-licenses-shall-be-issued-until-the-number~~
 21 ~~of-licenses-shall-be-reduced-to-within-the-above-limitation.~~

22 All beer manufactured outside of the state of Montana
 23 and shipped into Montana shall be consigned to and shipped
 24 to a licensed wholesaler, and by him unloaded into his
 25 warehouse in Montana or subwarehouse in Montana; said

1 wholesaler shall distribute said beer from such warehouse or
 2 subwarehouse; said wholesaler shall keep records at his
 3 principal place of business of all beer including the name
 4 or kind received, on hand, sold and distributed; said
 5 records may at all times be inspected by any member or
 6 representative of the board department; any beer which has
 7 been shipped into Montana and has not been shipped to and
 8 distributed from a warehouse of a licensed wholesaler shall
 9 be seized by any peace officer or representative of the
 10 board department and may be confiscated in the manner as
 11 provided for the confiscation of intoxicating liquor."

12 Section 57. Section 4-319, R.C.M. 1947, is renumbered
 13 section 4-3-213, and is amended to read as follows:

14 "~~4-319~~ 4-3-213. Monthly report of wholesaler. Every
 15 wholesaler, licensed to do business in this state, as herein
 16 provided, shall on or before the fifteenth day of each
 17 month, make an exact return to the board department of the
 18 amount of beer manufactured in this state, sold and
 19 delivered by him, and also of the amount of beer
 20 manufactured in places outside of the state, sold and
 21 delivered by him, during the previous month, and of his
 22 inventory in the manner and form as shall be prescribed by
 23 the board department, and the board department shall have
 24 the right at any time to make an examination of the said
 25 wholesaler's books and of his premises, and otherwise check

1 the accuracy of such return or to check the alcoholic
2 content of beer which he may have on hand."

3 Section 58. Section 4-320, R.C.M. 1947, is renumbered
4 section 4-6-403, and is amended to read as follows:

5 "~~4-320~~ 4-6-403. Penalty for brewer's and wholesalers'
6 failure to ~~file--statement--payment--of~~ pay tax. ~~With-such~~
7 ~~return--the-said-wholesaler--shall--pay--to--the--board--the~~
8 ~~amount--of-tax-upon-all-beer-not-manufactured-in-this-state,~~
9 ~~on-the-basis-hereinafter-provided--which--shall--have--been~~
10 ~~sold--by--him-during-such-previous-months.~~ Any such tax owed
11 by a brewer or wholesaler under this code not paid within
12 the time herein provided for shall be delinquent and a
13 penalty of five per cent (5%) thereof shall be added thereto
14 and the whole thereof shall bear interest at the rate of one
15 per cent (1%) per month from the date of delinquency until
16 paid, and any brewer or wholesaler who fails, neglects or
17 refuses to make the return to the board department provided
18 for in ~~section~~ sections ~~4-319~~ 4-3-203 or 4-3-213, or refuses
19 to allow such examination provided for in ~~section~~ sections
20 ~~4-319~~ 4-3-203 or 4-3-213, or fails to make an accurate
21 return according to the manner prescribed, shall be deemed
22 guilty of having committed a misdemeanor and upon conviction
23 thereof shall be fined in an amount not exceeding one
24 thousand dollars (\$1,000.00)."

25 Section 59. Section 4-321, R.C.M. 1947, is renumbered

1 section 4-3-214, and is amended to read as follows:

2 "~~4-321~~ 4-3-214. To whom wholesaler may sell. It shall
3 be lawful for any wholesaler to sell and deliver beer
4 purchased or acquired by him to a wholesaler, retailer, ~~club~~
5 or to a common carrier, holding and having a license under
6 this act."

7 Section 60. Section 4-325, R.C.M. 1947, is renumbered
8 section 4-3-217, and is amended to read as follows:

9 "~~4-325~~ 4-3-217. Penalty for brewer's failure to make
10 returns--lien of taxes--enforcement--release. If any brewer
11 subject to the payment of the tax provided for in
12 ~~subdivision--(3)--(4)}~~ of section ~~4-317~~ 4-1-405 or any
13 wholesaler subject to the payment of the tax provided for in
14 section ~~4-324~~ 4-1-404, shall fail, neglect or refuse to make
15 any return required by ~~Montana-Beer-Act~~ this code, or shall
16 fail to make payment of such tax within the time herein
17 provided, the board department shall, forthwith after such
18 time has expired, proceed to inform itself as best it may
19 regarding the matters and things required to be set forth in
20 such return and from such information as it may be able to
21 obtain, to make a statement showing such matters and things
22 and determine and fix the amount of such tax due the state
23 from such delinquent brewer or wholesaler and shall add
24 thereto a penalty of five per cent (5%) thereof for the
25 first failure, willful neglect or refusal; ten per cent

1 (10%) for the second; fifteen per cent (15%) for the third;
 2 and twenty-five per cent (25%) for the fourth, and each
 3 subsequent failure, neglect or refusal, which shall be in
 4 addition to the five per cent (5%) penalty hereinbefore
 5 provided for nonpayment of such tax within the time
 6 hereinbefore provided. Said tax and the penalties added
 7 thereto shall bear interest at the rate of one per cent (1%)
 8 per month from the date such returns should have been made
 9 and said tax paid. The board department shall then proceed
 10 to collect such tax with penalties and interest. Upon
 11 request of the board department it shall be the duty of the
 12 attorney general to commence and prosecute to final
 13 determination in any court of competent jurisdiction an
 14 action to collect such tax. All taxes due from any brewer
 15 or wholesaler under the provisions of Montana-Beer-Act this
 16 code, together with all penalties and interest thereon,
 17 shall be a lien upon any and all property of such brewer or
 18 wholesaler upon the filing by the board department of a
 19 duplicate copy of the statement so made by the board
 20 department, or a certified copy of any return filed with
 21 said-board the department, in the office of the county clerk
 22 of the county where such property is situated, which lien
 23 shall have precedence over any other claim, lien or demand
 24 thereafter filed or recorded and may be enforced in the name
 25 of the state of Montana in the same manner as other liens

1 are enforced by law. No action shall be maintained to
 2 enjoin the collection of such tax or any part thereof. When
 3 the amount due the state is paid in full and before the
 4 entry of foreclosure decree, the board department shall
 5 release the said lien by filing in the office of the county
 6 clerk wherein is filed the said lien a written release
 7 thereof. At any time prior to the payment of said taxes,
 8 penalty and interest, before the entry of foreclosure
 9 decree, the board department may release from the operation
 10 of said lien a part of said property to enable the brewer or
 11 wholesaler to mortgage, sell or otherwise dispose of the
 12 same in order to procure funds with which to pay said taxes,
 13 penalty and interest, provided there remains, in the
 14 judgment of the board department, sufficient property
 15 subject to said lien to ensure the payment of the whole of
 16 said unpaid taxes, penalty and interest."

17 Section 61. Section 4-326, R.C.M. 1947, is renumbered
 18 section 4-3-218, and is amended to read as follows:

19 "4-326 4-3-218. Carriers' reports of beer transported.
 20 Every railroad and every motor carrier transporting beer
 21 manufactured out of this state from points without this
 22 state and delivering the same to points within this state
 23 shall, on or before the fifteenth day of each month, make an
 24 exact return to the board department of the amount of such
 25 beer so transported and delivered by such railroad or motor

carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered."

Section 62. Section 4-327, R.C.M. 1947, is renumbered section 4-4-104, and is amended to read as follows:

"~~4-327~~ 4-4-104. Retailers' license--application and issuance--display required--check of alcoholic content by board department. Any person desiring to possess and have for sale beer, under the provisions of this act code, for the purpose of selling it at retail, shall first apply to the board department for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant is qualified as herein provided, the board department shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the board department shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be by the board department returned. The board department shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods of conducting business and the alcoholic contents of the

beer kept by him for sale. A person may not sell beer at retail without a valid license issued under this code."

Section 63. Section 4-328, R.C.M. 1947, is renumbered section 4-3-302, and is amended to read as follows:

"~~4-328~~ 4-3-302. Sale of beer by retailer--consumption on premises. It shall be lawful for such retailer to sell and serve beer either on draught or in bottles containers to the public to be consumed on the premises of such retailer."

Section 64. Section 4-330, R.C.M. 1947, is renumbered section 4-3-301, and is amended to read as follows:

"~~4-330~~ 4-3-301. Purchase of beer by retailer--persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers. It shall be unlawful for such a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler or retailer licensed under the provisions of this act code.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person, under the age of eighteen (18) years;
2. Any intoxicated person or any person actually, apparently or obviously intoxicated.

~~3--An-habitual-drunkard--or~~

~~4--An-interdicted-person--~~

Any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall upon conviction thereof be subject to the penalty provided in section 4-305 of the Montana Beer Act."

Section 65. Section 4-332, R.C.M. 1947, is renumbered section 4-4-105, and is amended to read as follows:

"~~4-332~~ 4-4-105. Special permits to sell beer-- application and issuance--fee. (1) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event, shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

The application of any such association or corporation shall be presented ten (10) days in advance and shall describe the location of such enclosure wherein such event

is held, the nature of such event, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when events are being held upon such grounds and during the period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of fifteen dollars (\$15) per day for each day beer is sold, or to be sold at those events lasting two (2) or more days, but in no event less than the sum of thirty dollars (\$30), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act code, shall in the discretion of the board department, without notice or hearing as provided in section ~~4-407.1~~ 4-4-302, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal

organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ~~five ten~~ dollars ~~(\$5.00)~~ (\$10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the ~~board~~ department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 66. Section 4-333, R.C.M. 1947, is renumbered section 4-4-201, and is amended to read as follows:

~~"4-333~~ 4-4-201. Issuance of retail beer licenses -- limit on number of ~~---off-premises~~ beer licenses -- ~~lapse and--cancellation---~~ wine license amendments -- retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved ~~by--a-majority-of-the-board~~ by the department as a fit and proper person, firm or corporation to sell beer; provided, that ~~the--number-of-retail-beer licenses-that-the-board-may-issue--shall--be--determined--as follows:~~

(a) ~~The~~ the number of retail beer licenses that the ~~board~~ department may issue for premises situated within

incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, to wit:

In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, ~~not more than two (2) retail beer--licenses--to-be-used-in-conjunction-with-retail-liquor licenses-and~~ not more than one (1) ~~additional~~ retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, ~~two (2) retail beer licenses--for--the--first--five--hundred (500)--inhabitants--and--one (1) retail beer license--for--each additional five hundred (500) inhabitants, which said retail beer licenses shall--be--used--in--conjunction--with--retail liquor--licenses,--and~~ one (1) ~~additional~~ beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities, ~~five (5) retail beer~~

~~licenses--for--the--first--two--thousand--(2000)--inhabitants--and~~
~~one--(1)--retail--beer--license--for--each--additional--one--thousand~~
~~(1000)--inhabitants--which--said--retail--beer--licenses--shall--be~~
~~used--in--conjunction--with--retail--liquor--licenses,--and~~ two (2)
 additional retail beer licenses for the first two thousand
 (2000) inhabitants or major fraction thereof and one (1)
 additional retail beer license for each additional two
 thousand (2000) inhabitants which shall not be used in
 conjunction with retail liquor licenses. The number of the
 inhabitants in such cities and towns, exclusive of the
 number of inhabitants residing within a distance of five (5)
 miles from the corporate limits thereof, shall govern the
 number of retail beer licenses that may be issued for use
 within such cities and towns and within a distance of five
 (5) miles from the corporate limits thereof; provided, that
 where two (2) or more incorporated municipalities are
 situated within a distance of five (5) miles from each
 other, the total number of retail beer licenses that may be
 issued for use in both of such municipalities and within a
 distance of five (5) miles from their respective corporate
 limits, shall be determined on the basis of the combined
 populations of both of such municipalities and shall not
 exceed the foregoing limitations. The said distance of five
 (5) miles from the corporate limits of any incorporated city
 or incorporated town shall be measured in a straight line

from the nearest entrance of the premises proposed for
 licensing to the nearest corporate boundary of such city or
 town. Retail beer licenses of issue on the date of the
 passage and approval of this act and which are in excess of
 the foregoing limitations shall be renewable, but no new
 licenses shall be issued in violation of such limitations;
 provided, that such limitations shall not prevent the
 issuance of a nontransferable and nonassignable retail beer
 license to any post of a nationally chartered veterans'
 organization or any lodge of a recognized national fraternal
 organization, if such veterans' or fraternal organization
 has been in existence for a period of five (5) years or more
 prior to January 1, 1949. No incorporated city or
 incorporated town may by ordinance restrict the number of
 licenses that the board department may issue; provided that
 no retail beer license may be issued by the board department
 for any premises situated within any zone of such city or
 town wherein the sale of beer is prohibited by ordinance, a
 certified copy of which has been filed with the board
department. The board department shall have discretion to
 deny the issuance of a retail beer license if it shall
 determine that the premises proposed for licensing are off
 regular police beats and cannot be properly policed by local
 authorities.

(b) The number of retail beer licenses that the board

1 department may issue for use at premises situated outside of
 2 any incorporated city or incorporated town and outside of
 3 the area within a distance of five (5) miles from the
 4 corporated limits thereof, or for use at premises situated
 5 within any unincorporated town shall be as determined by the
 6 board department in the exercise of its sound discretion;
 7 provided, that no retail beer license shall be issued for
 8 any premises so situated unless the board department shall
 9 determine that the issuance of such license is required by
 10 public convenience and necessity.

11 {2}--A-retail-license-to-sell-beer-in-the-original
 12 packages--for-off-premise-consumption-only-may-be-issued-to
 13 any-person-firm-or-corporation-who-shall-be-approved-by-a
 14 majority-of-the-board-as-a-fit-and-proper-person-firm-or
 15 corporation-to-sell-beer-and-whose-premises-proposed-for
 16 licensing--are--operated--as--a-bona-fide-grocery-store-or-a
 17 drugstore-licensed-as-a-pharmacy---The-number-of-such
 18 licenses--that--the--board-may-issue-shall-not-be-limited-by
 19 the-provisions-of-subsection-(1)-of-this-section-but-shall
 20 be-determined-by-the-board-in-the-exercise-of-its-sound
 21 discretion-and-the-board-may-in-the-exercise-of-its-sound
 22 discretion--grant-or-deny-any-application-for-any-such
 23 license-or-suspend-or-revoke-any-such-license-for-cause-
 24 The-annual-license-fee-for-a-license-to-sell-beer-at-retail
 25 for-off-premises-consumption-shall-be-the-same-as-for-a

1 retail-beer-license-

2 {3}--From-and-after-February-17-1949-any-retail
 3 license-issued-pursuant-to-this-act--(including-any-retail
 4 license-to-sell-beer-for-off-premises-consumption)-not
 5 actually-used-in-a-going-establishment-for-a-period-of
 6 ninety--(90)--days--shall--automatically--lapse--Upon
 7 determining-the-fact-of-nonuser-for-such-period-the-board
 8 shall-cancel-such-license-of-record-and-no-portion-of-the
 9 fee-paid-therefor-shall-be-refundable---The-provisions-of
 10 this-subsection-shall-not-apply-to-the-license-of-any
 11 licensee-whose-premises-are-operated-on-a-seasonal-basis-in
 12 connection-with-a-bona-fide-ranch-resort-park-hotel-
 13 tourist-facility-of-like-business--provided-such-licensee
 14 has-secured-written-authority-from-the-board-to-close-his
 15 licensed-premises-for-a-specified-period-of-greater-than
 16 ninety--(90)--days--duration--and-providing-further-that
 17 should-the-liquor-control-board-determine-that-such-lapse
 18 was-reasonably-beyond-the-control-of-the-licensee-then-the
 19 lapse-provision-set-out-above-shall-not-apply-

20 {4} (2) A person holding a license to sell beer for
 21 consumption on the premises at retail may apply to the
 22 department for an amendment to the license permitting the
 23 holder to sell wine as well as beer. The department
 24 division may issue such amendment if it finds, on a
 25 satisfactory showing by the applicant, that the sale of wine

for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine ~~subject--to--the~~ limitations-imposed--by--this--title--on--selling--beer for consumption on the premises. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

~~(5)~~ (3) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer only license shall be two hundred dollars (\$200).

(4) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by the department as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail

for off-premises consumption shall be the same as for a retail beer license."

Section 67. Section 4-338, R.C.M. 1947, is renumbered section 4-3-104, and is amended to read as follows:

~~"4-338~~ 4-3-104. Purchase of beer must be from licensed brewer, wholesaler or retailer. It shall be unlawful for the operator of any ~~such-railroad-train-as-a~~ common carrier, or its employees, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewer, or wholesaler ~~or~~ retailer duly licensed."

Section 68. Section 4-341, R.C.M. 1947, is renumbered section 4-4-401, and is amended to read as follows:

~~"4-341~~ 4-4-401. Fees for licenses--expiration dates--regulation by cities and towns. Each licensee, under the provisions of this ~~act~~ code, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars ~~(\$500.00)~~ (\$500);

Each "wholesaler" four hundred dollars ~~(\$400.00)~~ (\$400);

Each "retailer" two hundred dollars ~~(\$200.00)~~ (\$200);

Any unit of a nationally chartered veterans' organization fifty dollars ~~(\$50.00)~~ (\$50);

Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars ~~(\$25.00)~~ (\$25).

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana ~~liquor-control-board~~ department of revenue with the consent of the said ~~board~~ department provided that said transferee shall qualify under this ~~act~~ code. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana ~~liquor-control-board~~ department of revenue based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana ~~liquor-control-board~~ department of revenue; the cities and towns may also impose a fee on a licensee of the ~~board~~ department for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the ~~amount-imposed-by-the-state~~ limits set by section 4-4-406. This ~~act~~ code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of the ~~Montana-Beer-Act~~ this code which require beer manufactured outside of the state of Montana

and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana."

Section 69. Section 4-342, R.C.M. 1947, is renumbered as section 4-4-402, and is amended to read as follows:

"~~4-342~~ 4-4-402. Denial of application for license or renewal -- suspension or revocation -- actions. The ~~board~~ department may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under the ~~Montana-Beer-Act~~ this code. If the ~~board~~ department, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this ~~act~~ code, or any rules, or regulations of the ~~board~~ department, it may, in its discretion, and in addition to the other penalties herein prescribed, reprimand a licensee, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof, ~~under the procedures herein provided, if the board shall, in its sound discretion, determine to invoke such procedures for the purpose of refusing to grant a license or refusing to grant a renewal thereof to any applicant, or for revoking or suspending any license previously granted, it shall give~~

1 applicant--or--licensee,--as--the--case--may--be,--fifteen--(15)
 2 days--notice--in--writing--of--its--intended--action,--addressed
 3 and--forwarded--by--registered--mail--to--the--applicant--or
 4 licensee--at--the--address--given--in--the--application--for
 5 license,--or--upon--the--existing--license,--as--the--case--may--be,
 6 stating--generally--the--basis--and--reasons--for--its--intended
 7 action--and--the--proposed--action. Within said fifteen--(15)
 8 day--period--said--applicant--or--licensee--may,--in--cases--of
 9 intention--to--refuse--to--grant--a--license,--or--intention--to
 10 refuse--to--grant--a--renewal--thereof,--institute--proceedings--in
 11 the--nature--of--a--writ--of--review,--or,--in--case--of--intention--to
 12 revoke--or--suspend--a--license,--institute--proceedings--in
 13 injunction,--and--in--any--event--in--the--district--court--of--the
 14 county--wherein--the--premises--of--applicant--or--licensee--are
 15 located--for--the--purpose--of--having--the--intended--action--of--the
 16 board--judicially--reviewed--and--inquired--into--for--(a)--abuse--of
 17 discretion--on--the--part--of--the--board,--(b)--failure--of--the
 18 board--to--observe,--or--its--departure--from,--or--disregard--of--the
 19 applicable--law--governing--the--board--in--the--particular
 20 circumstances,--or--(c)--for--arbitrary--or--tyrannical--action--by
 21 the--board. The board shall in all cases certify to the
 22 court its complete record in the matter and the issues shall
 23 be heard on the merits by the court upon such record and
 24 upon such further legal evidence as the parties may present.
 25 If the court in any such proceedings determines that such

1 licensee--has,--in--fact,--violated--any--provisions--of--this--act
 2 or--any--regulations--of--the--board,--the--court--shall--dismiss
 3 such--proceedings,--and--the--board--shall--proceed--to--such
 4 administrative--determination--as--to--it--seems--proper--in--the
 5 circumstances. Pending determination of such matter on the
 6 merits the court may, based upon a showing of undue hardship
 7 to a licensee and upon the posting of a proper bond in an
 8 amount,--and--conditioned--upon--such--terms--as--the--court--may
 9 prescribe in the presence of the surrounding circumstances,
 10 stay the effective date of the intended action of the board
 11 for such time as to the court may seem proper. If no stay
 12 order is issued by the court or any stay order once issued
 13 has expired, the board shall issue its order of suspension
 14 or of revocation of license or its order denying the license
 15 applied for, or renewal thereof. If the court shall, on the
 16 other hand, determine that good cause did not exist for the
 17 intended action of the board, or that the board abused its
 18 discretion, or otherwise acted unlawfully with respect to
 19 its intended action, on any of the grounds herein stated,
 20 the court shall issue its order and decree accordingly and
 21 the board shall comply therewith. Either party to the
 22 proceedings in the district court may appeal from its
 23 decision to the supreme court of the state of Montana by
 24 following the procedures applicable to such appeals in civil
 25 actions, or impose a civil penalty not to exceed one

1 thousand five hundred dollars (\$1500), subject to the
 2 opportunity for a hearing under the Montana Administrative
 3 Procedure Act."

4 Section 70. Section 4-344, R.C.M. 1947, is renumbered
 5 section 4-6-301, and is amended to read as follows:

6 "~~4-344~~ 4-6-301. Jurisdiction of courts. As to
 7 misdemeanor actions, The the district courts of this state
 8 shall have concurrent jurisdiction with justice of the peace
 9 courts in all prosecutions under this act code."

10 Section 71. Section 4-346, R.C.M. 1947, is renumbered
 11 section 4-6-402, and is amended to read as follows:

12 "~~4-346~~ 4-6-402. Action to enjoin nuisance --
 13 injunction -- order of court -- bond. An action to enjoin
 14 any nuisance defined in this act code may be brought in the
 15 name of the state of Montana by the attorney general of the
 16 state or by any county attorney. Such action shall be
 17 brought and tried as an action in equity and may be brought
 18 in any court having jurisdiction to hear and determine
 19 equity cases. If it is made to appear by affidavits or
 20 otherwise, to the satisfaction of the court, or judge in
 21 vacation, that such nuisance exists, a temporary writ of
 22 injunction shall forthwith issue restraining the defendant
 23 from conducting or permitting the continuance of such
 24 nuisance until the conclusion of the trial. If a temporary
 25 injunction is prayed for, the court may issue an order

1 restraining the defendant and all other persons from
 2 removing or in any way interfering with the fixtures or
 3 other things used in connection with the violation of this
 4 act constituting such nuisance. No bond shall be required
 5 in instituting such proceedings. It shall not be necessary
 6 for the court to find the property involved was being
 7 unlawfully used as aforesaid at the time of the hearing, but
 8 on finding that the material allegations of the petition are
 9 true, the court shall order that no liquor or beer shall be
 10 manufactured, sold, or bartered in such room, house,
 11 building, boat, vehicle, structure, or place, or any part
 12 thereof. And upon judgment of the court ordering such
 13 nuisance to be abated, the court may order that the room,
 14 house, building, structure, boat, vehicle, or place shall
 15 not be occupied or used for one (1) year thereafter; but the
 16 court may, in its discretion, permit it to be occupied or
 17 used if the owner, lessee, tenant, or occupant thereof shall
 18 give bond with sufficient surety, to be approved by the
 19 court making the order, in the penal and liquidated sum of
 20 not less than five hundred dollars ~~(\$500.00)~~ (\$500), nor
 21 more than one thousand dollars ~~(\$1,000.00)~~ (\$1,000), payable
 22 to the state of Montana, and conditioned that liquor or beer
 23 will not thereafter be manufactured, sold or bartered
 24 therein or thereon, and that he will pay all fines, costs,
 25 and damages that may be assessed for any violations of this

1 ~~act code~~ upon said property." .

2 Section 72. Section 4-347, R.C.M. 1947, is renumbered
3 section 4-1-407, and is amended to read as follows:

4 "~~4-347~~ 4-1-407. Revenue to be paid to state
5 treasurer--disposition of revenue. Except as provided in
6 section ~~4-347.1~~ 4-1-408 of this ~~act code~~, all fees, charges,
7 taxes and revenues collected by or under authority of the
8 Montana ~~liquor-control-board~~ department, under--the--Montana
9 Beer--~~Act~~ shall be paid over to the state treasurer on or
10 before the tenth (10th) day of each and every month who
11 shall deposit said funds to the credit of the state general
12 fund."

13 Section 73. Section 4-347.1, R.C.M. 1947, is
14 renumbered section 4-1-408, and is amended to read as
15 follows:

16 "~~4-347.1~~ 4-1-408. Revenue allocation. All revenue
17 received from taxes on beer under sections ~~4-317~~ 4-1-404 and
18 ~~4-324~~ 4-1-405, R.C.M. 1947, over and above one dollar and
19 fifty cents (\$1.50) per barrel of thirty-one (31) gallons
20 shall be deposited with the state treasurer to the credit of
21 the incorporated cities and towns beer tax account in the
22 earmarked revenue fund. The state treasurer shall, monthly,
23 distribute this amount of money to the incorporated cities
24 and towns in the direct proportion that the population of
25 each city and town bears to the total population of all

1 incorporated cities and towns as shown in the latest
2 official federal census. For cities and towns incorporated
3 after the latest official federal census, the census shall
4 be determined as of the date of incorporation as evidenced
5 by the certificate of the incorporating officials of that
6 city or town. If a city or town disincorporates, it shall
7 cease to receive any funds under this section and the amount
8 previously distributed to the city or town shall be
9 distributed to the remaining incorporated cities and towns.
10 All funds received by cities and towns under this section
11 shall be expended for state purposes such as law
12 enforcement, maintenance of the transportation system, and
13 public health."

14 Section 74. Section 4-349, R.C.M. 1947, is renumbered
15 section 4-3-219, and is amended to read as follows:

16 "~~4-349~~ 4-3-219. Brewers and wholesalers not to supply
17 fixtures, etc., to retailers, except as specified--~~brewers~~
18 ~~not-to-be-interested-in-retailer-financially~~. (a) It shall
19 be unlawful for any brewer or wholesaler to lease, furnish,
20 give or pay for any premises, furniture, fixtures,
21 equipment, signs, or any other advertising matter or any
22 other property to any retail licensee, used or to be used in
23 the dispensation of beer in and about the interior or
24 exterior of the place of business of any licensed retailer
25 or furnish, give or pay for any repairs, improvements,

1 painting or decorating on or within such premises; provided,
2 however, that it shall be lawful for a brewer or wholesaler
3 to furnish, give or loan to a retail licensee:

4 1. Bottle openers, can openers and trays, with or
5 without advertising matter thereon;

6 2. Advertising matter or novelties, of a value of not
7 to exceed fifteen dollars ~~(\$15.00)~~ (\$15) in any calendar
8 year, to any one (1) retailer for display use on the
9 interior of said retailer's place of business; and

10 3. Not more than two (2) illuminated or electrical
11 signs, each of not more than six hundred thirty (630) square
12 inches in area, which signs may bear the name, brand name,
13 trade name, trade-mark or other designation indicating the
14 name of the manufacturer, and the place of manufacture, of
15 beer, for display by the retail licensee on and within the
16 interior of his place of business, or in the windows inside
17 the place of business of the licensed retailer, and only if
18 the particular brand of beer so advertised on such signs is
19 actually available for sale on the licensee's premises, at
20 the time of such display.

21 4. Maintenance or repair services on draft beer
22 equipment to keep it sanitary and in good working condition.

23 ~~(b)--No brewer or wholesaler shall advance or loan~~
24 ~~money to, or furnish money for, or pay for or on behalf of~~
25 ~~any retailer, for any license or tax which may be required~~

1 ~~to be paid for any retailer, and no brewer or wholesaler~~
2 ~~shall be financially interested, either directly or~~
3 ~~indirectly, in the conduct or operation of the business of a~~
4 ~~retailer, as herein defined. A brewer or wholesaler shall~~
5 ~~be deemed to have such a financial interest within the~~
6 ~~meaning of this section if (1) such brewer or wholesaler~~
7 ~~owns or holds any interest in, or a lien or mortgage against~~
8 ~~the retailer or his premises, or (2) if such brewer or~~
9 ~~wholesaler is under any contract with a retailer concerning~~
10 ~~future purchases and/or sale of merchandise by one from, or~~
11 ~~to the other, (3) if any retailer holds an interest as a~~
12 ~~stockholder, or otherwise, in the business of the~~
13 ~~wholesaler.~~

14 ~~(c) No sale or delivery of beer shall be made to any~~
15 ~~retail licensee except for cash paid within seven (7) days~~
16 ~~after the delivery thereof, and in no event shall any brewer~~
17 ~~or wholesaler extend more than seven (7) days credit on~~
18 ~~account of such beer to a retail licensee, nor shall any~~
19 ~~retail licensee accept or receive delivery of such beer~~
20 ~~without agreement to pay in cash therefor within seven (7)~~
21 ~~days from delivery thereof. A correctly dated check which~~
22 ~~is honored upon presentment shall be considered as cash~~
23 ~~within the meaning of this act. Any extension or acceptance~~
24 ~~of credit in violation hereof shall be regarded and~~
25 ~~construed as rendering or receiving financial assistance,~~

~~and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the board in its discretion."~~

Section 75. There is a new section to be numbered 4-3-220, R.C.M. 1947, which reads as follows:

4-3-220. Financial interest in retailers prohibited. No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, iether directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgagee against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

Section 76. There is a new section to be numbered 4-3-221, R.C.M. 1947, which reads as follows:

4-3-221. Seven day credit limitation. No sale or delivery of beer shall be made to any retail licensee,

except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

Section 77. Section 4-358, R.C.M. 1947, is renumbered section 4-3-222, and is amended to read as follows:

"~~4-358~~ 4-3-222. Limitations on advertising of beer. It shall be lawful to advertise beer containing not more than ~~four~~ seven per centum (~~4~~ 7%) of alcohol by weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section ~~4-349~~ 4-3-219 of this ~~act~~ code, and subject to (b) the restrictions on retailers, to wit: No retail licensee ~~under the Montana Beer Act~~ shall display, or permit to be displayed, on the exterior portion or surface

of such retailer's place of business, or on the exterior portion or surface of any building of which said place of business is a part, or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster or advertisement bearing the name, brand name, trade name, trade-mark or other designation indicating the manufacturer, brewer, wholesaler or place of manufacture, of any beer whatsoever."

Section 78. Section 4-401, R.C.M. 1947, is renumbered section 4-1-103, and is amended to read as follows:

~~"4-401~~ 4-1-103. Declaration of policy as to retail sale of liquor. It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to ensure the entire control of the sale of liquor in the Montana ~~liquor--control--board~~ department of revenue, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said ~~board~~ department be empowered and authorized to grant licenses to persons qualified under this act code, to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this act code and under rules and regulations promulgated by the said ~~board~~ department, and under its strict supervision and

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

Section 79. Section 4-403, R.C.M. 1947, is renumbered section 4-4-202, and is amended to read as follows:

~~"4-403~~ 4-4-202. ~~Issuance--of--retail-liquor-licenses--limit-on-number-of-licenses--retail-wine-licenses--lapse-and-cancellation.~~ All-beverage license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer and wine at retail, an all-beverages license, in accordance with the provisions of this act code and the regulations of the Montana ~~liquor-control-board~~ department of revenue, may be issued to any person who shall be approved by ~~a-majority of-the-board~~ the department as a fit and proper person to sell liquor such beverages; provided, that ~~the-number-of-retail-liquor-licenses-which-the-board-may--issue--shall--be-determined-as-follows:~~

(a) ~~The~~ the number of ~~retail--liquor~~ all-beverages licenses that the ~~board~~ department may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the

1 basis of population as shown by the most recent official
 2 United States census authorized by Congress, to wit: In
 3 incorporated towns of five hundred (500) inhabitants or less
 4 and within a distance of five (5) miles from the corporate
 5 limits of such towns, not more than two (2) retail ~~liquor~~
 6 licenses; in incorporated cities or incorporated towns of
 7 more than five hundred (500) inhabitants and not over three
 8 thousand (3000) inhabitants and within a distance of five
 9 (5) miles from the corporate limits of such cities and
 10 towns, three (3) retail ~~liquor~~ licenses for the first one
 11 thousand (1000) inhabitants and one (1) retail ~~liquor~~
 12 license for each additional one thousand (1000) inhabitants;
 13 in incorporated cities of over three thousand (3000)
 14 inhabitants and within a distance of five (5) miles from the
 15 corporate limits thereof, five (5) retail ~~liquor~~ licenses
 16 for the first three thousand (3000) inhabitants and one (1)
 17 retail ~~liquor~~ license for each additional one thousand five
 18 hundred (1500) inhabitants. The number of the inhabitants
 19 in such cities and towns, ~~and-in-addition~~ exclusive of the
 20 number of inhabitants residing within a distance of five (5)
 21 miles from the corporate limits thereof, shall govern the
 22 number of retail ~~liquor~~ licenses that may be issued for use
 23 within such cities and towns and within a distance of five
 24 (5) miles from the corporate limits thereof; provided,
 25 however, that where two (2) or more incorporated

1 municipalities are situated within a distance of five (5)
 2 miles from each other, the total number of retail ~~liquor~~
 3 licenses that may be issued for use in both of such
 4 municipalities and within a distance of five (5) miles from
 5 their respective corporate limits, shall be determined on
 6 the basis of the combined population of both of such
 7 municipalities and shall not exceed the foregoing
 8 limitations. Notwithstanding the preceding sentence, the
 9 total population for determining the quota of a city may
 10 include, with the city's population, the population residing
 11 outside, but within five (5) miles of the city limits in a
 12 case where the number of persons residing outside but within
 13 five (5) miles of the city exceeds the number of persons
 14 residing within the city. Such a determination may be made
 15 only upon a special census taken by the department or its
 16 agent at the expense of the applicant for a license under
 17 this section. The said distance of five (5) miles from the
 18 corporate limits of any incorporated city or incorporated
 19 town shall be measured in a straight line from the nearest
 20 entrance of the premises proposed for licensing to the
 21 nearest corporate boundary of such city or town. Retail
 22 ~~liquor~~ all-beverages licenses of issue on the date of the
 23 passage and approval of this act code and which are in
 24 excess of the foregoing limitations shall be renewable, but
 25 no new licenses shall be issued in violation of such

1 limitations; provided that such limitations shall not
 2 prevent the issuance of a nontransferable and nonassignable
 3 (as to ownership only) retail ~~liquor~~ license to any post of
 4 a nationally chartered veterans' organization or any lodge
 5 of a recognized national fraternal organization, if such
 6 veterans' or fraternal organization has been in existence
 7 for a period of five (5) years or more prior to January 1,
 8 1949. No incorporated city or incorporated town may by
 9 ordinance restrict the number of licenses that the board
 10 department may issue; provided that no retail license may be
 11 issued by the board department for any premises situated
 12 within any zone of a city or town wherein the sale of liquor
 13 is prohibited by ordinance, a certified copy of which has
 14 been filed with the board department. The board department
 15 shall have discretion to deny the issuance of a retail
 16 license if it shall determine that the premises proposed for
 17 licensing are off regular police beats and cannot be
 18 properly policed by local authorities.

19 (b) ~~The~~ the number of retail ~~liquor~~ all-beverages
 20 licenses that the board department may issue for use at
 21 premises situated outside of any incorporated city or
 22 incorporated town and outside of the area within a distance
 23 of five (5) miles from the corporate limits thereof, shall
 24 be not more than one (1) license for each seven hundred
 25 fifty (750) population of the county, after excluding the

1 population of incorporated cities and incorporated towns in
 2 such county ~~and-the-population-residing-within-a-distance-of~~
 3 ~~five-(5)-miles-from-the-corporate-limits-thereof.~~

4 {2}-~~From-and-after-February-1,-1949,-any-retail-license~~
 5 ~~issued--pursuant--to--this--act-not-actually-used-in-a-going~~
 6 ~~establishment-for--a--period--of--ninety--(90)--days,-shall~~
 7 ~~automatically--lapse---Upon-determining-the-fact-of-nonuser~~
 8 ~~for-such-period-the--board--shall--cancel--such--license--of~~
 9 ~~record--and--no--portion--of--the-fee-paid-therefor-shall-be~~
 10 ~~refundable--The-provisions-of--this--subsection--shall--not~~
 11 ~~apply--to--the--license--of--any-licensee-whose-premises-are~~
 12 ~~operated-on-a-seasonal-basis-in-connection-with-a-bona--fide~~
 13 ~~dude--ranchy--park-hotels-tourist-facility-or-like-business,-~~
 14 ~~provided-such-licensee-has-secured--written--authority--from~~
 15 ~~the--board--to--close--his-licensed-premises-for-a-specified~~
 16 ~~period-of-greater--than--ninety--(90)--days--duration,-and~~
 17 ~~providing--further--that--should--the--liquor--control-board~~
 18 ~~determine-that-such-lapse-was-reasonably-beyond-the--control~~
 19 ~~of--the--licensee,-then--the--lapse-provision-set-out-above~~
 20 ~~shall-not-apply.~~

21 {3}-~~Resort-licenses--It-is-the-intent-and--purpose--of~~
 22 ~~this--act--to--encourage--the-growth-of-quality-recreational~~
 23 ~~resort-facilities-in-undeveloped-areas-of-the-state--and--to~~
 24 ~~provide--for--the--orderly--growth--of-existing-recreational~~
 25 ~~sites-by-the-establishment--of--resort--areas--within--which~~

1 retail-liquor-licenses-may-be-issued-by-the-board-under-the
2 terms--and--as--more--particularly--prescribed--below,---in
3 addition-to-the-licenses-as-otherwise-set-forth-in-this-act,
4 the--board--may--issue--resort--retail--liquor-licenses-in-a
5 resort-area;

6 For-the-purposes-of-this--section,--a--resort--area--is
7 defined---as---a---recreational---facility---meeting---the
8 qualifications--determined--by--the--board--as---hereinafter
9 provided;

10 The--board--shall--determine--that--the--area-for-which
11 licenses--are--to--be--issued--is--a--resort--area,---such
12 determination--to--be--made--under-and-pursuant-to-rules-and
13 regulations-to-be-promulgated--within-one-hundred--eighty
14 {180}--days--after-the-passage-and-approval-of-this-act,--in
15 addition-to-the-other-requirements-of--this--act,--a--resort
16 area--for--the-purposes-of-qualification-for-the-issuance-of
17 resort-retail-liquor-license--must--have--a--current--actual
18 valuation--of--resort--or-recreational-facilities,--including
19 land-and-improvements-thereon,--of-not-less-than-five-hundred
20 thousand--dollars--{\$500,000},--at-least-half--of--which
21 valuation--must--be--for-a-structure-or-structures-within-the
22 resort-area,--and-must-be-under-the-sole-ownership-or-control
23 of-one-person-or-entity-at-the-time-of--the--filing--of--the
24 resort--area--plat--referred--to--in--the-next-paragraph;--The
25 word-control-shall-mean-lands-held-under-lease,--option,--or

1 permit,--Before-first-adopting-such-rules-and-regulations-in
2 regard--to--resort-liquor-licenses,--the-board-shall-publish-a
3 notice--of--the--hearing--to--be--held--on--said--rules--and
4 regulations-in-a-regularly-published-newspaper-in-the-cities
5 of--Billings,--Bozeman,--Butte,--Great--Falls,--Helena,--Miles
6 City,--Kalispell-and-Missoula,--Montana,--said-publication--to
7 be--published--in--said--newspapers-at-least-once-a-week-for
8 four-consecutive-weeks,--the-last-of-said-publications--being
9 at--least--ten--{10}--but-not-more-than-thirty--{30}--days-prior
10 to-the-date-set-for-said-hearing,--which--shall--be--held--in
11 Helena,--Montana,--at--a--time--and--place-designated-by-the
12 board;

13 The-resort--area--must--be--determined--by--the--resort
14 developer--or--landowner--by-a-plat-setting-forth-the-resort
15 boundaries-designating-the-ownership-of-the-lands-within-the
16 resort-area-which--plat--must--be--verified--by--the--resort
17 developer--or--landowner,--and-filed-with-the-board-prior-to
18 the-filing-of-any-applications-by-individuals--for--licenses
19 within--the--resort--area,--Such-plat-must-show-the-location
20 and-general-design-of-the-buildings,--and-other--improvements
21 to--be--built--in--said--area--in-which-resort-retail-liquor
22 licenses-are-to-or-may-be-located,--A-master-plan-for--the
23 development--of--the--said--area--may-be-filed-by-the-resort
24 developer-in-satisfaction-of-this-section;

25 Upon-such-filing-the-board-shall-forthwith--schedule--a

public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board. At least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall at the time of filing his application pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-425 herein.

Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.

When the board has accepted a plat and a given resort area has been determined, applications may then be filed

with the board by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the board may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-416 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-403 (1) (a) above and a resort retail liquor license shall be issued by the board on the basis that the board has determined that

1 ~~such---license---is---justified---by---public---convenience---and~~
 2 ~~necessity---following---a---hearing---as---provided---in---section~~
 3 ~~4-407.1.~~

4 ~~If---any---clause---sentence---paragraph---section---or---any~~
 5 ~~part-of-this-act---shall---be---declared---and---adjudged---to---be~~
 6 ~~invalid---and/or---unconstitutional---such---invalidity---or~~
 7 ~~unconstitutionality---shall---not---affect---impair---invalidate---or~~
 8 ~~nullify-the-remainder-of-this-act."~~

9 Section 80. There is a new section to be numbered
 10 4-4-203, R.C.M. 1947, which reads as follows:

11 4-4-203. Lapse of license for nonuse. From and after
 12 February 1, 1949, any retail license issued pursuant to this
 13 code (including any retail license to sell beer for
 14 off-premises consumption), not actually used in a going
 15 establishment for a period of ninety (90) days, shall
 16 automatically lapse. Upon determining the fact of nonuser
 17 for such period the department shall cancel such license of
 18 record and no portion of the fee paid therefor shall be
 19 refundable. The provisions of this subsection shall not
 20 apply to the license of any licensee whose premises are
 21 operated on a seasonal basis in connection with a bona fide
 22 dude ranch, resort, park hotel, tourist facility or like
 23 business, provided such licensee has secured written
 24 authority from the department to close, has licensed
 25 premises for a specified period of greater than ninety (90)

1 days' duration, and providing further that should the
 2 department determine that such lapse was reasonably beyond
 3 the control of the licensee, then the lapse provision set
 4 out above shall not apply.

5 Section 81. There is a new section to be numbered
 6 4-4-204, R.C.M. 1947, which reads as follows:

7 4-4-204. Resort licenses. It is the intent and
 8 purpose of this section to encourage the growth of quality
 9 recreational resort facilities in undeveloped areas of the
 10 state and to provide for the orderly growth of existing
 11 recreational sites by the establishment of resort areas
 12 within which retail liquor licenses may be issued by the
 13 department under the terms and as more particularly
 14 prescribed below. In addition to the licenses as otherwise
 15 set forth in this act, the department may issue resort
 16 retail liquor licenses in a resort area.

17 For the purposes of this section, a resort area is
 18 defined as a recreational facility meeting the
 19 qualifications determined by the department as hereinafter
 20 provided.

21 The department shall determine that the area for which
 22 licenses are to be issued is a resort area, such
 23 determination to be made under and pursuant to rules and
 24 regulations to be first promulgated on or before December
 25 31, 1975. In addition to the other requirements of this

1 code, a resort area for the purposes of qualification for
2 the issuance of resort retail liquor license must have a
3 current actual valuation of resort or recreational
4 facilities, including land and improvements thereon, of not
5 less than five hundred thousand dollars (\$500,000), at least
6 half of which valuation must be for a structure or
7 structures within the resort area, and must be under the
8 sole ownership or control of one person or entity at the
9 time of the filing of the resort area plat referred to in
10 the next paragraph. The word control shall mean lands held
11 under lease, option, or permit. Before first adopting such
12 rules and regulations in regard to resort liquor licenses,
13 the department shall publish a notice of the hearing to be
14 held on said rules and regulations in a regularly published
15 newspaper in the cities of Billings, Bozeman, Butte, Great
16 Falls, Helena, Miles City, Kalispell and Missoula, Montana,
17 said publication to be published in said newspapers at least
18 once a week for four consecutive weeks, the last of said
19 publications being at least ten (10) but not more than
20 thirty (30) days prior to the date set for said hearing,
21 which shall be held in Helena, Montana, at a time and place
22 designated by the department.

23 The resort area must be determined by the resort
24 developer or landowner by a plat setting forth the resort
25 boundaries designating the ownership of the lands within the

1 resort area which plat must be verified by the resort
2 developer or landowner, and filed with the department prior
3 to the filing of any applications by individuals for
4 licenses within the resort area. Such plat must show the
5 location and general design of the buildings, and other
6 improvements to be built in said area in which resort retail
7 liquor licenses are to, or may, be located. A master plan
8 for the development of the said area may be filed by the
9 resort developer in satisfaction of this section.

10 Upon such filing the department shall forthwith
11 schedule a public hearing to be held in Helena, Montana, to
12 determine whether the facility proposed by the resort
13 developer or landowner is a resort area within the meaning
14 of the rules and regulations of the department. At least
15 thirty (30) days prior to the date of the hearing, the
16 department shall publish notice thereof with a description
17 of the location of the proposed resort area in a newspaper
18 published in the county or counties in which the resort is
19 located, once a week for four (4) consecutive weeks. Each
20 resort developer or landowner shall, at the time of filing
21 his application, pay to the department an amount sufficient
22 to cover the costs of said publication. Persons may present
23 statements to the department at the hearing in person or in
24 writing in opposition or support of the plat. Within thirty
25 (30) days of the hearing the department shall accept or

1 reject the plat. If rejected the department must state its
2 reasons and set forth the conditions, if any, under which
3 the plat will be accepted and the decision of the department
4 may be reviewed pursuant to the review procedure set forth
5 in section 4-4-402.

6 Once filed with the department, the boundaries of a
7 resort may not be changed without full hearing as above
8 provided and the prior approval of the department, which
9 approval shall be according to public convenience and
10 necessity.

11 When the department has accepted a plat and a given
12 resort area has been determined, applications may then be
13 filed with the department by persons for the issuance of
14 resort retail liquor licenses within the said resort area.
15 Each applicant must submit plans showing the location,
16 appearance and floor plan of the premises for which
17 application for a license is made.

18 If an applicant otherwise qualifies for a resort
19 license but the premises to be licensed are still in
20 construction, or are otherwise incomplete and the time of
21 such application, the department shall issue a letter
22 stating that the license will be issued at such time as the
23 qualifications for a licensed premises have been met,
24 setting forth such time limitations and requirements as the
25 department may establish.

1 In addition to the restrictions on sale or transfer of
2 a license as provided in section 4-4-206 herein, no resort
3 retail liquor license may be sold or transferred for
4 operation at a location outside of the boundaries of the
5 resort area.

6 The annual fee for resort retail liquor licenses within
7 a given resort area shall be two thousand dollars (\$2,000)
8 for each such license.

9 A resort retail liquor license shall not be subject to
10 the quota limitations set forth in section 4-4-202 above and
11 a resort retail liquor license shall be issued by the
12 department on the basis that the department has determined
13 that such license is justified by public convenience and
14 necessity, following a hearing as provided in section
15 4-4-302.

16 Section 82. Section 4-406, R.C.M. 1947, is renumbered
17 section 4-4-404, and is amended to read as follows:

18 "4-406 4-4-404. Fee for and expiration of licenses.
19 Effective July 1, 1944, and at the same date of each year
20 thereafter, the Montana ~~liquor-control-board~~ department of
21 revenue shall issue licenses for the retail sale of ~~beer~~
22 ~~and/or alcoholic beverages~~ liquor on an annual basis, and at
23 such fees as are prescribed by law, and such licenses shall
24 expire at midnight of June 30th of the succeeding year.
25 ~~Provided--that--when--the--applicant--shall--have--had--a--beer~~

~~license-or-beer-and-liquor-licenses-for-1943,-he--shall--pay
the-fees-required-for-such-licenac-or-licenses-for-the-first
half--of-1944-before-he-shall-be-qualified-to-be-issued-such
license-or-licenses-for-the-year-commencing-June--30--1944.~~
The department shall notify each applicant for an original
license or renewal that he should inform himself of
applicable provisions of federal law which may require a
permit from a federal agency."

Section 83. Section 4-407, R.C.M. 1947, is renumbered
section 4-4-301, and is amended to read as follows:

"~~4-407~~ 4-4-301. Application for license--penalty for
false statements. Prior to the issuance of a license as
herein provided, the applicant shall file with the Montana
~~liquor-control-board~~ department of revenue an application in
writing, signed by the applicant, and containing such
information and statements relative to the applicant and the
premises where the ~~liquor~~ alcoholic beverage is to be sold,
as may be required by the Montana-liquor-board department.

The application shall be verified by the affidavit of
the person making the same before a person authorized to
administer oaths. If any false statement is made in any
part of said application, the applicant, or applicants,
shall be deemed guilty of a misdemeanor and upon conviction
thereof the license, if issued, shall be revoked and the
applicant, or applicants, subjected to the penalties

provided by law."

Section 84. Section 4-407.1, R.C.M. 1947, is
renumbered section 4-4-302, and is amended to read as
follows:

"~~4-407.1~~ 4-4-302. Notice of application--publication--
protest. When an application has been filed with the Montana
~~liquor-control-board~~ department of revenue for a license to
sell ~~liquor~~ alcoholic beverages at retail, or to transfer
such license, the board department shall promptly publish in
a newspaper of general circulation in the city, town or
county from whence such application shall come, a notice
that such applicant has made application for such license,
and that protests against the issuance of a license to the
applicant will be heard at a time and place stated in the
notice, which shall be ~~at-a-special-or-regular-meeting-of~~
~~the-Montana-liquor-control-board~~ in the city of Helena,
Montana. Notice of application for a new license shall be
published once a week for four (4) consecutive weeks.
Notice of application for transfer of a license shall be
published once a week for two (2) consecutive weeks. Notice
may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ~~LIQUOR~~

ALL BEVERAGE LICENSE

Notice is hereby given that on the day of,
19.., one (name of applicant) filed an application for a

1 retail ~~liquor~~ all beverage license with the Montana ~~liquor~~
2 ~~control-board~~ department of revenue, to be used at (describe
3 location of premises where license is to be sold), and
4 protests, if any there be, against the issuance of such
5 license will be heard at the hour of --M, on the day
6 of, 19.., at the office of the Montana ~~liquor--control~~
7 ~~board~~ department of revenue, in Helena, Montana.

8 Dated

9 Signed

10 ADMINISTRATOR

11 No license shall be issued until on or after the date
12 set in the notice for hearing protests. Nor shall a license
13 under this act code be issued if the said Montana ~~liquor~~
14 ~~control--board~~ department of revenue shall find from the
15 evidence at said hearing that the welfare of the people
16 residing in the vicinity of the place for which such license
17 is desired will be adversely and seriously affected, or that
18 the purposes of the ~~Montana-Retail-Liquor-License-Act~~ this
19 code will not be carried out by the issuance of such
20 license. Each applicant shall, at the time of filing his
21 application, pay to the Montana ~~liquor--control---board~~
22 department of revenue, an amount sufficient to cover the
23 costs of publishing said notice."

24 Section 85. Section 4-408, R.C.M. 1947, is renumbered
25 section 4-4-303, and is amended to read as follows:

1 "4-408 4-4-303. Investigation of application. Upon
2 receipt of ~~an~~ a completed application for a license under
3 this ~~act code~~, accompanied by the necessary license fee and
4 bond, the ~~board~~ department of revenue shall within thirty
5 (30) days thereafter, cause to be made a thorough
6 investigation of all matters pertaining thereto, and shall
7 determine whether such applicant is qualified to receive a
8 license and his premises are suitable for the carrying on of
9 the business, and whether the requirements of this act code
10 and the rules and regulations promulgated by the ~~board~~
11 department are met and complied with."

12 Section 86. Section 4-408.1, R.C.M. 1947, is
13 renumbered section 4-4-304, and is amended to read as
14 follows:

15 "4-408 4-4-304. Fingerprints required of licensees.
16 All applicants for a Montana retail ~~liquor~~ all beverage or
17 beer license, including corporate officers and managers, may
18 be required by the department of revenue, when applying for
19 said license to have their fingerprints taken for use in
20 determining the eligibility of the applicant for such
21 license."

22 Section 87. Section 4-409.1, R.C.M. 1947, is
23 renumbered section 4-4-106, and is amended to read as
24 follows:

25 "4-409.1 4-4-106. Special permits to sell ~~liquor~~

1 alcoholic beverages--application and issuance--fee. Any post
2 of a nationally chartered veterans' organization or any
3 lodge of a recognized national fraternal organization, not
4 otherwise licensed under this act, shall in the discretion
5 of the board department of revenue, without notice or
6 hearing as provided in section ~~4-407.1~~ 4-4-302, be entitled
7 to a special permit to sell ~~liquor~~ all alcoholic beverages
8 at such post or lodge, to members and their guests only, to
9 be consumed within the hall or building of such post or
10 lodge.

11 The application of such nationally chartered veterans'
12 organization or lodge of a recognized national fraternal
13 organization, shall describe the location of the hall or
14 building where the special permit shall be used and the date
15 it will be used. Such application shall be accompanied by a
16 permit fee of ten dollars ~~(\$10.00)~~ (\$10).

17 The special permit issued shall be for a twenty-four
18 (24) hour period ending at 2 a.m. only and the board
19 department shall not issue more than twelve (12) such
20 permits to any such post or lodge during a calendar year.
21 ~~Such post or lodge must have either a retail license or~~
22 ~~special permit to sell beer before being entitled to a~~
23 ~~special permit to sell liquor."~~

24 Section 88. Section 4-410, R.C.M. 1947, is renumbered
25 section 4-4-206, and is amended to read as follows:

1 "4-4-206. Contents of license -- posting --
2 privilege -- transfer -- expiration. (1) Every license
3 issued under this act code shall set forth the name of the
4 person to whom issued, the location by street and number, or
5 other appropriate specific description of location if no
6 street address exists, of the premises where the business is
7 to be carried on under said license, and such other
8 information as the board department shall deem necessary.
9 If the licensee is a partnership or if more than one person
10 has any interest in the business operated under the license,
11 the names of all persons in the partnership or interested in
12 the business must appear on the license. Every license must
13 be posted in a conspicuous place on the premises wherein the
14 business authorized under the license is conducted and such
15 license shall be exhibited upon request to any authorized
16 representative of the board department or to any peace
17 officer of the state of Montana.

18 (2) Any license issued under the provisions of this
19 act code shall be considered a privilege personal to the
20 licensee named in the license and shall be good until the
21 expiration of the license, unless sooner revoked or
22 suspended. A license may be transferred to the executor or
23 administrator of the estate of any deceased licensee when
24 such estate consists in whole or in part of the business of
25 selling liquor under a license and in such event the license

1 may descend or be disposed of with the business to which it
2 is applicable under appropriate probate proceedings.

3 (3) In the event of a major loss or damage to licensed
4 premises by unforeseen natural causes, or in case of
5 expiration of lease of the licensed premises, or in the
6 event of eviction or increase of rent by the landlord, in
7 case of rented, licensed premises, or in case of proposed
8 removal of license to premises as substantially suited for
9 the retail liquor business as the premises vacated, the
10 licensee may apply to the board department for a transfer of
11 the license to a different premises, the board department
12 may in its discretion permit a transfer in such cases if it
13 appears to the board department that such a transfer is
14 required to do justice to the licensee applying for the
15 transfer. The board department shall in no event, nor for
16 any cause, permit a transfer to a different premises where
17 the sanitary, health and service facilities are less
18 satisfactory than such facilities which exist or had existed
19 at the premises from which the transfer is proposed to be
20 made.

21 (4) Upon a bona fide sale of the business operated
22 under any license the license may be transferred to a
23 qualified purchaser. No transfer of any license as to
24 person or location shall be effective unless and until
25 approved by the board department and any licensee or

1 transferee or proposed transferee who operates or attempts
2 to operate under any supposedly transferred license prior to
3 the approval of such transfer by the board department,
4 endorsed upon the license in writing, shall be considered as
5 operating without a license and the license affected may be
6 revoked or suspended by the board department. ~~The board~~
7 ~~shall not in any event permit the transfer of any license~~
8 ~~beyond the quota area within which such license was~~
9 ~~originally issued, any such license which is not within a~~
10 ~~quota area may not be transferred to any premises within a~~
11 ~~quota area.~~

12 (a) A license may be transferred to a new ownership
13 and to a location outside the quota area for which it was
14 originally issued only when the following criteria are met:

15 (i) the total number of all-beverages licenses in the
16 original quota area exceeded the quota for that area by at
17 least twenty-five percent (25%) in the most recent census;
18 and

19 (ii) the total number of all-beverages licenses in the
20 quota area to which the license would be transferred did not
21 exceed that area's quota by more than twenty-five percent
22 (25%) in the most recent census; and

23 (iii) the department finds, after a public hearing,
24 that the public convenience and necessity would be served by
25 such a transfer.

(b) A license transferred between quota areas under this section may not be pledged as security or be transferred, except for a transfer by inheritance upon the death of the licensee. If the licensee is a corporation or a business entity other than a natural person, ownership interests in the licensee may not be pledged as security or transferred except by inheritance if the value of such ownership interests exceed the fair market value of the real property and inventory owned by the licensee.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon application to and approval of the board department, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year."

Section 89. Section 4-411, R.C.M. 1947, is renumbered section 4-4-207 and is amended to read as follows:

"4-411 4-4-207. Limit one license to person ---beer license,--when--required -- business in name of licensee. No person shall be granted more than one all-beverages license in any year. No--person, club, or fraternal organization shall be entitled to a license under this--act--unless--such person, club, or--fraternal organization shall have a beer

license issued under the laws of Montana. No business may be carried on under any license issued under this chapter except in the name of the licensee."

Section 90. Section 4-412, R.C.M. 1947, is renumbered section 4-4-108, and is amended to read as follows:

"4-412 4-4-108. Persons---disqualified--for--license. License as privilege -- criteria for decision on application. No license shall be issued by the board to:

1r--A person who has been convicted of being the keeper or is keeping a house of ill fame;

2r--A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;

3r--A person whose license issued under this act has been revoked for cause;

4r--A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application;

5r--A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board;

6r--A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of

~~the application for license.~~

~~7.---A person who is not the owner and operator of the business.~~

A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) the applicant is financially capable, with no ownership interest of his own or of any member of his immediate family in any other establishment licensed under this chapter for all-beverages sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;

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

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

Section 91. Section 4-413, R.C.M. 1947, is renumbered section 4-3-306, and is amended to read as follows:

~~"4-413~~ 4-3-306. Persons to whom ~~liquor~~ alcoholic

beverage may not be sold or given. (1) No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any ~~liquor, beer or wine~~ alcoholic beverage to:

~~1. (a)~~ Any person under the age of eighteen (18) years.

~~2. (b)~~ Any intoxicated person or any person actually, apparently or obviously intoxicated.

~~3.---A habitual drunkard.~~

~~4.---An interdicted person.~~

~~5. (2)~~ Any minor, or other person who knowingly misrepresents his or her qualifications for the purpose of obtaining ~~liquor, beer or wine~~ an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section ~~4-439~~ 94-5-610 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of ~~liquor, beer or wine~~ an alcoholic beverage to any person in violation of any federal law."

Section 92. Section 4-415, R.C.M. 1947, is renumbered section 4-4-107, and is amended to read as follows:

~~"4-415~~ 4-4-107. ~~Restrictions--on-proximity-of-premises to-churches-and-schools:~~ Proximity to churches and schools restricted. ~~No--license--shall--be-granted-for-any-premises~~

1 ~~which--shall--be--on--the--same--street--or--avenue--and--within--six~~
 2 ~~hundred--feet--of--a--building--occupied--exclusively--as--a--church,~~
 3 ~~synagogue--or--other--place--of--worship,--or--school,--except--a~~
 4 ~~commercially--operated--school,--the--measurements--to--be--taken~~
 5 ~~in--a--straight--line--from--the--center--of--the--nearest--entrance~~
 6 ~~of--such--school,--church,--synagogue--or--other--place--of--worship~~
 7 ~~to--the--center--of--the--nearest--entrance--of--the--premises--to--be~~
 8 ~~licensed,--except,--however,--that--no--license--shall--be--denied~~
 9 ~~because--such--restriction--may--apply--to--any--premises--so~~
 10 ~~located---which---are---maintained---as--a--bona--fide--hotel,~~
 11 ~~restaurant,--railway--car,--club--or--fraternal--organization--or~~
 12 ~~society--except--similar--places--of--business--established--and--in~~
 13 ~~actual--operation--for--one--year--prior--to--the--passage--and~~
 14 ~~approval--of--this--act. A retail licensee may not extend or~~
 15 ~~relocate his premises within six hundred (600) feet of and~~
 16 ~~on the same street as a building used exclusively as a~~
 17 ~~church, synagogue, or other place of worship, or as a school~~
 18 ~~other than a commercially operated or post-secondary school.~~
 19 ~~This distance shall be measured in a straight line from the~~
 20 ~~center of the nearest entrance of the place of worship or~~
 21 ~~school to the nearest entrance of the licensee's premises.~~
 22 ~~This section is a limitation upon the department's licensing~~
 23 ~~authority. However, the department may renew a license for~~
 24 ~~any establishment located in violation of this section if~~
 25 ~~the establishment was either located on the site before the~~

1 place of worship or school opened, or located in a bona fide
 2 hotel, restaurant, or fraternal organization building at the
 3 site since January 1, 1937."

4 Section 93. Section 4-416, R.C.M. 1947, is renumbered
 5 section 4-2-204, and is amended to read as follows:

6 "4-416 4-2-204. Board Department to sell to licensees
 7 -- posted price. The board department is hereby authorized
 8 to sell through its stores all kinds of liquor, wine and
 9 cordials kept in stock to licensees licensed under this act
 10 code at the posted price thereof in the store in which said
 11 liquor is sold. All sales shall be upon a cash basis. The
 12 posted price as used herein shall mean the retail price of
 13 such liquor as fixed and determined by the Montana--liquor
 14 control--board department of revenue and in addition thereto
 15 an excise tax as in this act provided."

16 Section 94. Section 4-417, R.C.M. 1947, is renumbered
 17 section 4-1-403, and is amended to read as follows:

18 "4-417 4-1-403. Excise liquor tax--collection. The
 19 Montana-liquor-control-board department of revenue is hereby
 20 authorized and directed to charge, receive and collect at
 21 the time of the sale and delivery of any liquor as
 22 authorized under any provision of the laws of the state of
 23 Montana an excise tax at the rate of sixteen per centum
 24 (16%) of the retail selling price on all liquor so sold and
 25 delivered. The Montana liquor-control-board department of

1 revenue shall retain the amount of such excise tax received
 2 in a separate account and shall deposit with the state
 3 treasurer, to the credit of the general fund, such sums so
 4 collected and received not later than the tenth (10th) day
 5 of each and every month."

6 Section 95. Section 4-418, R.C.M. 1947, is renumbered
 7 section 4-2-205, and is amended to read as follows:

8 "~~4-418~~ 4-2-205. Duplicate invoices of sales required.
 9 The state liquor store shall upon each and every sale of
 10 liquor to any licensee, issue a duplicate invoice of the
 11 liquor purchased as provided by ~~said-board~~ the department, a
 12 copy of which shall be delivered to the licensee and one
 13 copy retained at such store. The invoice shall show the
 14 date of purchase, name of employee making the sale, the
 15 quantity of each kind of liquor purchased, the price paid
 16 therefor, the name of the licensee and the number of the
 17 license, with such other information as may be required by
 18 the board department. The licensee shall keep and retain
 19 his duplicate invoice of all purchases made by him from the
 20 state liquor store, which shall at all times be subject to
 21 inspection by the duly authorized officers, agents and
 22 employees of the board department."

23 Section 96. Section 4-419, R.C.M. 1947, is renumbered
 24 section 4-6-102, and is amended to read as follows:

25 "~~4-419~~ 4-6-102. Sale of liquor not purchased from

1 state store forbidden -- penalty. It shall be unlawful for
 2 any licensee to sell or keep for sale and/or have on his
 3 premises for any purpose whatever, any liquor except that
 4 purchased from the state liquor store, and any licensee
 5 found in possession of, or selling and keeping for sale, any
 6 liquor which was not purchased from a state liquor store,
 7 shall, upon conviction, be fined not less than five hundred
 8 dollars ~~(\$500.00)~~ (\$500) nor more than fifteen hundred
 9 dollars ~~(\$1500.00)~~ (\$1500), or by imprisonment for not less
 10 than three (3) months nor more than one (1) year, or both
 11 such fine and imprisonment, and if the board department
 12 shall be satisfied that any such liquor was knowingly sold
 13 or kept for sale within the licensed premises by such
 14 licensee, or by his agents, servants or employees, it shall
 15 be mandatory that said board department immediately revoke
 16 the license of said licensee."

17 Section 97. Section 4-420, R.C.M. 1947, is renumbered
 18 section 4-4-407, and is amended to read as follows:

19 "~~4-420~~ 4-4-407. Penalty for sale of alcoholic ~~liquor~~
 20 beverage without license. Any person, who has not been
 21 issued a license under this act code, who shall sell or keep
 22 for sale any alcoholic ~~liquor~~ beverage, shall be guilty of a
 23 felony and upon conviction thereof shall be fined not less
 24 than one thousand dollars ~~(\$1000.00)~~ (\$1000) nor more than
 25 five thousand dollars ~~(\$5000.00)~~ (\$5,000), or be imprisoned

1 in the state prison for not less than one (1) nor more than
2 five (5) years, or both such fine and imprisonment."

3 Section 98. Section 4-421, R.C.M. 1947, is renumbered
4 section 4-3-307, and is amended to read as follows:

5 "~~4-421~~ 4-3-307. Sale of liquor at less than posted
6 price forbidden. It shall be unlawful for any licensee under
7 the provisions of this act code to resell any liquor
8 purchased by such licensee from a state liquor store or the
9 state of Montana for a sum less than the posted price
10 established by the said store and paid by the licensee
11 therefor."

12 Section 99. Section 4-422, R.C.M. 1947, is renumbered
13 section 4-1-305, and is amended to read as follows:

14 "~~4-422~~ 4-1-305. Employees of board liquor division not
15 to deal in liquor. No member or employee of the board liquor
16 division of the department, including those engaged in the
17 sale of liquor at the various state liquor stores, shall be
18 directly or indirectly engaged in dealing in liquor whether
19 as owner, part owner, member of a syndicate, shareholder or
20 otherwise, whether for his own benefit or in a fiduciary
21 capacity for others."

22 Section 100. Section 4-423, R.C.M. 1947, is
23 renumbered section 4-6-206, and is amended to read as
24 follows:

25 "~~4-423~~ 4-6-206. Officers may seize illicit ~~liquor~~

1 alcoholic beverages -- forfeiture. Any sheriff, police
2 officer, or ~~inspector~~ investigator appointed under this act
3 code, who shall find any alcoholic beverages, beverage
4 ~~liquor--or-moonshine-which-is~~ kept or held by any person for
5 sale or other disposition in violation of this act code, may
6 forthwith seize and remove the same, and keep the same as
7 evidence, and upon conviction of a person for violation of
8 the provisions hereof, the ~~said--liquor~~ alcoholic beverage
9 and all packages containing the same shall be forfeited to
10 the state of Montana, and in addition the person so
11 violating the law shall be subject to the penalties herein
12 prescribed."

13 Section 101. Section 4-428, R.C.M. 1947, is
14 renumbered section 4-6-204, and is amended to read as
15 follows:

16 "~~4-428~~ 4-6-204. Officers may examine premises. The
17 board department of revenue or any duly authorized
18 representative thereof, or the sheriff of any county, shall
19 have the right at any time to make an examination of the
20 premises of such a retail licensee as to whether the law of
21 Montana and the rules and regulations of the ~~said-board~~
22 department are being complied with, and shall also have a
23 right to inspect cars or aircraft of any railway common
24 carrier system licensed under act this code."

25 Section 102. Section 4-429, R.C.M. 1947, is

1 renumbered section 4-4-405, and is amended to read as
2 follows:

3 "~~4-429~~ 4-4-405. Renewal of suspended licenses. After
4 suspension or revocation of a license the board department
5 shall have the power to renew the same if in its discretion
6 a proper showing therefor has been made."

7 Section 103. Section 4-430, R.C.M. 1947, is
8 renumbered section 4-4-406, and is amended to read as
9 follows:

10 "~~4-439~~ 4-4-406. City and county licenses--fees. The
11 city council of any incorporated town or city, or the county
12 commissioners outside of any incorporated town or city, may
13 provide for the issuance of licenses to persons to whom a
14 retail license has been issued under the provisions of this
15 act code, and may fix license fees thereof, not to exceed a
16 sum equal to fifty per cent (50%) of the license fee
17 collected by the board department from such licensee under
18 this act code."

19 Section 104. Section 4-439, R.C.M. 1947, is
20 renumbered section 4-6-404, and is amended to read as
21 follows:

22 "~~4-439~~ 4-6-404. Penalty for violating act--revocation
23 of license. Any person violating any of the provisions of
24 this act code, shall upon conviction thereof, be deemed
25 guilty of a misdemeanor and punishable by such fine or

1 imprisonment, or both, as provided ~~by--law~~ in section
2 95-2206.3, R.C.M. 1947, except as is herein otherwise
3 provided. If any ~~such~~ retail licensee is convicted of any
4 offense under this act code his license shall be immediately
5 revoked, or in the discretion of the board department
6 ~~suspended-temporarily-for-a-time-to-be-determined-by-the~~
7 board such other sanction imposed as may be authorized under
8 section 4-4-402. Further, if any person under the age of
9 eighteen (18) is convicted of an offense under this act code
10 he shall be subject to a one hundred dollar (\$100) fine or
11 thirty (30) days in confinement. It shall be further
12 mandatory under the provisions of this act code that all
13 ~~such~~ licensees display in a prominent place in his premises
14 a placard as issued by the board department stating fully
15 the consequences for violations by persons under the age of
16 eighteen (18) years of the provisions of this act code.

17 Any person who invites a person under the age of
18 eighteen (18) years into a public place where ~~liquor~~ an
19 alcoholic beverage is sold and treats, gives or purchases
20 ~~liquor~~ an alcoholic beverage for such person, or permits
21 such person in a public place where ~~liquor~~ an alcoholic
22 beverage is sold to treat, give or purchase liquor for him,
23 or holds out such person to be over the age of eighteen (18)
24 years to the owner of the ~~liquor~~ establishment, or his or
25 her employee or employees, shall be guilty of a

1 misdemeanor."

2 Section 105. Section 4-440, R.C.M. 1947, is
3 renumbered section 4-1-106, and is amended to read as
4 follows:

5 "~~4-440~~ 4-1-106. Saving clause--scope of ~~act~~ code. If
6 any clause, sentence, paragraph, section or any part of this
7 ~~act~~ code shall be declared and adjudged to be invalid and/or
8 unconstitutional, such invalidity or unconstitutionality
9 shall not affect, impair, invalidate or nullify the
10 remainder of this ~~act~~ code. This ~~act~~ code shall apply to
11 the Montana ~~liquor-control-board~~ department of revenue as
12 now composed and existing, and to any board or commission or
13 other entity which may hereafter succeed the ~~above-said~~
14 ~~board~~ department."

15 Section 106. Section 4-507, R.C.M. 1947, is
16 renumbered section 4-5-102, and is amended to read as
17 follows:

18 "~~4-507~~ 4-5-102. Duties of the county clerk and
19 recorder. Upon making application to the county clerk and
20 recorder for an identification card, the applicant must
21 apply in person before the county clerk and recorder, who
22 shall ascertain and receive from the applicant:

- 23 1. The true and full name of the applicant;
- 24 2. The date of birth of the applicant, provided,
- 25 however, it shall be within the discretion of the officer to

1 require proof of the date of birth with a certified copy of
2 his or her birth certificate;

3 3. Place of birth of the applicant;

4 4. The height and weight of the applicant;

5 5. The color of eyes and hair of the applicant; and

6 6. A Two, one and one-quarter inch (1 1/4") by one and
7 one-half inch (1 1/2") photograph of the applicant which
8 shall bear a true resemblance to the applicant. It shall be
9 within the discretion of the clerk and recorder to refuse a
10 photograph which does not present a true resemblance of the
11 applicant. The second photograph is to be filed with the
12 state."

13 Section 107. Section 4-508, R.C.M. 1947, is
14 renumbered section 4-5-103, and is amended to read as
15 follows:

16 "~~4-508~~ 4-5-103. County clerk and recorder to forward
17 application to the Montana ~~liquor-control-board~~ department
18 of revenue for issuance of identification card. The county
19 clerk and recorder shall forward the application, properly
20 filled in and authenticated, to the Montana ~~liquor-control~~
21 ~~board~~ department of revenue, and that ~~board~~ department shall
22 prepare an identification card upon a laminating machine.
23 The identification card shall set forth all the information
24 contained in the application, together with the photograph,
25 and shall be signed by the ~~chairman-of~~ director of the

1 Montana ~~liquor-control-board~~ department of revenue or his
2 designee."

3 Section 108. Section 4-509, R.C.M. 1947, is
4 renumbered section 4-5-104, and is amended to read as
5 follows:

6 "~~4-509~~ 4-5-104. Montana ~~liquor-control-board~~
7 department of revenue to furnish application forms to
8 county clerk and recorders. It shall be the duty of the
9 Montana ~~liquor-control-board~~ department of revenue to
10 prepare suitable application blanks and cause the same to be
11 distributed to the various county clerk and recorders."

12 Section 109. Section 4-510, R.C.M. 1947, is
13 renumbered section 4-5-105, and is amended to read as
14 follows:

15 "~~4-510~~ 4-5-105. Fee to be charged. The county clerk
16 and recorders shall charge and collect a fee of one dollar
17 ~~and fifty cents (\$1.50)~~ from the applicant at the time
18 the application is prepared. ~~This fee~~ One dollar (\$1)
19 thereof shall be transmitted to the Montana ~~liquor-control-~~
20 ~~board~~ department of revenue along with the application and
21 shall be used to defray the cost of administering and
22 executing the provisions of this ~~act~~ code. Any surplus
23 shall revert to the general fund of the state of Montana.
24 The remaining fifty cents (\$.50) shall be paid into the
25 general fund of the county to defray the county's costs in

1 administering this program."

2 Section 110. There is a new section to be numbered
3 4-1-107, R.C.M. 1947, which reads as follows:

4 4-1-107. Definitions. As used in this code:

5 (1) "Alcohol" means ethyl alcohol, also called ethanol
6 or the hydrated oxide of ethyl.

7 (2) "Alcoholic beverage" means a compound produced and
8 sold for human consumption as a drink that contains more
9 than one-half of one percent (0.5%) of alcohol by volume.

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

12 (4) "Brewer" means a person who produces malt
13 beverages.

14 (5) "Department" means the Montana department of
15 revenue.

16 (6) "Immediate family" means a spouse, dependent
17 children, or dependent parents.

18 (7) "Industrial use" means a use described as
19 industrial use by the Federal Alcohol Administration Act and
20 the federal rules and regulations of 27 CFR.

21 (8) "Liquor" means an alcoholic beverage except beer.

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

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

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

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

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

14 (13) "Residence" means a building, part of a building,
15 or tent where a person resides, but does not include any
16 part of a building that is not actually and exclusively used
17 as a private residence.

18 (14) "Rules and regulations" means rules and
19 regulations published by the department pursuant to this
20 act.

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

25 (16) "State liquor store" means a retail store operated

1 by the department in accordance with this code for the
2 purpose of selling distilled spirits and wines.

3 (17) "Storage depot" means a building or structure
4 owned or operated by a brewer at any point in the state of
5 Montana, off and away from the premises of a brewery, and
6 which structure is equipped with refrigeration or cooling
7 apparatus for the storage of beer, and from which a brewer
8 may sell or distribute beer as permitted by this code.

9 (18) "Warehouse" means a building or structure owned or
10 operated by a licensed wholesaler for the receiving, storage
11 and distribution of beer as permitted by this code.

12 (19) "Wine" means an alcoholic beverage made from the
13 normal alcoholic fermentation of the juice of sound, ripe,
14 fruit or other agricultural products without addition or
15 abstraction, except as may occur in the usual cellar
16 treatment of clarifying and aging and that contains not less
17 than seven percent (7%) nor more than twenty-four percent
18 (24%) of alcohol by volume. Wine may be ameliorated to
19 correct natural deficiencies, sweetened and fortified in
20 accordance with applicable federal regulations and the
21 customs and practices of the industry. Other alcoholic
22 beverages not defined as above but made in the manner of
23 wine, labeled and sold as wine in accordance with federal
24 regulations are also wine.

25 Section 111. There is a new section to be numbered

1 4-1-204, R.C.M. 1947, which reads as follows:

2 4-1-204. Health professions exemption. A physician,
3 dentist, veterinarian or pharmacist, acting within the scope
4 of his professional responsibility and license to practice,
5 who prescribes, prepares, or administers alcohol or
6 substances containing alcohol, and sells or charges a fee,
7 does not violate the prohibitions of this title.

8 Section 112. There is a new section to be numbered
9 4-1-206, R.C.M. 1947, which reads as follows:

10 4-1-206. Local option. The electors of a county may,
11 by approving an initiative as provided under Title 37,
12 chapter 3, R.C.M. 1947, prohibit the sale and consumption of
13 liquor, or of all alcoholic beverages, within the county.
14 If such initiative is presented to the board of county
15 commissioners, the board may not approve it but shall submit
16 the proposal to the people under section 37-301.

17 Section 113. There is a new section to be numbered
18 4-1-405, R.C.M. 1947, which reads as follows:

19 4-1-405. In addition to the annual license tax imposed
20 by section 4-4-401, a tax of three dollars (\$3) per barrel
21 of thirty-one (31) gallons is hereby levied and imposed on
22 each and every barrel of beer sold by any duly licensed
23 brewer who manufactures beer in the state of Montana, which
24 said barrelage tax shall be due at the end of each month and
25 shall be payable with the brewer's monthly return or

1 statement required to be made to the department under the
2 provisions of section 4-3-203.

3 Section 114. There is a new section to be numbered
4 4-4-109, R.C.M. 1947, which reads as follows:

5 4-4-109. Passenger carrier licenses. Common carriers
6 serving Montana may serve beer and liquor to passengers in
7 aircraft over or railroad cars in the state of Montana, upon
8 the issuance by the department of revenue of a retail beer
9 and liquor license for that purpose. Such licenses shall be
10 issued on an annual basis to common carriers making
11 application therefor, and shall be effective from July 1 of
12 the current year to July 1 of the following year. They
13 shall be issued upon payment by the applicant of an annual
14 license fee in the sum of three hundred dollars (\$300);
15 provided, that licenses shall be issued for the remainder of
16 the fiscal year commencing July 1, 1968, upon payment of a
17 license fee in the sum of one hundred fifty dollars (\$150).

18 Section 115. There is a new section to be numbered
19 4-4-110, R.C.M. 1947, which reads as follows:

20 4-4-110. Payment of liquor taxes by passenger
21 carriers. Every airline or railroad operating in the state
22 of Montana and selling liquor purchased outside this state
23 for consumption within this state shall pay to the Montana
24 department of revenue the excise taxes and state markup
25 which would be applicable to such liquor if purchased from

1 the state liquor store.

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

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

11 From said product, the carrier shall subtract the
12 amount of excise taxes and state markup on purchases of
13 liquor made within this state.

14 Section 116. There is a new section to be numbered
15 4-4-111, R.C.M. 1947, which reads as follows:

16 4-4-111. Other accounting methods -- forms. (1) The
17 method provided in section 4-4-110 shall be presumed to
18 determine fairly and correctly the liquor purchased outside
19 this state and sold for consumption within this state. Any
20 carrier aggrieved by the application of such method may
21 petition the department for use of some other method.
22 Thereupon, if the department finds that the application of
23 such method will be unjust to the carrier, it may allow the
24 use of the method so petitioned for by the airline or may
25 use such other method as will fairly reflect the liquor

1 purchased outside this state and served for consumption
2 within this state.

3 (2) The department shall prescribe report forms which
4 shall be used by the carriers in reporting their sales and
5 computing their liability for excise taxes and markup.
6 Report forms shall be filed and payment of excise taxes and
7 state markup shall be made on a quarterly basis. The filing
8 of report forms and payment of excise taxes and state markup
9 shall be made not later than the last day of the month
10 immediately following the close of each quarterly period.

11 Section 117. There is a new section to be numbered
12 4-6-202, R.C.M. 1947, which reads as follows:

13 4-6-202. Arrest, entry of complaint, and lawful search
14 and seizure authorized. The department shall enforce the
15 provisions of this code, and may appoint certain of its
16 investigators as peace officers for the purpose of enforcing
17 this code. The powers of such persons under Title 95,
18 R.C.M. 1947, are limited to violations of a provision of
19 this code. Within these limits, a peace officer may arrest
20 any person violating this code, may enter complaint before
21 any court of competent jurisdiction, and may lawfully search
22 for and seize for use as evidence any unlawful or unlawfully
23 possessed liquor, beer, licenses or stamps.

24 Section 118. There is a new section to be numbered
25 4-3-308, R.C.M. 1947, which reads as follows:

1 4-3-308. Refilling of liquor bottles prohibited. No
2 person who sells, or offers for sale, liquor, nor the agent
3 or employee of such person, may--

4 (1) place in any liquor bottle any liquor whatsoever
5 other than those contained in such bottle at the time of
6 stamping by the federal government; or

7 (2) possess any liquor bottle in which any liquor has
8 been placed in violation of subsection (1); or

9 (3) by the addition of any substance whatsoever to any
10 liquor bottle, in any manner alter or increase any portion
11 of the original contents contained in such bottle at the
12 time of stamping by the federal government; or

13 (4) possess any liquor bottle, any portion of the
14 contents of which has been altered or increased in violation
15 of subsection (3); except that this section does not
16 prohibit any reuse of liquor bottles which is permitted
17 under laws or regulations of the federal government.

18 Section 119. Section 41-2004, R.C.M. 1947, is amended
19 to read as follows:

20 "41-2004. Definition of terms. For the purposes of
21 this act the words and phrases used herein have the
22 following meaning:

23 (1) "Person" includes any establishment, firm,
24 partnership, corporation, person or association of persons.

25 (2) "Restaurant" means a public eating house where

1 food is prepared and served for human consumption on the
2 premises.

3 (3) "Lessee" means one to whom a lease is made.

4 (4) "Bar" or "tavern" means a house where liquor or
5 beer are sold to be drunk on the premises.

6 (5) "Liquor" means ~~and---includes any alcoholic,~~
7 ~~spirituous,--vinous,--fermented,--malt-or-other-liquor,--which~~
8 ~~contains-more-than-one-per-centum-(11)-of-alcohol-by-weight,~~
9 ~~but-shall-not-mean-or-include-beer-as-that-term-is--defined~~
10 ~~in--the-Montana-Beer-Act-by-subsection-(b)-of-section-4-302,~~
11 ~~Revised-Codes-of-Montana-1947~~ beverage so defined in the
12 Alcoholic Beverages Code.

13 (6) "Beer" means any beverage ~~obtained-by-alcoholic~~
14 ~~fermentation-of-an-infusion-or-decoction-of-barley,--malt-and~~
15 ~~hops,--or--of--any--similar--products,--in--drinkable--water,~~
16 ~~containing--not--more--than--four-per-centum-(4)-alcohol-by~~
17 weight so defined in the Alcoholic Beverages Code.

18 (7) "Employee" means a person who works for wages or
19 salary in the service of an employer.

20 (8) "Business" means a commercial enterprise of any
21 kind involving the buying and selling of goods."

22 Section 120. The following sections of the Revised
23 Codes of Montana 1947 are renumbered as follows: 4-114.1 is
24 renumbered 4-2-202; 4-114.2 is renumbered 4-2-203; 4-119 is
25 renumbered 4-2-102; 4-151 is renumbered 4-3-101; 4-169 is

1 renumbered 4-3-105; 4-170 is renumbered 4-3-103; 4-172 is
 2 renumbered 4-6-105; 4-206 is renumbered 4-6-107; 4-207 is
 3 renumbered 4-6-108; 4-241 is renumbered 4-1-402; 4-315 is
 4 renumbered 4-3-205; 4-317.2 is renumbered 4-3-207; 4-317.3
 5 is renumbered 4-3-208; 4-317.4 is renumbered 4-3-209;
 6 4-317.5 is renumbered 4-3-210; 4-317.6 is renumbered
 7 4-3-211; 4-322 is renumbered 4-3-215; 4-323 is renumbered
 8 4-3-216; 4-324 is renumbered 4-1-404; 4-329 is renumbered
 9 4-3-303; 4-403.1 is renumbered 4-4-205; 4-404 is renumbered
 10 4-4-403; 4-408.2 is renumbered 4-4-305; 4-506 is renumbered
 11 4-5-101; 4-512 is renumbered 4-5-106.

12 Section 121. Sections 4-102, 4-104, 4-105, 4-106,
 13 4-110, 4-111, 4-115, 4-118, 4-134, 4-135, 4-136, 4-137,
 14 4-138, 4-142, 4-143, 4-144, 4-145, 4-146, 4-147, 4-148,
 15 4-149, 4-159, 4-163, 4-167, 4-173, 4-201, 4-202, 4-203,
 16 4-204, 4-205, 4-221, 4-222, 4-223, 4-227, 4-228, 4-230,
 17 4-232, 4-234, 4-235, 4-236, 4-237, 4-239, 4-302, 4-305,
 18 4-306, 4-307, 4-312, 4-314, 4-317.8, 4-337, 4-339, 4-345,
 19 4-350, 4-351, 4-352, 4-353, 4-354, 4-355, 4-356, 4-402,
 20 4-405, 4-409, 4-414, 4-424, 4-425, 4-431, 4-432, 4-433,
 21 4-434, 4-435, 4-436, 4-437, 4-438, 4-441, 4-501, 4-502,
 22 4-503, 4-504, 4-505, 4-513, and 4-514, R.C.M. 1947, are
 23 repealed.

-End-

Approved by Committee
on Business and Industry

SENATE BILL NO. 1

INTRODUCED BY TURNAGE, REGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECODIFY AND
GENERALLY REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS."

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

Section 1. Section 4-101, R.C.M. 1947, is renumbered
section 4-1-101, and is amended to read as follows:

~~"4-101 4-1-101.~~ Citation of ~~State Liquor Control Act~~--
declaration of policy--subject matters of regulation under
act. This act title may be cited as the ~~"State Liquor~~
~~Control Act of Montana"~~ "Montana Alcoholic Beverage Code".

It is hereby declared to be the policy of the state of
Montana to effectuate and ensure the entire control of the
manufacture, sale and distribution of liquor within the
state of Montana as that term is defined in this code in
~~section 4-102, Revised Codes of Montana, 1947, as amended by~~
~~chapter 209, laws of the thirty-first legislative assembly~~
~~of Montana, in, and~~ subject to, the authority of the state
of Montana through the Montana ~~liquor control board~~
department of revenue, in accordance with the provisions of
~~the State Liquor Control Act of Montana (Title 4, chapter 1,~~
~~sections 4-101 through 4-171, inclusive, Revised Codes of~~
~~Montana, 1947, as amended or supplemented) and in accordance~~

~~with the provisions of the Retail Liquor License Act (Title~~
~~4, chapter 4, sections 4-401 through 4-441, inclusive,~~
~~Revised Codes of Montana, 1947, as amended or supplemented).~~

It is hereby declared to be the policy of the state of
Montana to effectuate and ensure that the control and
regulation by the state of Montana of the manufacture, sale
and distribution of beer as that term is defined in the
Montana Beer Act (Title 4, chapter 3, sections 4-301 through
4-356, inclusive, Revised Codes of Montana, 1947, as amended
or supplemented) and regulated thereby, and containing four
per centum (4%) of alcohol by weight or less, and the
incidents of such manufacture, sale and distribution of such
beer, shall continue subject to, and be effectuated
exclusively under the provisions of the Montana Beer Act,
as amended or supplemented, and not under the provisions of
the State Liquor Control Act of Montana. The terms "beer"
and "malt liquor" whenever used as a subject of regulation
and control by and (under the State Liquor Control Act of
Montana shall refer to, and be construed as applicable only
to beer, ale, porter, stout or other malt liquors
containing more than four per centum (4%) of alcohol by
weight, and such beer, ale, porter, stout and malt liquors
containing more than four per centum (4%) of alcohol by
weight, are hereby classified and defined as "liquor" and
shall be subject to regulation and control under the terms

SECOND READING

~~of--the--State--Liquor--Control--Act--of--Montana--as--amended--or~~
~~supplemented--and--not--under--the--provisions--of--the--Montana~~
~~Beer--Act--as--amended--or--supplemented--The--said--acts--herein~~
~~referred--to--shall--be--deemed~~ This code is an exercise of the
 police power of the state, in, and for the protection, of
 the welfare, health, peace, morals and safety of the people
 of the state and their provisions shall be construed for the
 accomplishment of such purposes."

Section 2. Section 4-103, R.C.M. 1947, is renumbered
 section 4-1-105, and is amended to read as follows:

"~~4-103~~ 4-1-105. Divisions of act code. This act code
 is divided into six parts chapters. Part-II Chapter 1
 relates to the creation--of--a--board authority of the
department of revenue to administer this act and the powers
 and functions of the board department. Part-III Chapter 2
 relates to the establishment of state stores and the keeping
 and selling of liquors. Part-III Chapter 3 relates to the
formation--of--"local--option--areas"--and--the--holding--of
election--therein control of liquor, wine, and beer. Part
IV Chapter 4 relates to prohibitions--interdiction--
penalties--and--procedure--on--prosecution--and--on--appeal license
administration. Part--V Chapter 5 relates to property
acquired--by--the--board--and--the--financing--and--accounting--by
the--board--and--application--of--the--profits identification
cards. Part---VI Chapter 6 relates to general--and

miscellaneous--matters enforcement."

Section 3. Section 4-107, R.C.M. 1947, is renumbered
 section 4-1-301, and is amended to read as follows:

"~~4-107~~ 4-1-301. General powers and duties of the board
department. The board department of revenue shall have the
 powers and duties ~~herein--specified--and--the--administration--of~~
~~to administer~~ the ~~State--Liquor--Control--Act--of~~ Montana and
~~the--Montana--Beer--Code~~ Alcoholic Beverage Code, including the
 general control, management and supervision of all state
 liquor stores, ~~but--the--board--is--authorized--to--delegate--to~~
~~the---state---liquor---administrator---the---general--control--~~
~~management--and--supervision--of--all--state--liquor--stores,~~
~~including--the--power--to--purchase--supplies--for--same--and--the~~
~~power--to--hire--and--discharge--employees--of--the--board--subject,~~
~~however--to--such--regulations--and--restrictions--as--the--board~~
~~may--impose--upon--the--state--liquor--administrator."~~

Section 4. Section 4-109, R.C.M. 1947, is renumbered
 section 4-1-307, and is amended to read as follows:

"~~4-109~~ 4-1-307. Principal office of board department
of revenue. The principal office of the board department of
revenue shall be in the city of Helena."

Section 5. Section 4-112, R.C.M. 1947, is renumbered
 section 4-1-302, and is amended to read as follows:

"~~4-112~~ 4-1-302. Functions, powers and duties of board
department of revenue. The board department of revenue shall

1 have the following functions, duties and powers:

2 (a) To buy, import, and have in its possession for
3 sale, and sell, liquors, in the manner set forth in this act
4 code;

5 (b) To control the possession, sale and delivery of
6 liquors in accordance with the provisions of this act code;

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

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

12 (e) To buy or lease all plant and equipment it may
13 consider necessary and useful in carrying into effect the
14 objects and purposes of this act code;

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

23 (g) To determine the nature, form and capacity of all
24 packages to be used for containing liquor kept or sold under
25 this act code; ~~provided--that--all--spiruous--and--vinous~~

1 ~~liquors---shall--be--purchased--and--sold--only--in--bottled~~
2 ~~containers-in-the-original-packages,--and--not--in--barrels--or~~
3 ~~bulk,--it-being-the-intent-and-purpose-of-this-act-to-prevent~~
4 ~~the-rectification-or-dilution-of-such-liquors;~~

5 (h) To grant and issue licenses under and in pursuance
6 to this act code;

7 (i) Without in any way limiting, or being limited by
8 the foregoing, to do all such things as are deemed necessary
9 or advisable by the board department for the purpose of
10 carrying into effect the provisions of this act code, or the
11 regulations made thereunder."

12 Section 6. Section 4-113, R.C.M. 1947, is renumbered
13 section 4-1-303, and is amended to read as follows:

14 "~~4-113~~ 4-1-303. Regulations may be made by board
15 department of revenue--scope of regulations. (1) The board
16 department of revenue may make such regulations, not
17 inconsistent with this act code, as to the board department
18 of revenue seem necessary, for carrying out the provisions
19 of this act code, and for the efficient administration
20 thereof.

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

1 (a) Regulating the equipment and management of state
2 stores and warehouses in which liquor is kept or sold and
3 prescribing the books and records to be kept therein;

4 (b) Prescribing the duties of the ~~officers, clerks and~~
5 ~~servants~~ employees of the ~~board~~ liquor division, and
6 regulating their conduct while in the discharge of their
7 duties;

8 (c) Governing the purchase of liquor and the
9 furnishing of liquor to state stores established under this
10 act code;

11 (d) Determining the classes, varieties and brands of
12 liquor to be kept for sale at any state store;

13 (e) Prescribing, subject to this act code, the ~~days~~
14 ~~and hours during which state liquor stores and--hotels,--and~~
15 ~~clubs retail-establishments licensed-to-sell-beer-under-this~~
16 ~~act~~ shall be kept open for the sale of ~~liquor~~ alcoholic
17 beverages;

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

22 (g) Prescribing an official ~~serially--numbered~~ seal
23 which shall be attached to every package of liquor sold or
24 sealed under this act code;

25 (h) Prescribing forms to be used for the purpose of

1 this act code or of the regulations made thereunder, and the
2 terms and conditions in permits and licenses issued and
3 granted under this act code;

4 ~~{i}--Prescribing--the--kinds--and--quantities-of-liquor~~
5 ~~which-may-be-purchased-under-permits-of-any-class,--including~~
6 ~~the-quantity-which-may-be--purchased--at--any--one--time--or~~
7 ~~within-any-specified-period-of-time,~~

8 ~~{j}~~ (i) Prescribing the form of records of purchase of
9 liquor, and the reports to be made thereon to the board, and
10 providing for inspection of the records so kept;

11 ~~{k}~~ (j) Prescribing the manner of giving and serving
12 notices required by this act code or the regulations
13 thereunder;

14 ~~{l}~~ (k) Prescribing the fees payable in respect of
15 permits and licenses issued under this act code for which no
16 fees are prescribed in this act code, and prescribing the
17 fees for anything done or permitted to be done under the
18 regulations made thereunder;

19 ~~{m}--Prescribing,--subject-to--the--provisions--of--this~~
20 ~~act,--any--advertisement--of-the-application,--if-required-by~~
21 ~~the-board-and-the-conditions--and--qualifications--necessary~~
22 ~~for-the-obtaining-of-club-licenses-and-the-books-and-records~~
23 ~~to--be--kept--and--the--returns-to-be-made-by-clubs,--and--the~~
24 ~~number-of-licensed-clubs-in-any-municipality,--and--providing~~
25 ~~for-the-inspection-of-clubs,~~

1 ~~(n)~~ (l) Prescribing, subject to the provisions of this
 2 ~~act code~~, the conditions and qualifications necessary for
 3 the obtaining of a liquor or beer license, and the books and
 4 records to be kept and the returns to be made by the
 5 licensees and ~~the--number-of-such-licensed-premises-in-any~~
 6 ~~municipality--and~~ providing for the inspection of such
 7 licensed premises;

8 ~~(e)~~ (m) Specifying and describing the place and the
 9 manner in which liquor or beer may be lawfully kept or
 10 stored;

11 ~~(p)~~ (n) Specifying and regulating the time and periods
 12 when, and the manner, methods and means by which, vendors
 13 and brewers shall deliver liquor under this ~~act code~~, and
 14 the time and periods when, and the manner, methods and means
 15 by which liquor, under this ~~act code~~, may be lawfully
 16 conveyed or carried;

17 ~~(q)~~ (o) Governing the conduct, management and
 18 equipment of any premises licensed to sell liquor or beer
 19 under this ~~act code~~;

20 ~~(r)--Subject-to-this--act--to--make--regulations~~
 21 ~~respecting--the--sale--and--consumption--of--beer--in--a--club~~
 22 ~~holding-a-club-license;~~

23 ~~(s)~~ (p) Providing for the imposition and collection of
 24 ~~the-tax-to-be--collected--or--levied--under--section--4-147~~
 25 ~~4-317},~~ taxes and making regulations respecting returns, to

1 ~~be--made--by--a--brewery--and--respecting--the~~ accounting and
 2 ~~payment--by--a--brewer~~ to the ~~board,~~ department of revenue of
 3 the ~~tax,~~ taxes ~~to--be--collected--by--him--under--said--section~~
 4 ~~4-147-{4-317}.~~

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

12 Section 7. Section 4-114, R.C.M. 1947, is renumbered
 13 section 4-2-101, and is amended to read as follows:

14 "~~4-114~~ 4-2-101. Establishment of state liquor stores--
 15 hours--kinds and prices of liquor. The ~~board~~ department of
 16 revenue shall establish and maintain at the county seats and
 17 such other places as the ~~board~~ department deems advisable,
 18 one or more stores to be known as "state liquor stores," for
 19 the sale of liquor in accordance with the provisions of this
 20 ~~act code~~ and the regulations made thereunder; the stores
 21 shall be classified according to the volume of business
 22 which each store does each fiscal year; the volume of
 23 business to be used in figuring each store's classification
 24 shall be the volume of business done by the store to be
 25 classified during the immediate past fiscal year; stores

1 shall be classified as follows: stores having done a
 2 business of four hundred and fifty thousand dollars
 3 (\$450,000) or over during the immediate past fiscal year
 4 shall be "Class A" stores; stores having done a business of
 5 one hundred and forty thousand dollars (\$140,000) and up to
 6 four hundred and fifty thousand dollars (\$450,000) during
 7 the immediate past fiscal year shall be "Class B" stores;
 8 and all stores having done a business of less than one
 9 hundred and forty thousand dollars (\$140,000) during the
 10 immediate past fiscal year shall be "Class C" stores; in
 11 opening new stores the board department shall estimate the
 12 volume of business which said store will do the first year
 13 and classify said store according to the estimate of
 14 business; the board department shall contract ENTER INTO AN
 15 AGENCY AGREEMENT or employ the necessary help to operate
 16 said stores and shall designate the duties to be performed
 17 by the agent or employees; the board department may, from
 18 time to time, fix the prices at which the various classes,
 19 varieties and brands of liquor may be sold, and prices shall
 20 be the same at all state stores. Such state liquor stores
 21 shall be and remain open during such period of the day as
 22 the board department shall deem advisable, provided,
 23 however, that such stores shall be closed for the
 24 transaction of business between the close of normal business
 25 Saturday p.m. through up to the opening of normal business

1 Tuesday a.m. as set by board department regulation and
 2 including legal holidays ~~and election days.~~"

3 Section 8. Section 4-116, R.C.M. 1947, is renumbered
 4 section 4-2-106, and is amended to read as follows:

5 "~~4-116~~ 4-2-106. Provisions concerning sale of liquor
 6 ~~and-beer-by-venders~~. A vender store manager may sell to any
 7 person such liquor as that person is entitled to purchase in
 8 conformity with the provisions of this ~~act~~ code and the
 9 regulations made thereunder, provided that no delivery shall
 10 take place until the purchaser has paid the purchase price."

11 Section 9. Section 4-117, R.C.M. 1947, is renumbered
 12 section 4-2-201, and is amended to read as follows:

13 "~~4-117~~ 4-2-201. No reduction for quantity sales of
 14 liquor. No reductions shall be made by the ~~Montana--liquor~~
 15 ~~control-board department~~ for sales of liquor in quantity."

16 Section 10. Section 4-120, R.C.M. 1947, is renumbered
 17 section 4-2-107, and is amended to read as follows:

18 "~~4-120~~ 4-2-107. Liquor not to be consumed on premises
 19 of state store. No officer, clerk or servant of the board
 20 department, employed in the state store, shall allow any
 21 liquor to be consumed on the premises of a state store, nor
 22 shall any person consume any liquor on such premises."

23 Section 11. Section 4-121, R.C.M. 1947, is renumbered
 24 section 4-2-104, and is amended to read as follows:

25 "~~4-121~~ 4-2-104. When sales of liquor forbidden. No

1 sale or delivery of liquor shall be made on or from the
2 premises of any state liquor store, nor shall any store be
3 open for the sale of liquor

4 (a) on any holiday recognized by state law;
5 ~~(b) on any day on which polling takes place at any~~
6 ~~national or state election held in the electoral district in~~
7 ~~which the store is situated,~~
8 ~~(c) on any day on which polling takes place at any~~
9 ~~municipal election held in the municipality in which the~~
10 ~~store is situated,~~

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

13 Section 12. Section 4-122, R.C.M. 1947, is renumbered
14 section 4-2-103, and is amended to read as follows:

15 "4-122 4-2-103. Conveyance of liquors--opening liquor
16 during transit forbidden. It shall be lawful to carry or
17 convey liquor to any state store, and to and from any
18 warehouse or depot established by the board department for
19 the purposes of this act code, and when permitted so to do
20 by this act code and the regulations made thereunder, and in
21 accordance therewith, it shall be lawful for any common
22 carrier, or other person, to carry or convey liquor sold by
23 a vendor from a state store, or beer, when lawfully sold by
24 a brewer, from the premises wherein such beer was
25 manufactured, or from premises where the beer may be

1 lawfully kept and sold, to any place to which the same may
2 be lawfully delivered under this act code, and the
3 regulations made thereunder;

4 Provided that no such common carrier or any other
5 person, shall open, or break, or allow to be opened or
6 broken, any package or vessel containing liquor, or drink or
7 use, or allow to be drunk or used, any liquor therefrom,
8 while being so carried or conveyed."

9 Section 13. Section 4-139, R.C.M. 1947, is renumbered
10 section 4-1-205, and is amended to read as follows:

11 "4-139 4-1-205. Hospitals--and--sanitariums Licensed
12 hospital or health care facility -- restrictions --
13 violations. Any person in charge of an institution regularly
14 conducted as a hospital--or--sanitarium--for--the--care--of
15 persons--in--ill--health--or--as--a--home--devoted--exclusively--to
16 the--care--of--aged--people licensed hospital or health care
17 facility, may administer liquor purchased by him to any
18 patient or inmate of the institution who-is-in-need--of--the
19 same, either by way of external application or otherwise for
20 emergency medical purposes, and may charge for the liquor so
21 administered; but no liquor shall be administered by any
22 person under this section except to bona fide patients or
23 inmates of the institution of which he is in charge and-in
24 cases-of-actual-need, and every person in charge of an
25 institution who administers liquor in evasion or violation

1 of this ~~act~~ code shall be guilty of an offense against this
2 ~~act~~ code."

3 Section 14. Section 4-140, R.C.M. 1947, is renumbered
4 section 4-1-202, and is amended to read as follows:

5 "~~4-140~~ 4-1-202. Application of ~~act~~ code. (1) Nothing
6 in this ~~act~~ code shall prevent any brewer, distiller, or
7 other person duly licensed, under the provisions of any
8 statute of the United States of America, for the manufacture
9 of liquor, from having or keeping liquor in a place and in
10 the manner authorized by or under any such statute.

11 It is hereby declared to be the policy of the state of
12 Montana that the manufacture of liquor including the
13 distillation, rectification, bottling and processing as
14 these terms are defined under the provisions of the laws of
15 the United States shall be authorized and permitted by any
16 brewer, distiller, rectifier or other person duly licensed
17 under any provision of any statute of the United States of
18 America in a place and in the manner authorized by or under
19 any statute of the United States provided the Montana state
20 ~~liquor-control-board~~ department of revenue may make such
21 regulations as the ~~board--deem~~ department deems necessary
22 with respect thereto, not inconsistent with this ~~act~~ code,
23 or with the statutes of the United States of America or
24 regulations issued under the provisions of the federal
25 Alcohol Administration Act, title 27, United States Code

1 sections 201 through 212 inclusive or regulations issued
2 under the provisions of the Internal Revenue Code, title 26,
3 United States Code, sections 5001 through ~~section~~ 5693,
4 inclusive.

5 (2) Nothing in this ~~act~~ code shall prevent--

6 (a) The sale of liquor by any person to the ~~board~~
7 department;

8 (b) The purchase, importation and sale of liquor by
9 the ~~board~~ department for the purposes of and in accordance
10 with this ~~act~~ code."

11 Section 15. Section 4-141, R.C.M. 1947, is renumbered
12 section 4-1-203, and is amended to read as follows:

13 "~~4-141~~ 4-1-203. Preparations not subject to ~~act~~ code.
14 (1) Subject to the provisions of this section, nothing in
15 this ~~act~~ code shall, by reason only that such preparation
16 contains alcohol, prevent the manufacture, sale, purchase or
17 consumption--

18 (a) of any extract, essence or tincture or other
19 preparation containing alcohol, which is prepared according
20 to a formula of the United States Pharmacopoeia, or
21 according to a formula approved of by the ~~board~~ department;
22 or

23 (b) of any proprietary or patent medicine prepared
24 according to a formula approved of by the ~~board~~ department.

25 (2) The ~~board~~ department, if of opinion that any such

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

12 (3) The board department shall notify the manufacturer
 13 or vendor of such proprietary or patent medicine, extract,
 14 essence, tincture or preparation, of the said prohibition
 15 and from and after the date of such notification any person
 16 within the state selling or keeping for sale any such
 17 proprietary or patent medicine, extract, essence, tincture
 18 or preparation so prohibited as aforesaid shall be guilty of
 19 an offense under this act code."

20 Section 16. Section 4-150, R.C.M. 1947, is renumbered
 21 section 4-1-201, and is amended to read as follows:

22 "4-150 4-1-201. Sale of liquor, unlawful,
 23 when--foreign--substance--in-liquor--forbidden--possession of
 24 liquor, when unlawful. (1) Except as provided by this act
 25 code, no person shall, within the state, by himself, his

1 clerk, servant, or agent, expose or keep for sale, or
 2 directly or indirectly or upon any pretense, or upon any
 3 device, sell, or offer to sell, or in consideration of the
 4 purchase or transfer of any property, or for any other
 5 consideration, or at the time of the transfer of any
 6 property, give to any other person any liquor.

7 ~~(2)--No--person--shall--have--keep--or--sell--any--beer--or~~
 8 ~~malt-liquor--to--which--has--been--added--any--foreign--substance--~~

9 (3) (2) No person shall have or keep any liquor within
 10 the state which has not been purchased from a the state
 11 vender of the Montana liquor--control--board ~~(or--from--a~~
 12 ~~druggist--authorized--to--sell--the--same;~~ provided, however,
 13 that nothing in this act code shall prohibit any person
 14 entering this state from any other state, or from any
 15 foreign country, from having in his possession not to exceed
 16 ~~one--(1) three (3) wine gallon gallons~~ of alcoholic liquor or
 17 beer, which liquor or beer shall have been purchased in
 18 another state or foreign country but no person claiming to
 19 have so entered the state, shall at any time, have in his
 20 possession more than ~~one--(1) three (3) wine gallon gallons~~
 21 of intoxicating liquor which shall not have been purchased
 22 from a state liquor store. This subsection shall not apply
 23 to the board department or to the keeping or having of
 24 liquor by brewers, distillers and other persons duly
 25 licensed by the United States for the manufacture of such

liquor; nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this ~~act~~ code.

~~44~~ (3) Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the ~~board department~~, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee."

Section 17. Section 4-152, R.C.M. 1947, is renumbered section 4-2-105, and is amended to read as follows:

~~"4-152~~ 4-2-105. Place and time of selling liquor. No ~~vender store manager~~, and no person acting as the clerk or servant of or in any capacity for any ~~vender manager~~, shall sell liquor in any other place or at any other time or otherwise than as authorized by this ~~act~~ code and the regulations."

Section 18. Section 4-153, R.C.M. 1947, is renumbered section 4-1-304, and is amended to read as follows:

~~"4-153~~ 4-1-304. ~~Board---members~~ Liquor division ~~employees~~ not to be interested in liquor sales--unlawful to give or receive gift, commission or remuneration. (1) No ~~member officer~~ or employee of the ~~board~~ liquor division

shall be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee, and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the ~~board~~ division or any employee of the state shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the state or ~~board~~ division in pursuance of this ~~act~~ code.

(3) No person selling or offering for sale to, or purchasing liquor from, the state ~~or--the--board~~ liquor division, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the ~~board~~ division or to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the ~~board~~ division from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation proposing to sell any

1 spirituous liquors to the Montana liquor ~~control-board~~
2 division shall submit, without cost to the ~~board~~ division
3 prior to the original purchase, an analysis of each brand
4 and may submit a representative sample not exceeding
5 twenty-five (25) fluid ounces of such merchandise to the
6 board.

7 (b) It shall be the duty of the ~~board~~ division, when a
8 brand of liquor has been accepted for testing by the ~~board~~
9 division, to forward the sample, unopened and in its
10 entirety, to a qualified chemical laboratory for analysis.

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

17 (5) No liquor, wine, or other spirituous beverage
18 shall be withdrawn from the regular warehouse inventory or
19 from the state liquor stores of the Montana liquor ~~control-~~
20 ~~board~~ division, for any purpose whatsoever other than by
21 sale at the prevailing state retail prices, or for
22 destroying damaged or defective merchandise. The ~~board~~
23 division shall maintain a written record including the type,
24 brand, and container size; number of bottles or other units;
25 signatures of witnesses; and method of destruction or other

1 disposition of damaged or defective warehouse or state store
2 merchandise."

3 Section 19. Section 4-154, R.C.M. 1947, is renumbered
4 section 4-6-101, and is amended to read as follows:

5 "~~4-154~~ 4-6-101. Transfer of ~~liquor~~ alcoholic beverages
6 except as provided by ~~act~~ code unlawful. Except as provided
7 in this ~~act~~ code, no person shall, within the state, by
8 himself, his clerk, servant, or agent, attempt to purchase,
9 or directly or indirectly or upon any pretense or upon any
10 device, purchase, or in consideration of the sale or
11 transfer of any property, or for any other consideration, or
12 at the time of the transfer of any property, take or accept
13 from any other person any ~~liquor~~ alcoholic beverage."

14 Section 20. Section 4-156, R.C.M. 1947, is renumbered
15 section 4-6-106, and is amended to read as follows:

16 "~~4-156~~ 4-6-106. Consumption of ~~liquor~~ alcoholic
17 beverage on druggists' premises prohibited. No person,
18 within the state of Montana, shall consume any ~~liquor~~
19 alcoholic beverage on any premises where ~~liquor~~ an alcoholic
20 beverage is kept for sale by a druggist, nor shall any
21 druggist permit any ~~liquor~~ alcoholic beverage to be consumed
22 on such premises."

23 Section 21. Section 4-158, R.C.M. 1947, is renumbered
24 section 4-3-102, and is amended to read as follows:

25 "~~4-158~~ 4-3-102. Liquor container must have been sealed

with official seal--~~powers-and--duties--of--peace--officers.~~

~~{1} Except in the case of--~~

(a) liquor imported by the state, or by the ~~board~~
department; or

(b) liquor had and kept by a person, and in a place and
manner referred to in section ~~4-140~~ 4-1-202; or

(c) beer and malt liquor, lawfully had or kept under
this act code; or

(d) any liquor kept for sale by a druggist under
~~section-4-134~~ this code no liquor shall be kept or had by
any person within the state unless the package, not
including a decanter or other receptacle containing the
liquor for immediate consumption, in which the liquor is
contained has, while containing that liquor, been sealed
with the official seal prescribed under this act code.

~~{2}--Any--inspector--or-peace-officer-who-finds-liquor,~~
~~which-he-has-reasonable-cause-to-believe-is-had-or-kept--by~~
~~any--person--in-violation-of-the-provisions-of-this-act,-may~~
~~without-warrant,-forthwith-seize-and-remove-the-same-and-the~~
~~packages-in-which-the-liquor-is-kept,-and-upon-conviction-of~~
~~the-person-for-a-violation-of-any-provision-of-this--section~~
~~the--liquor--and--all-packages-containing-the-same-shall,-in~~
~~addition-to-any-other-penalty-prescribed-by-this--act,-ipso~~
~~facto-be-forfeited-to-the-state-of-Montana."~~

Section 22. There is a new section to be numbered

4-6-205, R.C.M. 1947, which reads as follows:

4-6-205. Unlawful alcoholic beverage -- seizure --
forfeiture. Any investigator or peace officer who finds an
alcoholic beverage, which he has reasonable cause to believe
is had or kept by any person in violation of the provisions
of this code, may forthwith seize and remove the same and
the packages in which the alcoholic beverage is kept, and
upon conviction of the person for a violation of any
provision of this section the alcoholic beverage and all
packages containing the same shall, in addition to any other
penalty prescribed by this code, ipso facto be forfeited to
the state of Montana.

Section 23. Section 4-160, R.C.M. 1947, is renumbered
section 4-6-103, and is amended to read as follows:

~~"4-160~~ 4-6-103. Sales-to-intoxicated-persons Providing
alcoholic beverage prohibited. (1) No ~~vender~~ store manager,
~~beer retail licensee, or club licensee~~, nor any employee of
a ~~vender~~ store manager, ~~beer or retail licensee, or club~~
~~licensee~~, ~~shall~~ may ~~sell~~ any liquor alcoholic beverage, or
permit any ~~liquor~~ alcoholic beverage to be sold, to any
person apparently under the influence of ~~liquor~~ an alcoholic
beverage.

(2) No person may give an alcoholic beverage to a
person apparently under the influence of alcohol."

Section 24. Section 4-161, R.C.M. 1947, is renumbered

section 4-6-104, and is amended to read as follows:

"~~4-161~~ 4-6-104. Age limit for sale of ~~liquor~~ alcoholic beverages. Except in the case of ~~liquor~~ an alcoholic beverage given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply ~~liquor~~ an alcoholic beverage to any person under the age of eighteen (18) years, or permit any person under that age to consume ~~liquor~~ an alcoholic beverage."

Section 25. Section 4-208, R.C.M. 1947, is renumbered section 4-6-203, and is amended to read as follows:

"~~4-208~~ 4-6-203. Search warrants--issuance. ~~(1)~~ Upon information on oath by any ~~inspector~~ investigator appointed under this ~~act~~ code or by any peace officer showing reasonable cause to believe that ~~liquor--is~~ alcoholic beverages are unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any ~~justice court~~ by warrant under--his--hand to authorize and empower the ~~inspector~~ investigator or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening

of the building or premises or any part thereof, or any closet, cupboard, box, or other receptacle therein which might contain ~~liquor~~ alcoholic beverages."

Section 26. Section 4-209, R.C.M. 1947, is renumbered section 4-6-207, and is amended to read as follows:

"~~4-209~~ 4-6-207. Seizure of ~~liquor~~ alcoholic beverage and conveyance--forfeiture of conveyance and ~~liquor~~ alcoholic beverage to state. Whenever an ~~inspector--of~~ investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description ~~liquor~~ an alcoholic beverage which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this ~~act~~ code, he may forthwith seize the ~~liquor~~ alcoholic beverage and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which ~~such--liquor the~~ alcoholic beverage is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such ~~liquors~~ alcoholic beverages contrary to any of the provisions of this ~~act~~ code in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of

any such person is had may, in addition to the sentence imposed under authority of law, declare the ~~liquor~~ alcoholic beverage or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana."

Section 27. Section 4-210, R.C.M. 1947, is renumbered section 4-6-208, and is amended to read as follows:

"~~4-210~~ 4-6-208. Force may be used in seizure of ~~liquor~~ alcoholic beverages, when--retention of seized ~~liquor~~ alcoholic beverage--forfeiture--hearing. (1) Where ~~liquor~~ alcoholic beverage is found by any ~~inspector~~ investigator or peace officer on any premises or in any place in such quantities as to satisfy the ~~inspector~~ investigator or peace officer that such ~~liquor~~ alcoholic beverage is being had or kept contrary to any of the provisions of this ~~act~~ code, it shall be lawful for the ~~inspector~~ investigator or peace officer to forthwith seize and remove, by force if necessary, any ~~liquor~~ alcoholic beverage so found, and the packages in which the ~~liquor~~ alcoholic beverage was had or kept and immediately turn said ~~liquor~~ alcoholic beverage over to the Montana ~~liquor--control--board~~ department of revenue.

(2) The Montana ~~liquor--control--board~~ department of revenue shall commence an action in the district court of the county in which the ~~liquor~~ alcoholic beverage is found and seized against said ~~liquor~~ alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The ~~said-liquor~~ alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana ~~liquor--control--board~~ department of revenue claims the right to the possession of ~~said-liquor~~ the alcoholic beverage and shall demand that all persons who claim any right to the possession of ~~said--liquor~~ the alcoholic beverage shall show the nature of their claim or claims and that the court declare ~~said-liquor~~ the alcoholic beverage contraband and that the court order ~~said--liquor~~ alcoholic beverage be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where ~~said-liquor~~ the alcoholic beverage was seized if a newspaper is published in said county.

1 (5) In all actions brought under this ~~act~~ code, proof
 2 of the absence of the official seal of the Montana ~~liquor~~
 3 ~~control--board~~ department of revenue upon the bottle, jug,
 4 package, container or containers of ~~such-liquor~~ an alcoholic
 5 beverage on which a seal is required shall be prima facie
 6 evidence that ~~said--liquor~~ the alcoholic beverage is
 7 contraband liquor and prima facie evidence of unlawful
 8 possession thereof in the defendants and each of them and in
 9 all other persons excepting the Montana ~~liquor-control-board~~
 10 department of revenue, and the court shall order all such
 11 liquor alcoholic beverage contraband and forfeited to the
 12 state of Montana."

13 Section 28. Section 4-211, R.C.M. 1947, is renumbered
 14 section 4-6-209, and is amended to read as follows:

15 "~~4-211~~ 4-6-209. Disposal of forfeited ~~liquor~~ alcoholic
 16 beverage--report by officers of seizure. (1) In every case
 17 in which a court makes any order for the forfeiture of
 18 liquor alcoholic beverages under any of the provisions of
 19 this act, and in every case in which any claimant to ~~liquor~~
 20 an alcoholic beverage under the provisions of section ~~4-210~~
 21 4-6-207, fails to establish his claim and right thereto, the
 22 liquor alcoholic beverage in question and the packages in
 23 which the liquor alcoholic beverage is kept shall forthwith
 24 be delivered to the board department. The board department
 25 shall thereupon, determine the market value of all forfeited

1 ~~liquor~~ alcoholic beverage which is found to be suitable for
 2 sale in the state liquor stores, and the ~~board~~ department
 3 shall pay the amount so determined to the state treasurer,
 4 after deducting therefrom the expenses necessarily incurred
 5 by the ~~board~~ department for transporting the forfeited
 6 liquor alcoholic beverage to the state liquor warehouses,
 7 and the ~~liquor~~ alcoholic beverage suitable for sale shall be
 8 taken into stock by the ~~board~~ department and sold under the
 9 provisions of this ~~act~~ code. All forfeited ~~liquor~~ alcoholic
 10 beverage which is found to be unsuitable for sale in state
 11 liquor stores shall be destroyed under competent supervision
 12 as may from time to time be directed by the ~~board~~
 13 department.

14 (2) In every case in which ~~liquor~~ an alcoholic beverage
 15 is seized by a peace officer it shall be his duty to
 16 forthwith make or cause to be made to the ~~board~~ department a
 17 report in writing, of the particulars of such seizure."

18 Section 29. Section 4-212, R.C.M. 1947, is renumbered
 19 section 4-6-210, and is amended to read as follows:

20 "~~4-212~~ 4-6-210. Inspection of carriers' records--when
 21 authorized. For the purpose of obtaining information
 22 concerning any matter relating to the administration or
 23 enforcement of this ~~act~~ code, the ~~board~~ department or any
 24 person appointed by it in writing for the purpose may
 25 inspect the freight and express books and records, and all

waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 30. Section 4-213, R.C.M. 1947, is renumbered section 4-6-211, and is amended to read as follows:

"~~4-213~~ 4-6-211. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the board department or by a person so appointed by it shall be guilty of an offense against this act code."

Section 31. Section 4-214, R.C.M. 1947, is renumbered section 4-6-303, and is amended to read as follows:

"~~4-214~~ 4-6-303. Description of offense--sufficiency of. In describing the offense respecting the sale or keeping for sale or other disposal of ~~liquor~~ alcoholic beverages, or the having, keeping, giving, purchasing or the consumption of ~~liquor~~ alcoholic beverages in any information, summons, conviction, warrant, or proceeding

under this act code, it shall be sufficient to state the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of ~~liquor~~ alcoholic beverages, simply without stating the name or kind of such ~~liquor~~ alcoholic beverage or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of ~~liquor~~ alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity."

Section 32. Section 4-215, R.C.M. 1947, is renumbered section 4-6-304, and is amended to read as follows:

"~~4-215~~ 4-6-304. Description of offense--sufficiency--defenses need not be negatived. The description of any offense under this act code, in the words of this act code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this act code, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified

1 nor negatived shall be required on the part of the informant
2 or complainant."

3 Section 33. Section 4-216, R.C.M. 1947, is renumbered
4 section 4-6-305, and is amended to read as follows:

5 "~~4-216~~ 4-6-305. Sufficiency of evidence. In any
6 prosecution under this act code for the sale or keeping for
7 sale or other disposal of liquor alcoholic beverages, or the
8 having, keeping, giving, purchasing, or consuming of liquor
9 alcoholic beverages, it shall not be necessary that any
10 witness should depose to the precise description or quantity
11 of the liquor alcoholic beverages sold, disposed of, kept,
12 had, given, purchased, or consumed, or the precise
13 consideration (if any) received therefor, or to the fact of
14 the sale or other disposal having taken place with his
15 participation or to his own personal or certain knowledge;
16 but conviction may be based upon circumstantial evidence
17 reasonably tending to establish the guilt of the accused
18 beyond a reasonable doubt."

19 Section 34. Section 4-217, R.C.M. 1947, is renumbered
20 section 4-6-306, and is amended to read as follows:

21 "~~4-217~~ 4-6-306. Proof of violation--sufficiency. In
22 proving the sale, disposal, gift, or purchase, gratuitous or
23 otherwise, or consumption of liquor alcoholic beverages, it
24 shall not be necessary in any prosecution to show that any
25 money actually passed or any liquor alcoholic beverages was

1 actually consumed, if the court hearing the case is
2 satisfied that a transaction in the nature of a sale,
3 disposal, gift, or purchase actually took place, or that any
4 consumption of liquor alcoholic beverages was about to take
5 place; and proof of consumption or intended consumption of
6 liquor alcoholic beverages on premises on which such
7 consumption is prohibited, by some person not authorized to
8 consume liquor an alcoholic beverage thereon, shall be
9 evidence that such liquor alcoholic beverage was sold or
10 given to or purchased by the person consuming, or being
11 about to consume, or carrying away the same, as against the
12 occupant of the said premises."

13 Section 35. Section 4-218, R.C.M. 1947, is renumbered
14 section 4-6-307, and is amended to read as follows:

15 "~~4-218~~ 4-6-307. Analyst's report as prima facie
16 evidence of contents. In any prosecution under this act
17 code, or the regulations made thereunder, production by a
18 police officer, policeman, constable, inspector or peace
19 officer, of a certificate or report signed or purporting to
20 be signed by a United States or state analyst as to the
21 analysis or ingredients of any liquor alcoholic beverage or
22 other fluid or any preparation, compound, or substance, such
23 certificate or report shall be prima facie evidence of the
24 facts stated in such certificate or report and of the
25 authority of the person giving or making the same without

any proof of appointment or signature."

Section 36. Section 4-219, R.C.M. 1947, is renumbered section 4-6-308 and is amended to read as follows:

"~~4-219~~ 4-6-308. Presumption of intoxicating ~~liquor~~ beverage arises, when. The court trying a case shall, in the absence of proof to the contrary, be at liberty to infer that the ~~liquor~~ alcoholic beverage in question is intoxicating from the fact that a witness described it as intoxicating, or by a name which is commonly applied to an intoxicating ~~liquor~~ beverage."

Section 37. Section 4-220, R.C.M. 1947, is renumbered section 4-6-309, and is amended to read as follows:

"~~4-220~~ 4-6-309. Inferences from facts of act code claimed to be violation. Upon the hearing of any charge of selling or purchasing ~~liquor~~ an alcoholic beverage, or of unlawfully having or keeping ~~liquor~~ an alcoholic beverage, contrary to any of the provisions of this act code, the court trying the case shall have the right to draw inferences of fact from the kind and quantity of ~~liquor~~ alcoholic beverages found in the possession of the person accused, or in any building, premises, vehicle, motorcar, automobile, vessel, boat, canoe, conveyance, or place occupied or controlled by him, and from the frequency with which ~~liquor~~ the alcoholic beverage is received thereat or therein or is removed therefrom, and from the circumstances

under which it is kept or dealt with."

Section 38. Section 4-224, R.C.M. 1947, is renumbered section 4-6-302, and is amended to read as follows:

"~~4-224~~ 4-6-302. Appeals. An appeal shall lie from any conviction or order made in the prosecution of any offense against any of the provisions of this act code and the practice and procedure on any appeal from any such conviction or order, and all proceedings thereon shall be governed by the law applicable to appeal in criminal cases."

Section 39. Section 4-225, R.C.M. 1947, is renumbered section 4-6-201, and is amended to read as follows:

"~~4-225~~ 4-6-201. ~~Inspectors~~ Investigators and prosecuting officers may be employed by ~~board~~ department of revenue. The ~~board~~ department of revenue may appoint one or more ~~inspectors~~ investigators or prosecuting officers, who, under its direction, shall perform such duties as it may require, and who shall be paid such salaries, fees and expenses as the said ~~board~~ department of revenue may fix."

Section 40. Section 4-226, R.C.M. 1947, is renumbered section 4-1-306, and is amended to read as follows:

"~~4-226~~ 4-1-306. Property and moneys acquired belong to state--expenses of administration, how paid. All property, whether real or personal, all moneys acquired, administered, possessed or received by the ~~board~~ department and all profits earned in the administration of this act code, shall

be the property of the state, and all expenses, debts and liabilities incurred by the board department in connection with the administration of this act code, shall be paid by the board department from the moneys received by the board department under such administration."

Section 41. Section 4-229, R.C.M. 1947, is renumbered section 4-1-406, and is amended to read as follows:

"4-229 4-1-406. Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the board department of revenue. The board department is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The board department shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the board department shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the board department solely from funds derived from the operation of state liquor stores. The board department shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of

state liquor stores."

Section 42. Section 4-233, R.C.M. 1947, is renumbered section 4-1-104, and is amended to read as follows:

"4-233 4-1-104. Intent and construction of act code. The purpose and intent of this act code are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this act code, and every section and provision of this act code shall be construed accordingly. The provisions of this act code dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a board department and otherwise provide the means by which such state control shall be made effective, and nothing in this act code shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state."

Section 43. Section 4-238, R.C.M. 1947, is renumbered section 4-6-401, and is amended to read as follows:

"4-238 4-6-401. Premises where liquor illegally sold ~~common~~ publicz nuisance. Any room, house, building, boat, vehicle, structure or place where ~~intoxicating--liquor--is~~ alcoholic beverages are knowingly manufactured, sold, or bartered, in violation of ~~the State Liquor--Control--Act--of~~ Montana this code or section 94-8-107 and all property knowingly kept and used in maintaining the same is hereby

declared to be a ~~common-nuisance~~ public nuisance and any person who maintains such a ~~common~~ nuisance shall be guilty of a misdemeanor, and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00), nor more than five hundred dollars ~~(\$500.00)~~ (\$500) and by imprisonment not less than thirty days, nor more than six months."

Section 44. Section 4-240, R.C.M. 1947, is renumbered section 4-1-401, and is amended to read as follows:

"~~4-240~~ 4-1-401. License tax on liquor -- amount -- distribution of proceeds. The department of revenue is hereby authorized and directed to charge, receive and collect at the time of sale and delivery of any liquor under any provisions of the laws of the state of Montana a license tax of five percent (5%) of the retail selling price on all liquor so sold and delivered. Said tax shall be charged and collected on all liquor brought into the state and taxed by the department of revenue. The retail selling price shall be computed by adding to the cost of said liquor the state markup as designated by ~~said--board~~ the department. Said five percent (5%) license tax shall be figured in the same manner as the state excise tax and shall be in addition to said state excise tax. The department of revenue shall retain the amount of such five percent (5%) license tax so received in a separate account. Four-fifths (4/5) of these revenues shall be distributed to the counties according to

the amount of liquor sold in each county. One-fifth (1/5) of these revenues shall be deposited in the general fund. Provided, however, in the case of purchases of liquor by a retail liquor licensee for use in his business, the department shall make such regulations as are necessary to apportion that proportion of license tax so generated to the county where the licensed establishment is located, for use as provided in section ~~4-241~~ 4-1-402, R.C.M. 1947. The department of revenue shall pay quarterly to each county treasurer the proportion of the license tax due each county.

The county treasurer of each county shall retain one-fourth (1/4) of said license tax, and shall, within thirty (30) days after receipt thereof, apportion the remaining three-fourths (3/4) thereof to the treasurers of the incorporated cities and towns within his county, said apportionment to be based in each instance upon the proportion which the gross sale of liquor in such incorporated city or town bears to the gross sale of liquor in all of the incorporated cities and towns in his said county."

Section 45. Section 4-301, R.C.M. 1947, is renumbered section 4-1-102, and is amended to read as follows:

"~~4-301~~ 4-1-102. ~~Citation-----of-----act--declaration~~ Declaration of policy--as to sale of beer. This act may be cited as the--"Montana-Beer-Act." It is hereby declared to

1 be the policy of the state of Montana that the manufacture,
 2 transportation, distribution, sale and possession of "beer,"
 3 as that term is hereinafter defined in this act code and
 4 which contains not more than four seven per centum (4 7%) of
 5 alcohol by weight, shall be controlled and regulated ~~by-and~~
 6 ~~under the provisions of the--"Montana--Beer--Act"--and--the~~
 7 ~~"Montana--Retail--Liquor--License--Act"~~ as provided under this
 8 code. Beer, porter, ale, stout and malt liquors containing
 9 more than four seven per centum (4 7%) of alcohol by weight
 10 and which are defined as "liquor" ~~by--the--"State--Liquor~~
 11 ~~Control--Act--of--Montana,"~~ shall be subject to the regulations
 12 and controls provided ~~by the--"State--Liquor--Control--Act--of~~
 13 ~~Montana,"--(section--4--101--through--section--4--171--inclusive,~~
 14 ~~Revised--Codes--of--Montana,--1947,--as--amended)--and--the~~
 15 ~~regulations--and--controls--provided--by--the--"Montana--Retail~~
 16 ~~Liquor--License--Act"--(sections--4--401--through--4--441,~~
 17 ~~inclusive, Revised--Codes--of--Montana,--1947,--as--amended)~~ for
 18 liquor.

19 Section 46. Section 4-303, R.C.M. 1947, is renumbered
 20 section 4-3-304, and is amended to read as follows:

21 "~~4-303~~ 4-3-304. Closing hours for licensed retail beer
 22 establishments. Hereafter all licensed establishments
 23 wherein ~~beer--as--defined--by--subsection--(b)--of--section--4--302,~~
 24 is alcoholic beverages are sold, offered for sale or given
 25 away at retail shall be closed during the following hours:

1 ~~(a)--Sunday--from--two--A.M.--to--one--P.M.,~~

2 ~~(b)~~ (a) On any ~~other~~ day between two A.M. and eight
 3 A.M.; provided, however, that when any municipal
 4 incorporation has by ordinance further restricted the hours
 5 of sale of ~~beer~~ alcoholic beverages, then the sale of ~~beer~~
 6 alcoholic beverages is prohibited within the limits of any
 7 such city or town during the time such sale is prohibited by
 8 this act code and in addition thereto during the hours that
 9 it is prohibited by such ordinance. During such hours all
 10 persons except the owner and employees of such licensed
 11 establishments shall be excluded therefrom except as
 12 provided in section 4-3-305."

13 Section 47. Section 4-304, R.C.M. 1947, is renumbered
 14 section 4-3-305, and is amended to read as follows:

15 "~~4-304~~ 4-3-305. Sale of ~~beer~~ alcoholic beverages
 16 during closed hours forbidden--lawful business need not be
 17 closed. During the hours when the said licensed
 18 establishments where ~~beer--is~~ alcoholic beverages are sold at
 19 retail are required by this act code to be closed, it shall
 20 be unlawful to sell, offer for sale or give away any ~~beer~~
 21 such alcoholic beverages, and during such hours all persons
 22 save employees of such licensed establishments shall be
 23 excluded therefrom; provided, however, that when a licensed
 24 establishment is operated in conjunction with a hotel,
 25 restaurant, bus depot, railway terminal, or other lawful

business other than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold."

Section 48. Section 4-308, R.C.M. 1947, is renumbered section 4-3-202, and is amended to read as follows:

~~"4-308 4-3-202. Beer, when declared--nonintoxicating-- sales,--when-permitted,--Beer-containing-one-half-of-one-per cent-(1/2-of-1%),--or-more,--of-alcohol--by--volume,--and--not more-than-three-and-two-tenths-per-cent-(3+2%)of-alcohol,--by weight,--is--hereby-declared-to-be-nonintoxicating,--and--such beer--and--other--beer--containing--more--than---three---and two-tenths--per-cent-(3+2%),--but-not-more-than-four-per-cent (4%)--of-alcohol-by-weight-may-be-manufactured-and/or-sold-or transported-in-and-into-this-state-or-posessed--therein--in the--manner--and-under-the-conditions-prescribed-in-this-act and-not-otherwise. The sale of beer by the Montana--liquor control--board department is hereby prohibited,--save-and except-ale,--porter-and-stout-containing-more-than--four--per cent-(4%)--of-alcohol-by-weight."~~

Section 49. Section 4-309, R.C.M. 1947, is renumbered section 4-3-201, and is amended to read as follows:

~~"4-309 4-3-201. Possession, manufacture or disposal of beer in other manner than prescribed unlawful. It shall be unlawful to manufacture or sell, or dispose of, or possess~~

for the purpose of sale, beer of any kind or character of an alcoholic content greater than herein prescribed, or other than in the manner permitted by this act code."

Section 50. Section 4-310, R.C.M. 1947, is renumbered section 4-4-101, and is amended to read as follows:

~~"4-310 4-4-101.~~ Applications for sale or manufacture of beer--qualifications of applicant. Any person, desiring to manufacture, import or ~~and~~ sell beer under the provisions of this act code, shall first apply to the board department for a permit so to do and pay with such application the license fee herein prescribed; the board department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person. Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the board department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant. If the board department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned."

Section 51. Section 4-311, R.C.M. 1947, is renumbered section 4-3-203, and is amended to read as follows:

~~"4-311 4-3-203.~~ Brewers' monthly report -- power of board department to inspect books and premises. Every

brewer, licensed to do business in this state, shall, on or before the fifteenth day of each month, make an exact return to the board department of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the board department, and the board department shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him."

Section 52. Section 4-313, R.C.M. 1947, is renumbered section 4-3-204, and is amended to read as follows:

"~~4-313~~ 4-3-204. Sale of beer by brewers--to whom. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any licensed wholesaler,--retailer, club--or common--carrier--holding--and--having--a--license--under--this--act."

Section 53. Section 4-317, R.C.M. 1947, is renumbered section 4-3-206, and is amended to read as follows:

"~~4-317~~ 4-3-206. Licenses of brewers--persons to whom brewers may sell beer--~~barrelage-tax~~. ~~{1}~~ Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section ~~4-341~~ 4-4-401 and upon presenting satisfactory evidence to the board

department as required by section ~~4-318~~ 4-4-101, shall be licensed by the board departmentz in accordance with the provisions of this act code and such regulations as may be prescribed by the board department, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

~~{2}--In--addition--to--the--annual--license--tax--imposed--by--section--4-341--a--tax--of--three--dollars--{63}--per--barrel--of--thirty--one--{31}--gallons--is--hereby--levied--and--imposed--on--each--and--every--barrel--of--beer--sold--by--any--duly--licensed--brewer--who--manufactures--beer--in--the--state--of--Montana--which--said--barrelage--tax--shall--be--due--at--the--end--of--each--month--and--shall--be--payable--with--the--brewer's--monthly--return--or--statement--required--to--be--made--to--the--board--under--the--provisions--of--section--4-311--"~~

Section 54. Section 4-317.1, R.C.M. 1947, is renumbered section 4-4-102, and is amended to read as follows:

"~~4-317.1~~ 4-4-102. Right of brewers to maintain and operate storage depots--annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer in the

1 state of Montana, upon the payment to the board department
 2 of an annual license fee, in addition to all other fees and
 3 taxes required to be paid by such brewer, of four hundred
 4 dollars (\$400.00) for each storage depot, to own, lease,
 5 maintain and operate, in any city or town in the state of
 6 Montana, a building for use as a storage depot, equipped
 7 with refrigeration and cooling apparatus, for receiving,
 8 handling, and storing beer therein and distributing and
 9 selling beer therefrom, as brewers are permitted to sell and
 10 distribute beer under the provisions of this act code."

11 Section 55. Section 4-317.7, R.C.M. 1947, is
 12 renumbered section 4-3-212, and is amended to read as
 13 follows:

14 "~~4-317.7~~ 4-3-212. Agreements filed with department of
 15 revenue. An exact copy of all agreements, contracts or
 16 franchises between a brewer and a wholesaler shall be filed
 17 with the department of revenue as a public document and
 18 shall be available to any of the parties to a dispute. The
 19 department, upon the instigation of any action in a court of
 20 record, shall file an exact certified copy of the agreement
 21 with the court for the court's consideration in determining
 22 any matter before it. Any contracts, agreements or
 23 franchises not upon record with the board department shall
 24 not be considered by any court as having any force or
 25 effect."

1 Section 56. Section 4-318, R.C.M. 1947, is renumbered
 2 section 4-4-103, and is amended to read as follows:

3 "~~4-318~~ 4-4-103. Wholesalers' licenses--application for
 4 and issuance--subwarehouse--imported beer handled through
 5 warehouse or subwarehouse. Any person desiring to sell and
 6 distribute beer as a wholesaler under the provisions of this
 7 act code shall apply to the board department for a license
 8 to do so and tender with his application the license fee
 9 hereinafter provided for and the board department is hereby
 10 empowered, authorized and directed to issue ~~one--(1)--~~
 11 ~~wholesale-license-for-every-thirty-(30)-retail-beer-licenses~~
 12 ~~figured--on-the-number-of-retail-beer-licenses-issued-in-the~~
 13 state wholesale licenses to qualified applicants in
 14 accordance with the provisions of this act code; such
 15 license shall be at all times prominently displayed in the
 16 place of business of such wholesaler.

17 To qualify for a wholesaler's license the applicant
 18 shall ~~have-been be~~ a resident of Montana ~~for--a--period--of~~
 19 ~~five--(5)--years-immediately-prior-to-making-application, or~~
 20 ~~if-said-applicant-is-a-Montana-corporation-said--corporation~~
 21 ~~shall--have--been (organized--for-a-period-of-five-(5)-years~~
 22 ~~immediately-prior-to-making-application; provided, however,~~
 23 any individual or partnership which has been licensed as a
 24 beer wholesaler may, upon incorporation in accordance with
 25 the laws of the state of Montana, transfer such license to

1 the corporation if a majority of the capital stock thereof
 2 is held by said individual or the members of said
 3 partnership; or if applicant is a foreign corporation said
 4 corporation shall ~~have-been~~ be authorized to do business in
 5 Montana ~~for-a-period-of-five-(5)-years-immediately-prior--to~~
 6 ~~making--application~~; and said applicant shall have a fixed
 7 place of business, sufficient capital, the facilities,
 8 storehouse, receiving house or warehouse for the receiving
 9 of, storage, handling and moving of beer in large and
 10 jobbing quantities for distribution and sale in original
 11 packages to other licensed wholesalers or licensed
 12 retailers. Each wholesaler shall be entitled to only one
 13 (1) wholesale license, which license shall be issued for his
 14 principal place of business in Montana; a duplicate license
 15 may be issued for one (1) subwarehouse only in Montana for
 16 each wholesale licensee, which said duplicate license shall
 17 at all times be prominently displayed at said subwarehouse;
 18 ~~licenses--already--issued--which--are--in--excess--of---said~~
 19 ~~limitations--and--which--are--of--issue--on--the-date-of-the~~
 20 ~~passage-and-approval-of-this-act, shall-be-renewable, but no~~
 21 ~~new-wholesale-beer-licenses-shall-be-issued-until-the-number~~
 22 ~~of-licenses-shall-be-reduced-to-within-the-above-limitation.~~

23 All beer manufactured outside of the state of Montana
 24 and shipped into Montana shall be consigned to and shipped
 25 to a licensed wholesaler, and by him unloaded into his

1 warehouse in Montana or subwarehouse in Montana; said
 2 wholesaler shall distribute said beer from such warehouse or
 3 subwarehouse; said wholesaler shall keep records at his
 4 principal place of business of all beer including the name
 5 or kind received, on hand, sold and distributed; said
 6 records may at all times be inspected by any member or
 7 representative of the board department; any beer which has
 8 been shipped into Montana and has not been shipped to and
 9 distributed from a warehouse of a licensed wholesaler shall
 10 be seized by any peace officer or representative of the
 11 board department and may be confiscated in the manner as
 12 provided for the confiscation of intoxicating liquor."

13 Section 57. Section 4-319, R.C.M. 1947, is renumbered
 14 section 4-3-213, and is amended to read as follows:

15 "~~4-319~~ 4-3-213. Monthly report of wholesaler. Every
 16 wholesaler, licensed to do business in this state, as herein
 17 provided, shall on or before the fifteenth day of each
 18 month, make an exact return to the board department of the
 19 amount of beer manufactured in this state, sold and
 20 delivered by him, and also of the amount of beer
 21 manufactured in places outside of the state, sold and
 22 delivered by him, during the previous month, and of his
 23 inventory in the manner and form as shall be prescribed by
 24 the board department, and the board department shall have
 25 the right at any time to make an examination of the said

wholesaler's books and of his premises, and otherwise check the accuracy of such return or to check the alcoholic content of beer which he may have on hand."

Section 58. Section 4-320, R.C.M. 1947, is renumbered section 4-6-403, and is amended to read as follows:

"~~4-320~~ 4-6-403. Penalty for brewer's and wholesalers' failure to ~~file--statement--payment--of pay~~ tax. ~~With such return, the said wholesaler--shall--pay--to--the--board--the amount--of tax upon all beer not manufactured in this state, on the basis hereinafter provided, which--shall--have--been sold--by--him--during--such--previous--month.~~ Any such tax owed by a brewer or wholesaler under this code not paid within the time herein provided for shall be delinquent and a penalty of five per cent (5%) thereof shall be added thereto and the whole thereof shall bear interest at the rate of one per cent (1%) per month from the date of delinquency until paid, and any brewer or wholesaler who fails, neglects or refuses to make the return to the board department provided for in ~~section~~ sections 4-3-203 or 4-3-213, or refuses to allow such examination provided for in ~~section~~ sections 4-3-203 or 4-3-213, or fails to make an accurate return according to the manner prescribed, shall be deemed guilty of having committed a misdemeanor and upon conviction thereof shall be fined in an amount not exceeding one thousand dollars (\$1,000.00)."

Section 59. Section 4-321, R.C.M. 1947, is renumbered section 4-3-214, and is amended to read as follows:

"~~4-321~~ 4-3-214. To whom wholesaler may sell. It shall be lawful for any wholesaler to sell and deliver beer purchased or acquired by him to a wholesaler, retailer, ~~club~~ or to a common carrier, holding and having a license under this act."

Section 60. Section 4-325, R.C.M. 1947, is renumbered section 4-3-217, and is amended to read as follows:

"~~4-325~~ 4-3-217. Penalty for brewer's failure to make returns--lien of taxes--enforcement--release. If any brewer subject to the payment of the tax provided for in ~~subdivision--(3)--(2)--of~~ section ~~4-317~~ 4-1-405 or any wholesaler subject to the payment of the tax provided for in section ~~4-324~~ 4-1-404, shall fail, neglect or refuse to make any return required by ~~Montana-Beer-Act~~ this code, or shall fail to make payment of such tax within the time herein provided, the board department shall, forthwith after such time has expired, proceed to inform itself as best it may regarding the matters and things required to be set forth in such return and from such information as it may be able to obtain, to make a statement showing such matters and things and determine and fix the amount of such tax due the state from such delinquent brewer or wholesaler and shall add thereto a penalty of five per cent (5%) thereof for the

1 first failure, willful neglect or refusal; ten per cent
 2 (10%) for the second; fifteen per cent (15%) for the third;
 3 and twenty-five per cent (25%) for the fourth, and each
 4 subsequent failure, neglect or refusal, which shall be in
 5 addition to the five per cent (5%) penalty hereinbefore
 6 provided for nonpayment of such tax within the time
 7 hereinbefore provided. Said tax and the penalties added
 8 thereto shall bear interest at the rate of one per cent (1%)
 9 per month from the date such returns should have been made
 10 and said tax paid. The board department shall then proceed
 11 to collect such tax with penalties and interest. Upon
 12 request of the board department it shall be the duty of the
 13 attorney general to commence and prosecute to final
 14 determination in any court of competent jurisdiction an
 15 action to collect such tax. All taxes due from any brewer
 16 or wholesaler under the provisions of Montana-Beer-Act this
 17 code, together with all penalties and interest thereon,
 18 shall be a lien upon any and all property of such brewer or
 19 wholesaler upon the filing by the board department of a
 20 duplicate copy of the statement so made by the board
 21 department, or a certified copy of any return filed with
 22 said-board the department, in the office of the county clerk
 23 of the county where such property is situated, which lien
 24 shall have precedence over any other claim, lien or demand
 25 thereafter filed or recorded and may be enforced in the name

1 of the state of Montana in the same manner as other liens
 2 are enforced by law. No action shall be maintained to
 3 enjoin the collection of such tax or any part thereof. When
 4 the amount due the state is paid in full and before the
 5 entry of foreclosure decree, the board department shall
 6 release the said lien by filing in the office of the county
 7 clerk wherein is filed the said lien a written release
 8 thereof. At any time prior to the payment of said taxes,
 9 penalty and interest, before the entry of foreclosure
 10 decree, the board department may release from the operation
 11 of said lien a part of said property to enable the brewer or
 12 wholesaler to mortgage, sell or otherwise dispose of the
 13 same in order to procure funds with which to pay said taxes,
 14 penalty and interest, provided there remains, in the
 15 judgment of the board department, sufficient property
 16 subject to said lien to ensure the payment of the whole of
 17 said unpaid taxes, penalty and interest."

18 Section 61. Section 4-326, R.C.M. 1947, is renumbered
 19 section 4-3-218, and is amended to read as follows:

20 "~~4-326~~ 4-3-218. Carriers' reports of beer transported.
 21 Every railroad and every motor carrier transporting beer
 22 manufactured out of this state from points without this
 23 state and delivering the same to points within this state
 24 shall, on or before the fifteenth day of each month, make an
 25 exact return to the board department of the amount of such

beer so transported and delivered by such railroad or motor carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered."

Section 62. Section 4-327, R.C.M. 1947, is renumbered section 4-4-104, and is amended to read as follows:

"~~4-327~~ 4-4-104. Retailers' license--application and issuance--display required--check of alcoholic content by board department. Any person desiring to possess and have for sale beer, under the provisions of this act code, for the purpose of selling it at retail, shall first apply to the board department for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant is qualified as herein provided, the board department shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the board department shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be by the board department returned. The board department shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods

of conducting business and the alcoholic contents of the beer kept by him for sale. A person may not sell beer at retail without a valid license issued under this code."

Section 63. Section 4-326, R.C.M. 1947, is renumbered section 4-3-302, and is amended to read as follows:

"~~4-326~~ 4-3-302. Sale of beer by retailer--consumption on premises. It shall be lawful for such retailer to sell and serve beer either on draught or in bottles containers to the public to be consumed on the premises of such retailer."

Section 64. Section 4-330, R.C.M. 1947, is renumbered section 4-3-301, and is amended to read as follows:

"~~4-330~~ 4-3-301. Purchase of beer by retailer--persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers. It shall be unlawful for such a licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler or-retailer licensed under the provisions of this act code."

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of eighteen (18) years;
2. Any intoxicated person or any person actually, apparently or obviously intoxicated.

~~3. An habitual drunkard, or~~

1 ~~4--An-interdicted-person-~~

2 ~~Any-brewery-wholesaler-or-retailer-violating-any-of-the~~
 3 ~~provisions-of-this-section,shall-upon-conviction-thereof-be~~
 4 ~~subject-to-the-penalties-provided-for-in--section--4-305--of~~
 5 ~~the-Montana-Beer-Act,-and-in-addition-thereto-the-license-of~~
 6 ~~any--such--brewery--wholesaler--or--retailer--shall--in-the~~
 7 ~~discretion-of-the-board,-be--immediately--revoked,-or--said-~~
 8 ~~license-may-be-suspended-for-a-period-of-not-more-than-three~~
 9 ~~(3)--months,---Any-minor-or-other--person--the--knowingly~~
 10 ~~misrepresents-his-or-her-qualification-for--the--purpose--of~~
 11 ~~obtaining--beer--from--any--licensee-shall-be-equally-guilty~~
 12 ~~with-said-licensee-and-shall,-upon--conviction--thereof,-be~~
 13 ~~subject--to--the--penalty--provided--in-section-4-305-of-the~~
 14 ~~Montana-Beer-Act."~~

15 Section 65. Section 4-332, R.C.M. 1947, is renumbered
 16 section 4-4-105, and is amended to read as follows:

17 "~~4-332~~ 4-4-105. Special permits to sell beer--
 18 application and issuance--fee. (1)z Any association or
 19 corporation conducting a picnic, convention, fair, civic or
 20 community enterprise, or sporting event, shall in the
 21 discretion of the liquor division be entitled to a special
 22 permit to sell beer to the patrons of such event to be
 23 consumed within the enclosure wherein the event is held.

24 The application of any such association or corporation
 25 shall be presented ten (10) days in advance and shall

1 describe the location of such enclosure wherein such event
 2 is held, the nature of such event, the period when it is
 3 contemplated that the same will be held. Such application
 4 shall be accompanied by the amount of the permit fee
 5 hereinafter provided.

6 The permit issued to such association or corporation
 7 shall be a special permit, but shall not authorize the sale
 8 of beer except starting one (1) day in advance of the
 9 regular period when events are being held upon such grounds
 10 and during the period described in such application, and for
 11 one (1) day thereafter.

12 The permit fee shall be at the rate of fifteen dollars
 13 (\$15) per day for each day beer is sold, or to be sold at
 14 those events lasting two (2) or more days, but in no event
 15 less than the sum of thirty dollars (\$30), hereby fixed as
 16 the minimum fee for such permit.

17 (2)z Any post of a nationally chartered veterans'
 18 organization or any lodge of a recognized national fraternal
 19 organization, not otherwise licensed under this ~~act~~ code,
 20 shall in the discretion of the ~~board~~ department, without
 21 notice or hearing as provided in section ~~4-407.1~~ 4-4-302, be
 22 entitled to a special permit to sell beer at such post or
 23 lodge, to members and their guests only, to be consumed
 24 within the hall or building of such post or lodge.

25 The application of such nationally chartered veterans'

organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ~~five ten~~ dollars ~~(\$5.00)~~ (\$10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the ~~board~~ department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 66. Section 4-333, R.C.M. 1947, is renumbered section 4-4-201, and is amended to read as follows:

"~~4-333~~ 4-4-201. Issuance of retail beer licenses -- limit on number of ~~---off-premises~~ beer licenses -- ~~lapse and--cancellation---~~ wine license amendments -- retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved ~~by--a-majority-of-the-board~~ by the department as a fit and proper person, firm or corporation to sell beer; provided, that ~~the--number-of-retail-beer licenses-that-the-board-may-issue--shall--be--determined--as follows:~~

(a) ~~the~~ the number of retail beer licenses that the

~~board department~~ may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by congress, to wit:

In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, ~~not-more-than-two-(2)-retail beer--licenses--to-be-used-in-conjunction-with-retail-liquor licenses-and~~ not more than one (1) ~~additional~~ retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, ~~two-(2)-retail-beer-licenses--for--the--first--five--hundred (500)--inhabitants--and-one-(1)-retail-beer-license-for-each additional-five-hundred-(500)-inhabitants, which-said-retail beer-licenses-shall--be--used--in--conjunction--with--retail liquor--licenses,--and~~ one (1) ~~additional~~ beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the

1 corporate limits of such cities, ~~five--(5)--retail--beer~~
 2 ~~licenses--for--the--first--two--thousand--(2000)--inhabitants--and~~
 3 ~~one--(1)--retail--beer--license--for--each--additional--one--thousand~~
 4 ~~(1000)--inhabitants--which--said--retail--beer--licenses--shall--be~~
 5 ~~used--in--conjunction--with--retail--liquor--licenses,~~ and two (2)
 6 additional retail beer licenses for the first two thousand
 7 (2000) inhabitants or major fraction thereof and one (1)
 8 additional retail beer license for each additional two
 9 thousand (2000) inhabitants which shall not be used in
 10 conjunction with retail liquor licenses. The number of the
 11 inhabitants in such cities and towns, exclusive of the
 12 number of inhabitants residing within a distance of five (5)
 13 miles from the corporate limits thereof, shall govern the
 14 number of retail beer licenses that may be issued for use
 15 within such cities and towns and within a distance of five
 16 (5) miles from the corporate limits thereof; provided, that
 17 where two (2) or more incorporated municipalities are
 18 situated within a distance of five (5) miles from each
 19 other, the total number of retail beer licenses that may be
 20 issued for use in both of such municipalities and within a
 21 distance of five (5) miles from their respective corporate
 22 limits, shall be determined on the basis of the combined
 23 populations of both of such municipalities and shall not
 24 exceed the foregoing limitations. The said distance of five
 25 (5) miles from the corporate limits of any incorporated city

1 or incorporated town shall be measured in a straight line
 2 from the nearest entrance of the premises proposed for
 3 licensing to the nearest corporate boundary of such city or
 4 town. Retail beer licenses of issue on the date of the
 5 passage and approval of this act and which are in excess of
 6 the foregoing limitations shall be renewable, but no new
 7 licenses shall be issued in violation of such limitations;
 8 provided, that such limitations shall not prevent the
 9 issuance of a nontransferable and nonassignable retail beer
 10 license to any post of a nationally chartered veterans'
 11 organization or any lodge of a recognized national fraternal
 12 organization, if such veterans' or fraternal organization
 13 has been in existence for a period of five (5) years or more
 14 prior to January 1, 1949. No incorporated city or
 15 incorporated town may by ordinance restrict the number of
 16 licenses that the board department may issue; provided that
 17 no retail beer license may be issued by the board department
 18 for any premises situated within any zone of such city or
 19 town wherein the sale of beer is prohibited by ordinance, a
 20 certified copy of which has been filed with the board
 21 department. The board department shall have discretion to
 22 deny the issuance of a retail beer license if it shall
 23 determine that the premises proposed for licensing are off
 24 regular police beats and cannot be properly policed by local
 25 authorities.

1 (D) The number of retail beer licenses that the board
 2 department may issue for use at premises situated outside of
 3 any incorporated city or incorporated town and outside of
 4 the area within a distance of five (5) miles from the
 5 incorporated limits thereof, or for use at premises situated
 6 within any unincorporated town shall be as determined by the
 7 board department in the exercise of its sound discretion;
 8 provided, that no retail beer license shall be issued for
 9 any premises so situated unless the board departmentz shall
 10 determine that the issuance of such license is required by
 11 public convenience and necessity.

12 ~~(2) A retail license to sell beer in the (original~~
 13 ~~packages for off-premise consumption only may be issued to~~
 14 ~~any person, firm or corporation who shall be approved by a~~
 15 ~~majority of the board as a fit and proper person, firm or~~
 16 ~~corporation to sell beer and whose premises proposed for~~
 17 ~~licensing are operated as a bona fide grocery store or a~~
 18 ~~drugstore licensed as a pharmacy. The number of such~~
 19 ~~licenses that the board may issue shall not be limited by~~
 20 ~~the provisions of subsection (1) of this section, but shall~~
 21 ~~be determined by the board in the exercise of its sound~~
 22 ~~discretion, and the board may in the exercise of its sound~~
 23 ~~discretion grant or deny any application for any such~~
 24 ~~license or suspend or revoke any such license for cause.~~
 25 ~~The annual license fee for a license to sell beer at retail~~

1 ~~for off-premises consumption shall be the same as for a~~
 2 ~~retail beer licensee.~~

3 ~~(3) From and after (February 17, 1949, any retail~~
 4 ~~license issued pursuant to this act (including any retail~~
 5 ~~license to sell beer for off-premises consumption), not~~
 6 ~~actually used in a going establishment for a period of~~
 7 ~~ninety (90) days, shall automatically lapse. Upon~~
 8 ~~determining the fact of nonuser for such period the board~~
 9 ~~shall cancel such license of record and no portion of the~~
 10 ~~fee paid therefor shall be refundable. The provisions of~~
 11 ~~this subsection shall not apply to the license of any~~
 12 ~~licensee whose premises are operated on a seasonal basis in~~
 13 ~~connection with a bona fide dude ranch, resort, park, hotel,~~
 14 ~~tourist facility of like business, provided such licensee~~
 15 ~~has secured written authority from the board to close his~~
 16 ~~licensed premises for a specified period of greater than~~
 17 ~~ninety (90) days; (duration, and providing further that~~
 18 ~~should the liquor control board determine that such lapse~~
 19 ~~was reasonably beyond the control of the licensee, then the~~
 20 ~~lapse provision set out above shall not apply.~~

21 ~~(4) (2) A person holding a license to sell beer for~~
 22 ~~consumption on the premises at retail may apply to the~~
 23 ~~department for an amendment to the license permitting the~~
 24 ~~holder to sell wine as well as beer. The department~~
 25 ~~division may issue such amendment if it finds, on a~~

satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine ~~subject--to--the limitations-imposed--by--this--title--on--selling--beer~~ for consumption on the premises. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

~~(5)~~ (3) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer only license shall be two hundred dollars (\$200).

(4) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by the department as a fit and proper person, firm or corporation to sell beer and whose premises proposed for zlicensifg are operated as za bona fide grocery store or a drugstore licensed as a pharmacy. The number of zsuch licenses that the department may issue shall not be zlimited byzthe provisions of subsection (1) of this section, but shall be determined by the department in the exercise of its sound discretion, and the departmentzmay in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause.

The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license..w

Section 67. Section 4-338, R.C.M. 1947, is renumbered section 4-3-104, and is amended to read as follows:

~~"4-338~~ 4-3-104. Purchase of beer must be from licensed brewer, wholesaler or retailer. It shall be unlawful for the operator of any ~~such-railroad-train, as-a~~ common carrier, or its employees, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewer, or wholesaler ~~or~~ retailer duly licensed."

Section 68. Section 4-341, R.C.M. 1947, is renumbered section 4-4-401, and is amended to read as follows:

~~"4-341~~ 4-4-401. Fees for licenses--expiration dates--regulation by cities and towns. Each licensee, under the provisions of this ~~act~~ code, shall pay an annual license fee as follows:

Each "brewer," ~~z~~wherever located, whose product is sold or offered for sale within the state, five hundred dollars ~~(500-00)~~ (\$500);

Each "wholesaler" four hundred dollars ~~(\$400-00)~~ (\$400);

Each "retailer" two hundred dollars ~~(\$200-00)~~ (\$200);

Any unit of a nationally chartered veterans'

1 organization fifty dollars ~~(\$50.00)~~ (\$50);
 2 ~~Each "vehicle" being a common carrier of passengers, or~~
 3 ~~other persons operating buffet and dining cars for such~~
 4 ~~common carrier, twenty-five dollars (\$25.00) (\$25).~~

5 All licenses issued in any year shall expire on the
 6 30th day of June at midnight of such year. A transfer of
 7 any such license may be made on application to the Montana
 8 ~~liquor-control-board~~ department of revenue with the consent
 9 of the said board department provided that said transferee
 10 shall qualify under this act code. The cities and
 11 incorporated towns may enact ordinances defining certain
 12 areas in said cities or towns where beer may or may not be
 13 sold providing that said ordinance does not affect the limit
 14 of retail beer licenses which shall be issued by the Montana
 15 ~~liquor-control-board~~ department of revenue based upon the
 16 population of the city or town and said city or town shall
 17 file a certified copy of said ordinance with the Montana
 18 ~~liquor-control-board~~ department of revenue; ~~the cities and~~
 19 ~~towns may also impose a fee on a licensee of the board~~
 20 ~~department for selling beer at retail in the city or town~~
 21 ~~providing said fee shall be reasonable and not in excess of~~
 22 ~~the amount imposed by the state limits set by section~~
 23 4-4-406. This act code shall not be construed or
 24 interpreted so as to repeal, amend, modify, change, or alter
 25 any provisions of ~~the Montana Beer Act~~ this code which

1 require beer manufactured outside of the state of Montana
 2 and shipped into Montana to be consigned to and shipped to a
 3 licensed wholesaler and by him unloaded into his warehouse
 4 or subwarehouse in Montana."

5 Section 69. Section 4-342, R.C.M. 1947, is renumbered
 6 as section 4-4-402, and is amended to read as follows:

7 "~~4-342~~ 4-4-402. Denial of application for license or
 8 renewal -- suspension or revocation -- actions. The board
 9 department may (1) upon its own motion and shall (2) upon a
 10 written, verified complaint of any person, investigate the
 11 action and operation of any brewer, wholesaler or retailer
 12 licensed under ~~the Montana Beer Act~~ this code. If the board
 13 department, after investigation, shall have reasonable cause
 14 to believe that any such licensee has violated any of the
 15 provisions of this act code, or any rules, or regulations of
 16 the board department, it may, in its discretion, and in
 17 addition to the other penalties herein prescribed, reprimand
 18 a licensee, proceed to revoke the license of any such
 19 licensee, or it may suspend the same for a period of not to
 20 exceed three (3) months, or it may refuse to grant a renewal
 21 of said license upon the expiration thereof; ~~under the~~
 22 ~~procedures herein provided; if the board shall, in its~~
 23 ~~sound discretion, determine to invoke such procedures for~~
 24 ~~the purpose of (refusing to grant a license or refusing to~~
 25 ~~grant a renewal thereof to any applicant, or for revoking or~~

1 suspending any license previously granted, it shall give
 2 applicant or licensee, as the case may be, fifteen (15)
 3 days' notice in writing of its intended action, addressed
 4 and forwarded by registered mail to the applicant or
 5 licensee at the address given in the application for
 6 license or upon the existing license as the case may be,
 7 stating generally the basis and reasons for its intended
 8 action and the proposed action. Within said fifteen (15)
 9 day period said applicant or licensee may, in cases of
 10 intention to refuse to grant a license or intention to
 11 refuse to grant a renewal thereof, institute proceedings in
 12 the nature of a writ of review, or, in case of intention to
 13 revoke or suspend a license, institute proceedings in
 14 injunction, and in any event in the district court of the
 15 county wherein the premises of applicant or licensee are
 16 located for the purpose of having the intended action of the
 17 board judicially reviewed and inquired into for (a) abuse of
 18 discretion on the part of the board, (b) failure of the
 19 board to observe or its departure from, or disregard of the
 20 applicable law governing the board in the particular
 21 circumstances, or (c) for arbitrary or tyrannical action by
 22 the board. The board shall in all cases certify to the
 23 court its complete record in the matter and the issues shall
 24 be heard on the merits by the court upon such record and
 25 upon such further legal evidence as the parties may present.

1 If the court in any such proceedings determines that such
 2 licensee has, in fact, violated any provisions of this act
 3 or any regulations of the board, the court shall dismiss
 4 such proceedings, and the board shall proceed to such
 5 administrative determination as to it seems proper in the
 6 circumstances. Pending determination of such matter on the
 7 merits the court may, based upon a showing of undue hardship
 8 to a licensee and upon the posting of a proper bond in an
 9 amount and conditioned upon such terms as the court may
 10 prescribe in the presence of the surrounding circumstances,
 11 stay the effective date of the intended action of the board
 12 for such time as to the court may seem proper. If no stay
 13 order is issued by the court or any stay order once issued
 14 has expired, the board shall issue its order of suspension
 15 or of revocation of license or its order denying the license
 16 applied for, or renewal thereof. If the court shall, on the
 17 other hand, determine that good cause did not exist for the
 18 intended action of the board, or that the board abused its
 19 discretion, or otherwise acted unlawfully with respect to
 20 its intended action, on any of the grounds herein stated,
 21 the court shall issue its order and decree accordingly and
 22 the board shall comply therewith. Either party to the
 23 proceedings in the district court may appeal from its
 24 decision to the supreme court of the state of Montana, by
 25 following the procedures applicable to such appeals in civil

1 ~~actions;~~ or impose a civil penalty not to exceed one
 2 thousand five hundred dollars (\$1500), subject to the
 3 opportunity for a hearing under the Montana Administrative
 4 Procedure Act."

5 Section 70. Section 4-344, R.C.M. 1947, is renumbered
 6 section 4-6-301, and is amended to read as follows:

7 "4-~~344~~ 4-6-301. Jurisdiction of courts. As to
 8 misdemeanor actions, ~~the~~ the district courts of this state
 9 shall have concurrent jurisdiction with justice of the peace
 10 courts in all prosecutions under this ~~act~~ code."

11 Section 71. Section 4-346, R.C.M. 1947, is renumbered
 12 section 4-6-402, and is amended to read as follows:

13 "4-~~346~~ 4-6-402. Action to enjoin nuisance --
 14 injunction -- order of court -- bond. An action to enjoin
 15 any nuisance defined in this ~~act~~ code may be brought in the
 16 name of the state of Montana by the attorney general of the
 17 state or by any county attorney. Such action shall be
 18 brought and tried as an action in equity and may be brought
 19 in any court having jurisdiction to hear and determine
 20 equity cases. If it is made to appear by affidavits or
 21 otherwise, to the satisfaction of the court, or judge in
 22 vacation, that such nuisance exists, a temporary writ of
 23 injunction shall forthwith issue restraining the defendant
 24 from conducting or permitting the continuance of such
 25 nuisance until the conclusion of the trial. If a temporary

1 injunction is prayed for, the court may issue an order
 2 restraining the defendant and all other persons from
 3 removing or in any way interfering with the fixtures or
 4 other things used in connection with the violation of this
 5 act constituting such nuisance. No bond shall be required
 6 in instituting such proceedings. It shall not be necessary
 7 for the court to find the property involved was being
 8 unlawfully used as aforesaid at the time of the hearing, but
 9 on finding that the material allegations of the petition are
 10 true, the court shall order that no liquor or beer shall be
 11 manufactured, sold, or bartered in such room, house,
 12 building, boat, vehicle, structure, or place, or any part
 13 thereof. And upon judgment of the court ordering such
 14 nuisance to be abated, the court may order that the room,
 15 house, building, structure, boat, vehicle, or place shall
 16 not be occupied or used for one (1) year thereafter; but the
 17 court may, in its discretion, permit it to be occupied or
 18 used if the owner, lessee, tenant, or occupant thereof shall
 19 give bond with sufficient surety, to be approved by the
 20 court making the order, in the penal and liquidated sum of
 21 not less than five hundred dollars ~~(\$500.00)~~ (\$500), nor
 22 more than one thousand dollars ~~(\$1,000.00)~~ (\$1,000), payable
 23 to the state of Montana, and conditioned that liquor or beer
 24 will not thereafter be manufactured, sold or bartered
 25 therein or thereon, and that he will pay all fines, costs,

1 and damages that may be assessed for any violations of this
2 ~~act~~ code upon said property."

3 Section 72. Section 4-347, R.C.M. 1947, is renumbered
4 section 4-1-407, and is amended to read as follows:

5 "4-347 4-1-407. Revenue to be paid to state
6 treasurer--disposition of revenue. Except as provided in
7 section ~~4-347.1~~ 4-1-408 of this ~~act~~ code, all fees, charges,
8 taxes and revenues collected by or under authority of the
9 Montana ~~liquor-control-board~~ department, ~~under--the--Montana~~
10 ~~Beer--Act~~ shall be paid over to the state treasurer on or
11 before the tenth (10th) day of each and every month who
12 shall deposit said funds to the credit of the state general
13 fund."

14 Section 73. Section 4-347.1, R.C.M. 1947, is
15 renumbered section 4-1-408, and is amended to read as
16 follows:

17 "4-347.1 4-1-408. Revenue allocation. All revenue
18 received from taxes on beer under sections ~~4-317~~ 4-1-404 and
19 ~~4-324~~ 4-1-405, R.C.M. 1947, over and above one dollar and
20 fifty cents (\$1.50) per barrel of thirty-one (31) gallons
21 shall be deposited with the state treasurer to the credit of
22 the incorporated cities and towns beer tax account in the
23 earmarked revenue fund. The state treasurer shall, monthly,
24 distribute this amount of money to the incorporated cities
25 and towns in the direct proportion that the population of

1 each city and town bears to the total population of all
2 incorporated cities and towns as shown in the latest
3 official federal census. For cities and towns incorporated
4 after the latest official federal census, the census shall
5 be determined as of the date of incorporation as evidenced
6 by the certificate of the incorporating officials of that
7 city or town. If a city or town disincorporates, it shall
8 cease to receive any funds under this section and the amount
9 previously distributed to the city or town shall be
10 distributed to the remaining incorporated cities and towns.
11 All funds received by cities and towns under this section
12 shall be expended for state purposes such as law
13 enforcement, maintenance of the transportation system, and
14 public health."

15 Section 74. Section 4-349, R.C.M. 1947, is renumbered
16 section 4-3-219, and is amended to read as follows:

17 "4-349 4-3-219. Brewers and wholesalers not to supply
18 fixtures, etc., to retailers, except as specified--~~brewers~~
19 ~~not-to-be-interested-in-retailer-financially~~. (a) It shall
20 be unlawful for any brewer or wholesaler to lease, furnish,
21 give or pay for any premises, furniture, fixtures,
22 equipment, signs, or any other advertising matter or any
23 other property to any retail licensee, used or to be used in
24 the dispensation of beer in and about the interior or
25 exterior of the place of business of any licensed retailer

1 or furnish, give or pay for any repairs, improvements,
2 painting or decorating on or within such premises; provided,
3 however, that it shall be lawful for a brewer or wholesaler
4 to furnish, give or loan to a retail licensee:

5 1. Bottle openers, can openers and trays, with or
6 without advertising matter thereon;

7 2. Advertising matter or novelties, of a value of not
8 to exceed fifteen dollars ~~(\$15.00)~~ (\$15) in any calendar
9 year, to any one (1) retailer for display use on the
10 interior of said retailer's place of business; and

11 3. Not more than two (2) illuminated or electrical
12 signs, each of not more than six hundred thirty (630) square
13 inches in area, which signs may bear the name, brand name,
14 trade name, trade-mark or other designation indicating the
15 name of the manufacturer, and the place of manufacture, of
16 beer, for display by the retail licensee on and within the
17 interior of his place of business, or in the windows inside
18 the place of business of the licensed retailer, and only if
19 the particular brand of beer so advertised on such signs is
20 actually available for sale on the licensee's premises, at
21 the time of such display.

22 4. Maintenance or repair services on draft beer
23 equipment to keep it sanitary and in good working condition.

24 ~~(b) No brewer or wholesaler shall advance or loan~~
25 ~~money to, or furnish money for, or pay for or on behalf of~~

1 ~~any retailer, for any license or tax which may be required~~
2 ~~to be paid for any retailer, and no brewer or wholesaler~~
3 ~~shall be financially interested, either directly or~~
4 ~~indirectly, in the conduct or operation of the business of a~~
5 ~~retailer, as herein defined. A brewer or wholesaler shall~~
6 ~~be deemed to have such a financial interest within the~~
7 ~~meaning of this section if (1) such brewer or wholesaler~~
8 ~~owns or holds any interest in, or a lien or mortgage against~~
9 ~~the retailer or his premises, or (2) if such brewer or~~
10 ~~wholesaler is under any contract with a retailer concerning~~
11 ~~future purchases and/or sale of merchandise by one from, or~~
12 ~~to the other, (3) if any retailer holds an interest as a~~
13 ~~stockholder, or otherwise, in the business of the~~
14 ~~wholesaler.~~

15 ~~(c) No sale or delivery of beer shall be made to any~~
16 ~~retail licensee except for cash paid within seven (7) days~~
17 ~~after the delivery thereof, and in no event shall any brewer~~
18 ~~or wholesaler extend more than seven (7) days' credit on~~
19 ~~account of such beer to a retail licensee, nor shall any~~
20 ~~retail licensee accept or receive delivery of such beer~~
21 ~~without agreement to pay in cash therefor within seven (7)~~
22 ~~days from delivery thereof. A correctly dated check which~~
23 ~~is honored upon presentment shall be considered as cash~~
24 ~~within the meaning of this act. Any extension or acceptance~~
25 ~~of credit in violation hereof shall be regarded and~~

~~construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the board in its discretion."~~

Section 75. There is a new section to be numbered 4-3-220, R.C.M. 1947, which reads as follows:

4-3-220. Financial interest in retailers prohibited. No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, iether directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgagee against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

Section 76. There is a new section to be numbered 4-3-221, R.C.M. 1947, which reads as follows:

4-3-221. Seven day credit limitation. No sale or

delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7)z days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

Section 77. Section 4-358, R.C.M. 1947, is renumbered section 4-3-222, and is amended to read as follows:

~~"4-358~~ 4-3-222. Limitations on advertising of beer. It shall be lawful to advertise beer containing not more than ~~four~~ seven per centum (4 7%) of alcohol by weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section ~~4-349~~ 4-3-219 of this ~~act~~ code, and subject to (b) the restrictions on retailers, to wit: No retail licensee ~~under the Montana Beer Act~~ shall display, or

1 permit to be displayed, on the exterior portion or surface
2 of such retailer's place of business, or on the exterior
3 portion or surface of any building of which said place of
4 business is a part, or on any premises adjacent thereto,
5 whether any of such premises be owned or leased by the
6 retailer, any sign, poster or advertisement bearing the
7 name, brand name, trade name, trade-mark or other
8 designation indicating the manufacturer, brewer, wholesaler
9 or place of manufacture, of any beer whatsoever."

10 Section 78. Section 4-401, R.C.M. 1947, is renumbered
11 section 4-1-103, and is amended to read as follows:

12 "~~4-401~~ 4-1-103. Declaration of policy as to retail
13 sale of liquor. It is hereby declared as the policy of the
14 state that it is necessary to further regulate and control
15 the sale and distribution within the state of alcoholic
16 beverages, and to eliminate certain illegal traffic in
17 liquor now existing, and to ensure the entire control of the
18 sale of liquor in the Montana ~~liquor---control---board~~
19 department of revenue, it is advisable and necessary, in
20 addition to the operation of the state liquor stores now
21 provided by law, that the said ~~board department~~ be empowered
22 and authorized to grant licenses to persons qualified under
23 this ~~act code~~, to sell liquor purchased by them at state
24 liquor stores at retail posted price in accordance with this
25 ~~act code~~ and under rules and regulations promulgated by the

1 said ~~board~~ department, and under its strict supervision and
2 control, and to provide severe penalty for the sale of
3 liquor except by and in state liquor stores and by persons
4 licensed under this ~~act code~~. The restrictions, regulations
5 and provisions contained in this ~~act code~~ are enacted by the
6 legislature for the protection, health, welfare and safety
7 of the people of the state."

8 Section 79. Section 4-403, R.C.M. 1947, is renumbered
9 section 4-4-202, and is amended to read as follows:

10 "~~4-403~~ 4-4-202. ~~issuance-of-retail--liquor--licenses--~~
11 ~~limit-on-number-of-licenses--retail-wine-licenses--lapse-and~~
12 ~~cancellation.~~ All-beverage license quota. (1) Except as
13 otherwise provided by law, a license to sell liquor, beer
14 and wine at retail, an all-beverages license, in accordance
15 with the provisions of this ~~act code~~ and the regulations of
16 the Montana ~~liquor-control-board~~ department of revenue, may
17 be issued to any person who shall be approved by ~~a--majority~~
18 ~~of--the--board~~ the department as a fit and proper person to
19 sell ~~liquor~~ such beverages; provided, that ~~the--number--of~~
20 ~~retail--liquor--licenses--which-the-board-may-issue-shall-be~~
21 ~~determined-as-follows~~:

22 (a) ~~The~~ the number of ~~retail--liquor~~ all-beverage
23 licenses that the ~~board~~ department may issue for premises
24 situated within incorporated cities and incorporated towns
25 and within a distance of five (5) miles from the corporate

1 limits of such cities and towns shall be determined on the
 2 basis of population as shown by the most recent official
 3 United States census authorized by Congress, to wit: In
 4 incorporated towns of five hundred (500) inhabitants or less
 5 and within a distance of five (5) miles from the corporate
 6 limits of such towns, not more than two (2) retail ~~liquor~~
 7 licenses; in incorporated cities or incorporated towns of
 8 more than five hundred (500) inhabitants and not over three
 9 thousand (3000) inhabitants and within a distance of five
 10 (5) miles from the corporate limits of such cities and
 11 towns, three (3) retail ~~liquor~~ licenses for the first one
 12 thousand (1000) inhabitants and one (1) retail ~~liquor~~
 13 license for each additional one thousand (1000) inhabitants;
 14 in incorporated cities of over three thousand (3000)
 15 inhabitants and within a distance of five (5) miles from the
 16 corporate limits thereof, five (5) retail ~~liquor~~ licenses
 17 for the first three thousand (3000) inhabitants and one (1)
 18 retail ~~liquor~~ license for each additional one thousand five
 19 hundred (1500) inhabitants. The number of the inhabitants
 20 in such cities and towns, ~~and-in-addition~~ exclusive of the
 21 number of inhabitants residing within a distance of five (5)
 22 miles from the corporate limits thereof, shall govern the
 23 number of retail ~~liquor~~ licenses that may be issued for use
 24 within such cities and towns and within a distance of five
 25 (5) miles from the corporate limits thereof; provided,

1 however, that where two (2) or more incorporated
 2 municipalities are situated within a distance of five (5)
 3 miles from each other, the total number of retail ~~liquor~~
 4 licenses that may be issued for use in both of such
 5 municipalities and within a distance of five (5) miles from
 6 their respective corporate limits, shall be determined on
 7 the basis of the combined population of both of such
 8 municipalities and shall not exceed the foregoing
 9 limitations. Notwithstanding the preceding sentence, the
 10 total population for determining the quota of a city may
 11 include, with the city's population, the population residing
 12 outside, but within five (5) miles of the city limits in a
 13 case where the number of persons residing outside but within
 14 five (5) miles of the city exceeds the number of persons
 15 residing within the city. Such a determination may be made
 16 only upon a special census taken by the department or its
 17 agent at the expense of the applicant for a license under
 18 this section. The said distance of five (5) miles from the
 19 corporate limits of any incorporated city or incorporated
 20 town shall be measured in a straight line from the nearest
 21 entrance of the premises proposed for licensing to the
 22 nearest corporate boundary of such city or town. Retail
 23 ~~liquor~~ all-beverages licenses of issue on the date of the
 24 passage and approval of this ~~act~~ code and which are in
 25 excess of the foregoing limitations shall be renewable, but

1 no new licenses shall be issued in violation of such
 2 limitations; provided that such limitations shall not
 3 prevent the issuance of a nontransferable and nonassignable
 4 (as to ownership only) retail ~~liquor~~ license to any post of
 5 a nationally chartered veterans' organization or any lodge
 6 of a recognized national fraternal organization, if such
 7 veterans' or fraternal organization has been in existence
 8 for a period of five (5) years or more prior to January 1,
 9 1949. No incorporated city or incorporated town may by
 10 ordinance restrict the number of licenses that the board
 11 department may issue; provided that no retail license may be
 12 issued by the board department for any premises situated
 13 within any zone of a city or town wherein the sale of liquor
 14 is prohibited by ordinance, a certified copy of which has
 15 been filed with the board department. The board department
 16 shall have discretion to deny the issuance of a retail
 17 license if it shall determine that the premises proposed for
 18 licensing are off regular police beats and cannot be
 19 properly policed by local authorities.

20 (b) ~~The~~ the number of retail ~~liquor~~ all-beverages
 21 licenses that the board department may issue for use at
 22 premises situated outside of any incorporated city or
 23 incorporated town and outside of the area within a distance
 24 of five (5) miles from the corporate limits thereof, shall
 25 be not more than one (1) license for each seven hundred

1 fifty (750) population of the county, after excluding the
 2 population of incorporated cities and incorporated towns in
 3 such county ~~and the population residing within a distance of~~
 4 ~~five (5) miles from the corporate limits thereof.~~

5 ~~(2) From and after February 17, 1949, any retail license~~
 6 ~~issued pursuant to this act not actually used in a going~~
 7 ~~establishment for a period of ninety (90) days, shall~~
 8 ~~automatically lapse. Upon determining the fact of nonuser~~
 9 ~~for such period the board shall cancel such license of~~
 10 ~~record and no portion of the fee paid therefor shall be~~
 11 ~~refundable. The provisions of this subsection shall not~~
 12 ~~apply to the license of any licensee whose premises are~~
 13 ~~operated on a seasonal basis in connection with a bona fide~~
 14 ~~dude ranch, park, hotel, tourist facility or like business,~~
 15 ~~provided such licensee has secured written authority from~~
 16 ~~the board to close his licensed premises for a specified~~
 17 ~~period of greater than ninety (90) days' duration, and~~
 18 ~~providing further that should the liquor control board~~
 19 ~~determine that such lapse was reasonably beyond the control~~
 20 ~~of the licensee, then the lapse provision set out above~~
 21 ~~shall not apply.~~

22 ~~(3) Resort licenses. It is the intent and purpose of~~
 23 ~~this act to encourage the growth of quality recreational~~
 24 ~~resort facilities in undeveloped areas of the state and to~~
 25 ~~provide for the orderly growth of existing recreational~~

sites--by--the--establishment--of--resort-areas-within--which
 retail-liquor-licenses-may-be-issued-by-the-board-under--the
 terms---and--as--more--particularly--prescribed--below,---in
 addition-to-the-licenses-as-otherwise-set-forth-in-this-act
 the-board-may-issue--resort--retail--liquor--licenses--in--a
 resort-area,

For--the--purposes--of--this--section, a resort-area-is
 defined---as---a---recreational---facility---meeting---the
 qualifications---determined--by--the--board--as--hereinafter
 provided:

The-board-shall--determine--that--the--area--for--which
 licenses---are---to---be--issued--is--a--resort--area,--such
 determination-to-be-made-under-and--pursuant--to (rules--and
 regulations--to--be--promulgated--within--one-hundred-eighty
 (180)-days-after-the-passage-and-approval-of-this--act,---in
 addition--to--the--other--requirements-of-this-act, a resort
 area-for-the-purposes-of-qualification-for-the--issuance-of
 resort--retail--liquor--license-must--have-a-current-actual
 valuation-of-resort-or--recreational--facilities,--including
 land-and-improvements-thereon, of-not-less-than-five-hundred
 thousand---dollars---(\$500,000),--at-least (half--of--which
 valuation-must-be-for-a-structure-or-structures--within--the
 resort-area, and-must-be-under-the-sole-ownership-or-control
 of--one--person--or--entity-at-the-time-of-the-filing-of-the
 resort-area-plat-referred-to-in--the--next--paragraph,---The

word--control--shall-mean-lands-held-under-lease, option, or
 permit,---Before-first-adopting-such-rules-and-regulations-in
 regard-to-resort-liquor-licenses, the-board-shall-publish--a
 notice--of--the--hearing--to--be--held--on--said--rules--and
 regulations-in-a-regularly-published-newspaper-in-the-cities
 of-Billings, Bozeman,--Butte,--Great--Falls,--Helena,--Missoula
 City,--Kalispell--and-Missoula,--Montana, said-publication-to
 be-published-in-said-newspapers-at-least--once--a--week--for
 four--consecutive-weeks, the-last-of-said-publications-being
 at-least-ten--(10)--but-not-more-than-thirty--(30)--days--prior
 to--the--date--set--for-said-hearing, which-shall-be-held-in
 Helena, Montana, at-a--time--and--place--designated--by--the
 board.

The--resort--area--must--be--determined--by--the-resort
 developer-or-landowner-by-a-plat-setting--forth--the--resort
 boundaries-designating-the-ownership-of-the-lands-within-the
 resort--area--which--plat--must--be--verified--by-the-resort
 developer-or-landowner, and-filed-with-the--board--prior--to
 the--filing--of-any-applications-by-individuals-for-licenses
 within-the-resort-area,--Such-plat-must-show--the--location
 and--general-design-of-the-buildings, and-other-improvements
 to-be-built-in-said--area--in--which--resort--retail--liquor
 licenses--are-to, or-may, be-located,--A-master-plan-for-the
 development-of-the-said-area-may--be--filed--by--the--resort
 developer-in-satisfaction-of-this-section.

Upon such filing the board shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board. At least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-425 herein.

Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.

When the board has accepted a plat and a given resort

area has been determined, applications may then be filed with the board by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the board may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-410 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-403 (1) (a) above and a resort retail liquor license shall be issued by

~~the--board--on--the-basis-that-the-board-has-determined-that
such--license--is--justified--by--public--convenience--and
necessity--following--a--hearing--as--provided--in--section
4-407,1r~~

~~if-any-clause,--sentence,--paragraph,--section,--or--any
part--of--this--act--shall--be--declared--and--adjudged--to--be
invalid--and/or--unconstitutional,--such--invalidity--or
unconstitutionality--shall--not--affect,--impair,--invalidate--or
nullify--the--remainder--of--this--act."~~

Section 80. There is a new section to be numbered
4-4-203, R.C.M. 1947, which reads as follows:

4-4-203. Lapse of license for nonuse. From and after
February 1, 1949, any retail license issued pursuant to this
code (including any retail license to sell beer for
off-premises consumption), not actually used in a going
establishment for a period of ninety (90)z days, shall
automatically lapse. Upon determining the fact of nonuser
for such period the department shall cancel such license of
record and no portion of the fee paid therefor shall be
refundable. The provisions of this subsection shall not
apply to the license of any licensee whose premises are
operated on a seasonal basis in connection with a bona fide
dude ranch, resort, park hotel, tourist facility or like
business, provided such licensee has secured written
authority from the department to close, has licensed

premises for a specified period of greater than ninety (90)
days' duration, and providing further that should the
department determine that such lapse was reasonably beyond
the control of the licensee, then the lapse provision set
out above shall not apply.

Section 81. There is a new section to be numbered
4-4-204, R.C.M. 1947, which reads as follows:

4-4-204. Resort licenses. It is the intent and
purpose of this section to encourage the growth of quality
recreational resort facilities in undeveloped areas of the
state and to provide for the orderly growth of existing
recreational sites by the establishment of resort areas
within which retail liquor licenses may be issued by the
department under the terms and as more particularly
prescribed below. In addition to the licenses as otherwise
set forth in this act, the department may issue resort
retail liquor licenses in a resort area.

For the purposes of this section, a resort area is
defined as a recreational facility meeting the
qualifications determined by the department as hereinafter
provided.

The department shall determine that the area for which
licenses are to be issued is a resort area, such
determination to be made under and pursuant to rules and
regulations to be first promulgated on or before December

1 31, 1975. In addition to the other requirements of this
 2 code, a resort area for the purposes of qualification for
 3 the issuance of resort retail liquor license must have a
 4 current actual valuation of resort or recreational
 5 facilities, including land and improvements thereon, of not
 6 less than five hundred thousand dollars (\$500,000), at least
 7 half of which valuation must be for a structure or
 8 structures within the resort area, and must be under the
 9 sole ownership or control of one person or entity at the
 10 time of the filing of the resort area plat referred to in
 11 the next paragraph. The word control shall mean lands held
 12 under lease, option, or permit. Before first adopting such
 13 rules and regulations in regard to resort liquor licenses,
 14 the department shall publish a notice of the hearing to be
 15 held on said rules and regulations in a regularly published
 16 newspaper in the cities of Billings, Bozeman, Butte, Great
 17 Falls, Helena, Miles City, Kalispell and Missoula, Montana,
 18 said publication to be published in said newspapers at least
 19 once a week for four consecutive weeks, the last of said
 20 publications being at least ten (10) but not more than
 21 thirty (30) days prior to the date set for said hearing,
 22 which shall be held in Helena, Montana, at a time and place
 23 designated by the department.

24 The resort area must be determined by the resort
 25 developer or landowner by a plat setting forth the resort

1 boundaries designating the ownership of the lands within the
 2 resort area which plat must be verified by the resort
 3 developer or landowner, and filed with the department prior
 4 to the filing of any applications by individuals for
 5 licenses within the resort area. Such plat must show the
 6 location and general design of the buildings, and other
 7 improvements to be built in said area in which resort retail
 8 liquor licenses are to, or may, be located. A master plan
 9 for the development of the said area may be filed by the
 10 resort developer in satisfaction of this section.

11 Upon such filing the department shall forthwith
 12 schedule a public hearing to be held in Helena, Montana, to
 13 determine whether the facility proposed by the resort
 14 developer or landowner is a resort area within the meaning
 15 of the rules and regulations of the department. At least
 16 thirty (30) days prior to the date of the hearing, the
 17 department shall publish notice thereof with a description
 18 of the location of the proposed resort area in a newspaper
 19 published in the county or counties in which the resort is
 20 located, once a week for four (4) consecutive weeks. Each
 21 resort developer or landowner shall, at the time of filing
 22 his application, pay to the department an amount sufficient
 23 to cover the costs of said publication. Persons may present
 24 statements to the department at the hearing in person or in
 25 writing in opposition or support of the plat. Within thirty

1 (30) days of the hearing the department shall accept or
 2 reject the plat. If rejected the department must state its
 3 reasons and set forth the conditions, if any, under which
 4 the plat will be accepted and the decision of the department
 5 may be reviewed pursuant to the review procedure set forth
 6 in section 4-4-402.

7 Once filed with the department, the boundaries of a
 8 resort may not be changed without full hearing as above
 9 provided and the prior approval of the department, which
 10 approval shall be according to public convenience and
 11 necessity.

12 When the department has accepted a plat and a given
 13 resort area has been determined, applications may then be
 14 filed with the department by persons for the issuance of
 15 resort retail liquor licenses within the said resort area.
 16 Each applicant must submit plans showing the location,
 17 appearance and floor plan of the premises for which
 18 application for a license is made.

19 If an applicant otherwise qualifies for a resort
 20 license but the premises to be licensed are still in
 21 construction, or are otherwise incomplete and the time of
 22 such application, the department shall issue a letter
 23 stating that the license will be issued at such time as the
 24 qualifications for a licensed premises have been met,
 25 setting forth such time limitations and requirements as the

1 department may establish.

2 In addition to the restrictions on sale or transfer of
 3 a license as provided in section 4-4-206 herein, no resort
 4 retail liquor license may be sold or transferred for
 5 operation at a location outside of the boundaries of the
 6 resort area.

7 The annual fee for resort retail liquor licenses within
 8 a given resort area shall be two thousand dollars (\$2,000)
 9 for each such license.

10 A resort retail liquor license shall not be subject to
 11 the quota limitations set forth in section 4-4-202 above and
 12 a resort retail liquor license shall be issued by the
 13 department on the basis that the department has determined
 14 that such license is justified by public convenience and
 15 necessity, following a hearing as provided in section
 16 4-4-302.

17 Section 82. Section 4-406, R.CqM. 1947, is renumbered
 18 section 4-4-404, and is amended to read as follows:

19 "4-406 4-4-404. Fee for and expiration of licenses.
 20 Effective July 1, 1944, and at the same date of each year
 21 thereafter, the Montana ~~liquor-control-board~~ department of
 22 revenue shall issue licenses for the retail sale of ~~beer~~
 23 and/or alcoholic beverages liquor on an annual basis, and at
 24 such fees as are prescribed by law, and such licenses shall
 25 expire at midnight of June 30th of the succeeding year.

~~Provided that when the applicant shall have had a beer license or beer and liquor licenses for 1943, he shall pay the fees required for such license or licenses for the first half of 1944 before he shall be qualified to be issued such license or licenses for the year commencing June 30, 1944.~~
The department shall notify each applicant for an original license or renewal that he should inform himself of applicable provisions of federal law which may require a permit from a federal agency."

Section 83. Section 4-407, R.C.M. 1947, is renumbered section 4-4-301, and is amended to read as follows:

~~"4-407 4-4-301.~~ Application for license--penalty for false statements. Prior to the issuance of a license as herein provided, the applicant shall file with the Montana ~~liquor control board~~ department of revenue an application in writing, signed by the applicant, and containing such information and statements relative to the applicant and the premises where the ~~liquor~~ alcoholic beverage is to be sold, as may be required by the ~~Montana liquor board~~ department.

The application shall be verified by the affidavit of the person making the same before a person authorized to administer oaths. If any false statement is made in any part of said application, the applicant, or applicants, shall be deemed guilty of a misdemeanor and upon conviction thereof the license, if issued, shall be revoked and the

applicant, or applicants, subjected to the penalties provided by law."

Section 84. Section 4-407.1, R.C.M. 1947, is renumbered section 4-4-302, and is amended to read as follows:

~~"4-407.1 4-4-302.~~ Notice of application--publication--protest. When an application has been filed with the Montana ~~liquor control board~~ department of revenue for a license to sell ~~liquor~~ alcoholic beverages at retail, or to transfer such license, the ~~board~~ department shall promptly publish in a newspaper of general circulation in the city, town or county from whence such application shall come, a notice that such applicant has made application for such license, and that protests against the issuance of a license to the applicant will be heard at a time and place stated in the notice, which shall be ~~at a special or regular meeting of the Montana liquor control board~~ in the city of Helena, Montana. Notice of application for a new license shall be published once a week for four (4) consecutive weeks. Notice of application for transfer of a license shall be published once a week for two (2) consecutive weeks. Notice may be substantially in the following form:

NOTICE OF APPLICATION FOR RETAIL ~~LIQUOR~~

ALL BEVERAGE LICENSE

Notice is hereby given that on the day of,

19..., one (name of applicant) filed an application for a retail ~~liquor~~ all beverage license with the Montana ~~liquor control-board~~ department of revenue, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of --M, on the day of, 19..., at the office of the Montana ~~liquor-control-board~~ department of revenue, in Helena, Montana.

Dated

Signed

ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this act code be issued if the said Montana ~~liquor control-board~~ department of revenue shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of the Montana-Retail-Liquor-License--Act this code will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana ~~liquor--control--board~~ department of revenue, an amount sufficient to cover the costs of publishing said notice."

Section 85. Section 4-408, R.C.M. 1947, is renumbered

section 4-4-303, and is amended to read as follows:

"~~4-408~~ 4-4-303. Investigation of application. Upon receipt of an a completed application for a license under this act code, accompanied by the necessary license fee and bond, the ~~board~~ department of revenue shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this act code and the rules and regulations promulgated by the ~~board~~ department are met and complied with."

Section 86. Section 4-408.1, R.C.M. 1947, is renumbered section 4-4-304, and is amended to read as follows:

"~~4-408.1~~ 4-4-304. Fingerprints required of licensees. All applicants for a Montana retail ~~liquor~~ all beverage or beer license, including corporate officers and managers, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license."

Section 87. Section 4-409.1, R.C.M. 1947, is renumbered section 4-4-106, and is amended to read as follows:

~~"4-409.1~~ 4-4-106. Special permits to sell ~~liquor~~ alcoholic beverages--application and issuance--fee. Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act, shall in the discretion of the ~~board~~ department of revenue, without notice or hearing as provided in section ~~4-407.1~~ 4-4-302, be entitled to a special permit to sell ~~liquor~~ all alcoholic beverages at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization, shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ten TWENTY dollars ~~(\$10.00)~~ (\$20).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the ~~board~~ department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year. ~~Such--post--or--lodge--must--have--either--a--retail--license--or--special--permit--to--sell--beer--before--being--entitled--to--a--special--permit--to--sell--liquor."~~

Section 88. Section 4-410, R.C.M. 1947, is renumbered

section 4-4-206, and is amended to read as follows:

~~"4-410~~ 4-4-206. Contents of license -- posting -- privilege -- transfer -- expiration. (1) Every license issued under this ~~act~~ code shall set forth the name of the person to whom issued, the location by street and number, or other appropriate specific description of location if no street address exists, of the premises where the business is to be carried on under said license, and such other information as the ~~board~~ department shall deem necessary. If the licensee is a partnership or if more than one person has any interest in the business operated under the license, the names of all persons in the partnership or interested in the business must appear on the license. Every license must be posted in a conspicuous place on the premises wherein the business authorized under the license is conducted and such license shall be exhibited upon request to any authorized representative of the ~~board~~ department or to any peace officer of the state of Montana.

(2) Any license issued under the provisions of this ~~act~~ code shall be considered a privilege personal to the licensee named in the license and shall be good until the expiration of the license, unless sooner revoked or suspended. A license may be transferred to the executor or administrator of the estate of any deceased licensee when such estate consists in whole or in part of the business of

1 selling liquor under a license and in such event the license
2 may descend or be disposed of with the business to which it
3 is applicable under appropriate probate proceedings.

4 (3) In the event of a major loss or damage to licensed
5 premises by unforeseen natural causes, or in case of
6 expiration of lease of the licensed premises, or in the
7 event of eviction or increase of rent by the landlord, in
8 case of rented, licensed premises, or in case of proposed
9 removal of license to premises as substantially suited for
10 the retail liquor business as the premises vacated, the
11 licensee may apply to the board department for a transfer of
12 the license to a different premises, the board department
13 may in its discretion permit a transfer in such cases if it
14 appears to the board department that such a transfer is
15 required to do justice to the licensee applying for the
16 transfer. The board department shall in no event, nor for
17 any cause, permit a transfer to a different premises where
18 the sanitary, health and service facilities are less
19 satisfactory than such facilities which exist or had existed
20 at the premises from which the transfer is proposed to be
21 made.

22 (4) Upon a bona fide sale of the business operated
23 under any license the license may be transferred to a
24 qualified purchaser. No transfer of any license as to
25 person or location shall be effective unless and until

1 approved by the board department and any licensee or
2 transferee or proposed transferee who operates or attempts
3 to operate under any supposedly transferred license prior to
4 the approval of such transfer by the board department,
5 endorsed upon the license in writing, shall be considered as
6 operating without a license and the license affected may be
7 revoked or suspended by the board department; HOWEVER, THE
8 DEPARTMENT MAY, WITHIN ITS DISCRETION PERMIT A QUALIFIED
9 PURCHASER TO OPERATE THE BUSINESS TO BE TRANSFERRED PENDING
10 FINAL APPROVAL, PROVIDING THE APPLICATION FOR TRANSFER HAS
11 BEEN FILED WITH THE DEPARTMENT. The-board-shall-not-in-any
12 event-permit-the-transfer-of-any-license-beyond-the-quota
13 area-within-which-such-license-was-originally-issued-any
14 such-license-which-is-not-within-a-quota-area-may-not-be
15 transferred-to-any-premises-within-a-quota-area.

16 (a) A license may be transferred to a new ownership
17 and to a location outside the quota area for which it was
18 originally issued only when the following criteria are met:

19 (i) the total number of all-beverages licenses in the
20 original quota area exceeded the quota for that area by at
21 least twenty-five percent (25%) in the most recent census;
22 and

23 (ii) the total number of all-beverages licenses in the
24 quota area to which the license would be transferred did not
25 exceed that area's quota by more than twenty-five percent

(25%) in the most recent census; and

(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.

(b) A license transferred between quota areas under this section may not be pledged as security, or MAY NOT be transferred, except for a transfer by inheritance upon the death of the licensee. ~~If the licensee is a corporation or a business entity other than a natural person, ownership interests in the licensee may not be pledged as security or transferred except by inheritance if the value of such ownership interests exceed the fair market value of the real property and inventory owned by the licensee.~~ A LICENSE TRANSFERRED BETWEEN QUOTA AREAS UNDER THIS SECTION MAY BE HELD ONLY BY NATURAL PERSONS. FOR THE PURPOSE OF THIS SECTION, NATURAL PERSONS SHALL NOT INCLUDE LIMITED PARTNERSHIPS OR OTHER BUSINESS ENTITIES OF ANY KIND IN WHICH EACH NATURAL PERSON IS NOT A FULL PARTICIPANT IN THE OWNERSHIP AND OPERATION OF THE BUSINESS AUTHORIZED BY THE LICENSE.

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon

application to and approval of the ~~board~~ department, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year."

Section 89. Section 4-411, R.C.M. 1947, is renumbered section 4-4-207 and is amended to read as follows:

"~~4-411~~ 4-4-207. Limit one license to person ~~beer licensee when required~~ -- business in name of licensee. No person shall be granted more than one all-beverages license in any year. ~~No person, club, or fraternal organization shall be entitled to a license under this act unless such person, club, or fraternal organization shall have a beer license issued under the laws of Montana.~~ No business may be carried on under any license issued under this chapter except in the name of the licensee."

Section 90. Section 4-412, R.C.M. 1947, is renumbered section 4-4-108, and is amended to read as follows:

"~~4-412~~ 4-4-108. ~~Persons disqualified for~~ license as privilege -- criteria for decision on application. ~~No license shall be issued by the board to~~

~~1. A person who has been convicted of being the keeper or is keeping a house of ill fame;~~

~~2. A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States;~~

3.---A person whose license issued under this act has been revoked for cause.

4.---A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.

5.---A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board.

6.---A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.

7.---A person who is not the owner and operator of the business.

A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) ~~the applicant is financially capable, with no ownership interest of his own or of any member of his immediate family~~ NEITHER THE APPLICANT NOR ANY MEMBER OF HIS IMMEDIATE FAMILY HAS AN OWNERSHIP INTEREST in any other establishment licensed under this chapter for all beverages

sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;

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

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

Section 91. Section 4-413, R.C.M. 1947, is renumbered section 4-3-306, and is amended to read as follows:

"4-413 4-3-306. Persons to whom ~~liquor~~ alcoholic beverage may not be sold or given. (1) No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any ~~liquor, beer or wine~~ alcoholic beverage to:

1. (a) Any person under the age of eighteen (18) years.

2. (b) Any intoxicated person or any person actually, apparently or obviously intoxicated.

3.---A habitual drunkard.

4.---An interdicted person.

5. (2) Any minor, or other person who knowingly

misrepresents his or her qualifications for the purpose of obtaining ~~liquor, beer or wine~~ an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-439 ~~94-5-610~~ provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of ~~liquor, beer or wine~~ an alcoholic beverage to any person in violation of any federal law."

Section 92. Section 4-415, R.C.M. 1947, is renumbered section 4-4-107, and is amended to read as follows:

"~~4-415 4-4-107. Restrictions--on-proximity-of-premises to-churches-and-schools. Proximity to churches and schools restricted. No--license--shall--be-granted-for-any-premises which-shall-be-on-the-same-street-or-avenue-and--within--six hundred-feet-of-a-building-occupied-exclusively-as-a-church, synagogue--or--other--place--of-worship,--or-school,--except-a commercially-operated-school,--the-measurements-to--be--taken in--a--straight-line-from-the-center-of-the-nearest-entrance of-such-school, church, synagogue or other place of--worship to--the-center-of-the-nearest-entrance-of-the-premises-to-be licensed, except, however, that no license shall--be--denied because--such--restriction--may--apply--to--any--premises-so located--which--are--maintained--as--a--bona--fide--hotel, restaurant,--railway--car, club or fraternal organization or society except similar places of business established and in~~

~~actual-operation-for-one-year-prior-to-the--passage--and approval--of--this-act.~~ A retail licensee may not extend or relocate his premises within six hundred (600) feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship, or as a school other than a commercially operated or post-secondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority. However, the department may renew a license for any establishment located in violation of this section if the establishment was either located on the site before the place of worship or school opened, or located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937."

Section 93. Section 4-416, R.C.M. 1947, is renumbered section 4-2-204, and is amended to read as follows:

"~~4-416 4-2-204. Board Department~~ to sell to licensees -- posted price. The board department is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this ~~act~~ code at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of

such liquor as fixed and determined by the ~~Montana-liquor control-board~~ department of revenue and in addition thereto an excise tax as in this act provided."

Section 94. Section 4-417, R.C.M. 1947, is renumbered section 4-1-403, and is amended to read as follows:

"~~4-417~~ 4-1-403. Excise liquor tax--collection. The ~~Montana-liquor-control-board~~ department of revenue is hereby authorized and directed to charge, receive and collect at the time of the sale and delivery of any liquor as authorized under any provision of the laws of the state of Montana an excise tax at the rate of sixteen per centum (16%) of the retail selling price on all liquor so sold and delivered. The Montana ~~liquor-control-board~~ department of revenue shall retain the amount of such excise tax received in a separate account and shall deposit with the state treasurer, to the credit of the general fund, such sums so collected and received not later than the tenth (10th) day of each and every month."

Section 95. Section 4-418, R.C.M. 1947, is renumbered section 4-2-205, and is amended to read as follows:

"~~4-418~~ 4-2-205. Duplicate invoices of sales required. The state liquor store shall upon each and every sale of liquor to any licensee, issue a duplicate invoice of the liquor purchased as provided by ~~said-board~~ the department, a copy of which shall be delivered to the licensee and one

copy retained at such store. The invoice shall show the date of purchase, name of employee making the sale, the quantity of each kind of liquor purchased, the price paid therefor, the name of the licensee and the number of the license, with such other information as may be required by the ~~board~~ department. The licensee shall keep and retain his duplicate invoice of all purchases made by him from the state liquor store, which shall at all times be subject to inspection by the duly authorized officers, agents and employees of the ~~board~~ department."

Section 96. Section 4-419, R.C.M. 1947, is renumbered section 4-6-102, and is amended to read as follows:

"~~4-419~~ 4-6-102. Sale of liquor not purchased from state store forbidden -- penalty. It shall be unlawful for any licensee to sell or keep for sale and/or have on his premises for any purpose whatever, any liquor except that purchased from the state liquor store, and any licensee found in possession of, or selling and keeping for sale, any liquor which was not purchased from a state liquor store, shall, upon conviction, be fined not less than five hundred dollars ~~(\$500.00)~~ (\$500) nor more than fifteen hundred dollars ~~(\$1500.00)~~ (\$1500), or by imprisonment for not less than three (3) months nor more than one (1) year, or both such fine and imprisonment, and if the ~~board~~ department shall be satisfied that any such liquor was knowingly sold

or kept for sale within the licensed premises by such licensee, or by his agents, servants or employees, it shall be mandatory that said ~~board department~~ immediately revoke the license of said licensee."

Section 97. Section 4-420, R.C.M. 1947, is renumbered section 4-4-407, and is amended to read as follows:

"~~4-420~~ 4-4-407. Penalty for sale of alcoholic ~~liquor~~ beverage without license. Any person, who has not been issued a license under this ~~act~~ code, who shall sell or keep for sale any alcoholic ~~liquor~~ beverage, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars ~~(\$1000.00)~~ (\$1000) nor more than five thousand dollars ~~(\$5,000.00)~~ (\$5,000), or be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment."

Section 98. Section 4-421, R.C.M. 1947, is renumbered section 4-3-307, and is amended to read as follows:

"~~4-421~~ 4-3-307. Sale of liquor at less than posted price forbidden. It shall be unlawful for any licensee under the provisions of this ~~act~~ code to resell any liquor purchased by such licensee from a state liquor store or the state of Montana for a sum less than the posted price established by the said store and paid by the licensee therefor."

Section 99. Section 4-422, R.C.M. 1947, is renumbered

section 4-1-305, and is amended to read as follows:

"~~4-422~~ 4-1-305. Employees of ~~board liquor division~~ not to deal in liquor. No member or employee of the ~~board liquor division of the department~~, including those engaged in the sale of liquor at the various state liquor stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, shareholder or otherwise, whether for his own benefit or in a fiduciary capacity for others."

Section 100. Section 4-423, R.C.M. 1947, is renumbered section 4-6-206, and is amended to read as follows:

"~~4-423~~ 4-6-206. Officers may seize illicit ~~liquor~~ alcoholic beverages -- forfeiture. Any sheriff, police officer, or ~~inspector~~ investigator appointed under this ~~act~~ code, who shall find any alcoholic ~~beverages, beverage liquor or moonshine which is~~ kept or held by any person for sale or other disposition in violation of this ~~act~~ code, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the ~~said liquor~~ alcoholic beverage and all packages containing the same shall be forfeited to the state of Montana, and in addition the person so violating the law shall be subject to the penalties herein prescribed."

1 Section 101. Section 4-428, R.C.M. 1947, is
2 renumbered section 4-6-204, and is amended to read as
3 follows:

4 "~~4-428~~ 4-6-204. Officers may examine premises. The
5 ~~board~~ department of revenue or any duly authorized
6 representative thereof, or the sheriff of any county, shall
7 have the right at any time to make an examination of the
8 premises of ~~such a retail~~ licensee as to whether the law of
9 Montana and the rules and regulations of the ~~said--board~~
10 department are being complied with, and shall also have a
11 right to inspect cars or aircraft of any ~~railway common~~
12 carrier system licensed under act this code."

13 Section 102. Section 4-429, R.C.M. 1947, is
14 renumbered section 4-4-405, and is amended to read as
15 follows:

16 "~~4-429~~ 4-4-405. Renewal of suspended licenses. After
17 suspension or revocation of a license the ~~board~~ department
18 shall have the power to renew the same if in its discretion
19 a proper showing therefor has been made."

20 Section 103. Section 4-430, R.C.M. 1947, is
21 renumbered section 4-4-406, and is amended to read as
22 follows:

23 "~~4-430~~ 4-4-406. City and county licenses--fees. The
24 city council of any incorporated town or city, or the county
25 commissioners outside of any incorporated town or city, may

1 provide for the issuance of licenses to persons to whom a
2 retail license has been issued under the provisions of this
3 ~~act code~~, and may fix license fees thereof, not to exceed a
4 sum equal to fifty per cent (50%) of the license fee
5 collected by the ~~board~~ department from such licensee under
6 this ~~act code~~."

7 Section 104. Section 4-439, R.C.M. 1947, is
8 renumbered section 4-6-404, and is amended to read as
9 follows:

10 "~~4-439~~ 4-6-404. Penalty for violating act--revocation
11 of license. Any person violating any of the provisions of
12 this ~~act code~~, shall upon conviction thereof, be deemed
13 guilty of a misdemeanor and punishable by such fine or
14 imprisonment, or both, as provided ~~by--law in section~~
15 95-2206.3, R.C.M. 1947, except as is herein otherwise
16 provided. If any ~~such retail~~ licensee is convicted of any
17 offense under this ~~act code~~ his license shall be immediately
18 revoked, or in the discretion of the ~~board~~ department
19 ~~suspended--temporarily--for--a--time--to--be--determined--by--the~~
20 board such other sanction imposed as may be authorized under
21 section 4-4-402. Further, if any person under the age of
22 eighteen (18) is convicted of an offense under this ~~act code~~
23 he shall be subject to a one hundred dollar (\$100) fine or
24 thirty (30) days in confinement. It shall be further
25 mandatory under the provisions of this ~~act code~~ that all

such licensees display in a prominent place in his premises a placard as issued by the board department stating fully the consequences for violations by persons under the age of eighteen (18) years of the provisions of this act code.

Any person who invites a person under the age of eighteen (18) years into a public place where ~~liquor~~ an alcoholic beverage is sold and treats, gives or purchases ~~liquor~~ an alcoholic beverage for such person, or permits such person in a public place where ~~liquor~~ an alcoholic beverage is sold to treat, give or purchase liquor for him, or holds out such person to be over the age of eighteen (18) years to the owner of the ~~liquor~~ establishment, or his or her employee or employees, shall be guilty of a misdemeanor."

Section 105. Section 4-440, R.C.M. 1947, is renumbered section 4-1-106, and is amended to read as follows:

"~~4-440~~ 4-1-106. Saving clause--scope of act code. If any clause, sentence, paragraph, section or any part of this act code shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act code. This act code shall apply to the Montana ~~liquor--control-board~~ department of revenue as now composed and existing, and to any board or commission or

other entity which may hereafter succeed the ~~above--said~~ board department."

Section 106. Section 4-507, R.C.M. 1947, is renumbered section 4-5-102, and is amended to read as follows:

"~~4-507~~ 4-5-102. Duties of the county clerk and recorder. Upon making application to the county clerk and recorder for an identification card, the applicant must apply in person before the county clerk and recorder, who shall ascertain and receive from the applicant:

1. The true and full name of the applicant;
2. The date of birth of the applicant, provided, however, it shall be within the discretion of the officer to require proof of the date of birth with a certified copy of his or her birth certificate;
3. Place of birth of the applicant;
4. The height and weight of the applicant;
5. The color of eyes and hair of the applicant; and
6. A Two, one and one-quarter inch (1 1/4") by one and one-half inch (1 1/2") photograph of the applicant which shall bear a true resemblance to the applicant. It shall be within the discretion of the clerk and recorder to refuse a photograph which does not present a true resemblance of the applicant. The second photograph is to be filed with the state."

1 Section 107. Section 4-508, R.C.M. 1947, is
2 renumbered section 4-5-103, and is amended to read as
3 follows:

4 "~~4-508~~ 4-5-103. County clerk and recorder to forward
5 application to the Montana ~~liquor-control-board~~ department
6 of revenue for issuance of identification card. The county
7 clerk and recorder shall forward the application, properly
8 filled in and authenticated, to the Montana ~~liquor-control~~
9 ~~board~~ department of revenue, and that ~~board~~ department shall
10 prepare an identification card upon a laminating machine.
11 The identification card shall set forth all the information
12 contained in the application, together with the photograph,
13 and shall be signed by the ~~chairman-of~~ director of the
14 Montana ~~liquor-control-board~~ department of revenue or his
15 designee."

16 Section 108. Section 4-509, R.C.M. 1947, is
17 renumbered section 4-5-104, and is amended to read as
18 follows:

19 "~~4-509~~ 4-5-104. Montana ~~liquor---control---board~~
20 department of revenue to furnish application forms to
21 county clerk and recorders. It shall be the duty of the
22 Montana ~~liquor--control--board~~ department of revenue to
23 prepare suitable application blanks and cause the same to be
24 distributed to the various county clerk and recorders."

25 Section 109. Section 4-510, R.C.M. 1947, is

1 renumbered section 4-5-105, and is amended to read as
2 follows:

3 "~~4-510~~ 4-5-105. Fee to be charged. The county clerk
4 and recorders shall charge and collect a fee of one dollar
5 ~~(61)~~ and fifty cents (\$1.50) from the applicant at the time
6 the application is prepared. ~~This--fee~~ One dollar (\$1)
7 thereof shall be transmitted to the Montana ~~liquor-control~~
8 ~~board~~ department of revenue along with the application and
9 shall be used to defray the cost of administering and
10 executing the provisions of this ~~act~~ code. Any surplus
11 shall revert to the general fund of the state of Montana.
12 The remaining fifty cents (\$.50) shall be paid into the
13 general fund of the county to defray the county's costs in
14 administering this program."

15 Section 110. There is a new section to be numbered
16 4-1-107, R.C.M. 1947, which reads as follows:

17 4-1-107. Definitions. As used in this code:

18 (1) "AGENCY AGREEMENT" MEANS AN AGREEMENT BETWEEN THE
19 DEPARTMENT AND A PERSON APPOINTED TO SELL LIQUOR AS A
20 COMMISSION MERCHANT, RATHER THAN AS AN EMPLOYEE.

21 ~~(1)~~ (2) "Alcohol" means ethyl alcohol, also called
22 ethanol or the hydrated oxide of ethyl.

23 ~~(2)~~ (3) "Alcoholic beverage" means a compound
24 produced and sold for human consumption as a drink that
25 contains more than one-half of one percent (0.5%) of alcohol

1 by volume.

2 ~~(3)~~--(4) "Beer" means a malt beverage containing not

3 more than seven percent (7%) of alcohol by weight.

4 ~~(4)~~--(5) "Brewer" means a person who produces malt

5 beverages.

6 ~~(5)~~--(6) "Department" means the Montana department of

7 revenue.

8 ~~(6)~~--(7) "Immediate family" means a spouse, dependent

9 children, or dependent parents.

10 ~~(7)~~--(8) "Industrial use" means a use described as

11 industrial use by the Federal Alcohol Administration Act and

12 the federal rules and regulations of 27 CFR.

13 ~~(8)~~--(9) "Liquor" means an alcoholic beverage except

14 beer.

15 ~~(9)~~--(10) "Malt beverage" means an alcoholic beverage

16 made by the fermentation of an infusion or decoction, or a

17 combination of both, in potable brewing water, of malted

18 barley with or without hops or their parts, or their

19 products, and with or without other malted cereals and with

20 or without the addition of unmalted or prepared cereals,

21 other carbohydrates or products prepared therefrom, and with

22 or without other wholesome products suitable for human food

23 consumption.

24 ~~(10)~~--(11) "Package" means a container or receptacle

25 used for holding an alcoholic beverage.

1 ~~(11)~~--(12) "Proof gallon" means a U. S. gallon of liquor

2 at sixty degrees on the Fahrenheit scale that contains fifty

3 percent (50%) of alcohol by volume.

4 ~~(12)~~--(13) "Public place" means a place, building, or

5 conveyance to which the public has or may be permitted to

6 have access and any place of public resort.

7 ~~(13)~~--(14) "Residence" means a building, part of a

8 building, or tent where a person resides, but does not

9 include any part of a building that is not actually and

10 exclusively used as a private residence.

11 ~~(14)~~--(15) "Rules and regulations" means rules and

12 regulations published by the department pursuant to this

13 act.

14 ~~(15)~~--(16) "State liquor facility" means a facility

15 owned or under control of the department for the purpose of

16 receiving, storing, transporting, or selling alcoholic

17 beverages.

18 ~~(16)~~--(17) "State liquor store" means a retail store

19 operated by the department in accordance with this code for

20 the purpose of selling distilled spirits and wines.

21 ~~(17)~~--(18) "Storage depot" means a building or structure

22 owned or operated by a brewer at any point in the state of

23 Montana, off and away from the premises of a brewery, and

24 which structure is equipped with refrigeration or cooling

25 apparatus for the storage of beer, and from which a brewer

1 may sell or distribute beer as permitted by this code.

2 ~~(18)~~-(19) "Warehouse" means a building or structure
3 owned or operated by a licensed wholesaler for the
4 receiving, storage and distribution of beer as permitted by
5 this code.

6 ~~(19)~~-(20) "Wine" means an alcoholic beverage made from
7 the normal alcoholic fermentation of the juice of sound,
8 ripe, fruit or other agricultural products without addition
9 or abstraction, except as may occur in the usual cellar
10 treatment of clarifying and aging and that contains not less
11 than seven percent (7%) nor more than twenty-four percent
12 (24%) of alcohol by volume. Wine may be ameliorated to
13 correct natural deficiencies, sweetened and fortified in
14 accordance with applicable federal regulations and the
15 customs and practices of the industry. Other alcoholic
16 beverages not defined as above but made in the manner of
17 wine, labeled and sold as wine in accordance with federal
18 regulations are also wine.

19 Section 111. There is a new section to be numbered
20 4-1-204, R.C.M. 1947, which reads as follows:

21 4-1-204. Health professions exemption. A physician,
22 dentist, veterinarian or pharmacist, acting within the scope
23 of his professional responsibility and license to practice,
24 who prescribes, prepares, or administers alcohol or
25 substances containing alcohol, and sells or charges a fee,

1 does not violate the prohibitions of this title.

2 Section 112. There is a new section to be numbered
3 4-1-206, R.C.M. 1947, which reads as follows:

4 4-1-206. Local option. The electors of a county may,
5 by approving an initiative as provided under Title 37,
6 chapter 3, R.C.M. 1947, prohibit the sale and consumption of
7 liquor, or of all alcoholic beverages, within the county.
8 If such initiative is presented to the board of county
9 commissioners, the board may not approve it but shall submit
10 the proposal to the people under section 37-301.

11 Section 113. There is a new section to be numbered
12 4-1-405, R.C.M. 1947, which reads as follows:

13 4-1-405. In addition to the annual license tax imposed
14 by section 4-4-401, a tax of three dollars (\$3) per barrel
15 of thirty-one (31) gallons is hereby levied and imposed on
16 each and every barrel of beer sold by any duly licensed
17 brewer who manufactures beer in the state of Montana, which
18 said barrelage tax shall be due at the end of each month and
19 shall be payable with the brewer's monthly return or
20 statement required to be made to the department under the
21 provisions of section 4-3-203.

22 Section 114. There is a new section to be numbered
23 4-4-109, R.C.M. 1947, which reads as follows:

24 4-4-109. Passenger carrier licenses. Common carriers
25 serving Montana may serve beer and liquor to passengers in

1 aircraft over or railroad cars in the state of Montana, upon
 2 the issuance by the department of revenue of a retail beer
 3 and liquor license for that purpose. Such licenses shall be
 4 issued on an annual basis to common carriers making
 5 application therefor, and shall be effective from July 1 of
 6 the current year to July 1 of the following year. They
 7 shall be issued upon payment by the applicant of an annual
 8 license fee in the sum of three hundred dollars (\$300);
 9 provided, that licenses shall be issued for the remainder of
 10 the fiscal year commencing July 1, 1968, upon payment of a
 11 license fee in the sum of one hundred fifty dollars (\$150).

12 Section 115. There is a new section to be numbered
 13 4-4-110, R.C.M. 1947, which reads as follows:

14 4-4-110. Payment of liquor taxes by passenger
 15 carriers. Every airline or railroad operating in the state
 16 of Montana and selling liquor purchased outside this state
 17 for consumption within this state shall pay to the Montana
 18 department of revenue the excise taxes and state markup
 19 which would be applicable to such liquor if purchased from
 20 the state liquor store.

21 The amount of such excise taxes and state markup
 22 payable shall be determined by multiplying the following
 23 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 From said product, the carrier shall subtract the
 6 amount of excise taxes and state markup on purchases of
 7 liquor made within this state.

8 Section 116. There is a new section to be numbered
 9 4-4-111, R.C.M. 1947, which reads as follows:

10 4-4-111. Other accounting methods -- forms. (1) The
 11 method provided in section 4-4-110 shall be presumed to
 12 determine fairly and correctly the liquor purchased outside
 13 this state and sold for consumption within this state. Any
 14 carrier aggrieved by the application of such method may
 15 petition the department for use of some other method.
 16 Thereupon, if the department finds that the application of
 17 such method will be unjust to the carrier, it may allow the
 18 use of the method so petitioned for by the airline or may
 19 use such other method as will fairly reflect the liquor
 20 purchased outside this state and served for consumption
 21 within this state.

22 (2) The department shall prescribe report forms which
 23 shall be used by the carriers in reporting their sales and
 24 computing their liability for excise taxes and markup.
 25 Report forms shall be filed and payment of excise taxes and

state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

Section 117. There is a new section to be numbered 4-6-202, R.C.M. 1947, which reads as follows:

4-6-202. Arrest, entry of complaint, and lawful search and seizure authorized. The department shall enforce the provisions of this code, ~~and may appoint certain of its investigators as peace officers for the purpose of enforcing this code. The powers of such persons under Title 95, R.C.M., 1947, are limited to violations of a provision of this code. Within these limits, a peace officer may arrest any person violating this code~~ AND FOR THIS PURPOSE AN INVESTIGATOR SHALL HAVE THE AUTHORITY TO ARREST ANY PERSON VIOLATING THIS CODE, may enter complaint before any court of competent jurisdiction, and may lawfully search for and seize for use as evidence any unlawful or unlawfully possessed liquor, beer, licenses or stamps AS IF SUCH INVESTIGATOR WERE A PEACE OFFICER, PROVIDED HE SHALL NOT BE AUTHORIZED TO CARRY A WEAPON MERELY BECAUSE OF THIS AUTHORITY. THE INVESTIGATORS, GIVEN THE ABOVE AUTHORITY, SHALL BE TRAINED TO MEET THE REQUIREMENTS OF THE POLICE OFFICERS STANDARDS OF TRAINING.

Section 118. There is a new section to be numbered

4-3-308, R.C.M. 1947, which reads as follows:

4-3-308. Refilling of liquor bottles prohibited. No person who sells, or offers for sale, liquor, nor the agent or employee of such person, may--

(1) place in any liquor bottle any liquor whatsoever other than those contained in such bottle at the time of stamping by the federal government; or

(2) possess any liquor bottle in which any liquor has been placed in violation of subsection (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

Section 119. Section 41-2004, R.C.M. 1947, is amended to read as follows:

"41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means ~~and---includes any alcoholic, spirituous,--vinous,--fermented,--malt-or-other-liquor,--which contains more than one per centum--(1%)--of alcohol by weight, but shall not mean or include beer as that term--is--defined in--the Montana Beer Act by subsection--(b)--of section 4-302, Revised Codes of Montana, 1947~~ beverage so defined in the Alcoholic Beverages Code.

(6) "Beer" means any beverage ~~obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any--similar--products,--in--drinkable--water, containing--not--more--than--four per centum--(4%)--alcohol by weight~~ so defined in the Alcoholic Beverages Code.

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods."

SECTION 120. SECTION 4-404, R.C.M. 1947, IS RENUMBERED 4-4-403, AND IS AMENDED TO READ AS FOLLOWS:

"4-404-4-4-403. License fee for retail sale of liquor

within and without cities and towns of designated populations--census of population. Each licensee licensed under ~~the provisions of--this--act~~ the quotas of section 4-4-202 shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), ~~two four~~ two hundred ~~(\$200.00)~~ dollars (\$400) per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred (\$300.00) dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~three five~~ three hundred ~~(\$300.00)~~ dollars (\$500) per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, ~~measured~~ measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~four six~~ four hundred fifty ~~(\$450.00)~~ dollars (\$650) per annum;

1 (d) For each license in incorporated cities with a
 2 population of ten thousand (10,000) or more, or within a
 3 distance of five (5) miles thereof, measured in a straight
 4 line from the nearest entrance of the premises to be
 5 licensed to the nearest boundary of such city, ~~six~~ eight
 6 hundred dollars ~~(\$600)~~ (\$800) per annum;

7 (e) For each railway system in the state of Montana,
 8 three hundred (\$300.00) dollars per annum;

9 (f) The distance of five (5) miles from the corporate
 10 limits of any incorporated cities and incorporated towns
 11 shall be measured in a straight line from the nearest
 12 entrance of the premises to be licensed to the nearest
 13 boundary of such city or town; and where the premises of the
 14 applicant to be licensed are situated within five (5) miles
 15 of the corporate boundaries of two (2) or more incorporated
 16 cities or incorporated towns of different populations the
 17 license chargeable by the larger incorporated city or
 18 incorporated town shall apply and be paid by the applicant;
 19 provided, however, that when the premises of the applicant
 20 to be licensed are situated within an incorporated town or
 21 incorporated city and any portion of said incorporated town
 22 or incorporated city be without said five (5) mile limit
 23 then the license fee chargeable by the smaller incorporated
 24 town or incorporated city shall apply and be paid by said
 25 applicant.

1 An applicant for the issuance of an original license to
 2 be located in areas described in subsection (d) of this
 3 section shall pay a one-time original license fee of twenty
 4 thousand dollars (\$20,000) for any such license issued. The
 5 said one-time license fee of twenty thousand dollars
 6 (\$20,000) shall not apply to any transfer or renewal of a
 7 license duly issued prior to July 1, 1974. All licenses,
 8 however, shall be subject to the annual renewal fee of ~~six~~
 9 eight hundred dollars ~~(\$600)~~.

10 The license fees herein provided for are exclusive of
 11 and in addition to other license fees chargeable in the
 12 state of Montana for the sale of liquor, beer and malt
 13 beverages.

14 The census taken under the direction of Congress of the
 15 United States in the year nineteen hundred and thirty, and
 16 every ten years thereafter, shall be the basis upon which
 17 the respective populations of said municipalities shall be
 18 determined, unless a direct enumeration of the inhabitants
 19 thereof be made by the state or municipal corporation, in
 20 which case such later direct enumeration shall constitute
 21 such basis, provided, however, that no census hereafter
 22 taken shall be such basis until it shall have been published
 23 under the authority under which the same shall be taken, and
 24 then its effect shall from the date of such publication be
 25 prospective only and provided, further, that none of the

1 provisions of this act shall be deemed to operate
2 retroactively."

3 Section 121. The following sections of the Revised
4 Codes of Montana 1947 are renumbered as follows: 4-114.1 is
5 renumbered 4-2-202; 4-114.2 is renumbered 4-2-203; 4-119 is
6 renumbered 4-2-102; 4-151 is renumbered 4-3-101; 4-169 is
7 renumbered 4-3-105; 4-170 is renumbered 4-3-103; 4-172 is
8 renumbered 4-6-105; 4-206 is renumbered 4-6-107; 4-207 is
9 renumbered 4-6-108; 4-241 is renumbered 4-1-402; 4-315 is
10 renumbered 4-3-205; 4-317.2 is renumbered 4-3-207; 4-317.3
11 is renumbered 4-3-208; 4-317.4 is renumbered 4-3-209;
12 4-317.5 is renumbered 4-3-210; 4-317.6 is renumbered
13 4-3-211; 4-322 is renumbered 4-3-215; 4-323 is renumbered
14 4-3-216; 4-324 is renumbered 4-1-404; 4-329 is renumbered
15 4-3-303; 4-403.1 is renumbered 4-4-205; 4-404 is renumbered
16 4-4-403; 4-408.2 is renumbered 4-4-305; 4-506 is renumbered
17 4-5-101; 4-512 is renumbered 4-5-106.

18 Section 122. Sections 4-102, 4-104, 4-105, 4-106,
19 4-110, 4-111, 4-115, 4-118, 4-134, 4-135, 4-136, 4-137,
20 4-138, 4-142, 4-143, 4-144, 4-145, 4-146, 4-147, 4-148,
21 4-149, 4-159, 4-163, 4-167, 4-173, 4-201, 4-202, 4-203,
22 4-204, 4-205, 4-221, 4-222, 4-223, 4-227, 4-228, 4-230,
23 4-232, 4-234, 4-235, 4-236, 4-237, 4-239, 4-302, 4-305,
24 4-306, 4-307, 4-312, 4-314, 4-317.8, 4-337, 4-339, 4-345,
25 4-350, 4-351, 4-352, 4-353, 4-354, 4-355, 4-356, 4-402,

1 4-405, 4-409, 4-414, 4-424, 4-425, 4-431, 4-432, 4-433,
2 4-434, 4-435, 4-436, 4-437, 4-438, 4-441, 4-501, 4-502,
3 4-503, 4-504, 4-505, 4-513, and 4-514, R.C.M. 1947, are
4 repealed.

-End-

SENATE BILL NO. 1

INTRODUCED BY TURNAGE, REGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECODIFY AND
GENERALLY REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS."

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

Section 1. Section 4-101, R.C.M. 1947, is renumbered
section 4-1-101, and is amended to read as follows:

~~"4-101 4-1-101.~~ Citation of State Liquor Control Act--
declaration of policy--subject matters of regulation under
act. This act title may be cited as the "State Liquor
Control Act of Montana" "Montana Alcoholic Beverage Code".
It is hereby declared to be the policy of the state of
Montana to effectuate and ensure the entire control of the
manufacture, sale and distribution of liquor within the
state of Montana as that term is defined in this code in
~~section 4-102, Revised Codes of Montana, 1947, as amended by~~
~~chapter 209, laws of the thirty-first legislative assembly~~
~~of Montana, in, and~~ subject to, the authority of the state
of Montana through the Montana liquor ~~control board~~
~~department of revenue, in accordance with the provisions of~~
~~the State Liquor Control Act of Montana (Title 4, Chapter 1,~~
~~sections 4-101 through 4-171, inclusive, Revised Codes of~~
~~Montana, 1947, as amended or supplemented) and in accordance~~

~~with the provisions of the Retail Liquor License Act (Title~~
~~4, Chapter 4, sections 4-401 through 4-441, inclusive,~~
~~Revised Codes of Montana, 1947, as amended or supplemented).~~

~~It is hereby declared to be the policy of the state of~~
~~Montana to effectuate and ensure that the control and~~
~~regulation by the state of Montana of the manufacture, sale~~
~~and distribution of beer, as that term is defined in the~~
~~Montana Beer Act (Title 4, Chapter 3, sections 4-301 through~~
~~4-356, inclusive, Revised Codes of Montana, 1947, as amended~~
~~or supplemented) and regulated thereby, and containing four~~
~~per centum (4%) of alcohol by weight or less, and the~~
~~incidents of such manufacture, sale and distribution of such~~
~~beer, shall continue subject to, and be effectuated~~
~~exclusively under, the provisions of the Montana Beer Act,~~
~~as amended or supplemented, and not under the provisions of~~
~~the State Liquor Control Act of Montana. The terms "beer"~~
~~and "malt liquor" whenever used as a subject of regulation~~
~~and control by and under the state liquor control act of~~
~~Montana shall refer to, and be construed as applicable only~~
~~to, beer, ale, porter, stout or other malt liquors~~
~~containing more than four per centum (4%) of alcohol by~~
~~weight, and such beer, ale, porter, stout and malt liquors~~
~~containing more than four per centum (4%) of alcohol by~~
~~weight, are hereby classified and defined as "liquor" and~~
~~shall be subject to regulation and control under the terms~~

~~of the State Liquor Control Act of Montana as amended or supplemented, and not under the provisions of the Montana Beer Act, as amended or supplemented. The said acts herein referred to shall be deemed This code is~~ an exercise of the police power of the state, in, and for the protection, of the welfare, health, peace, morals and safety of the people of the state and their provisions shall be construed for the accomplishment of such purposes."

Section 2. Section 4-103, R.C.M. 1947, is renumbered section 4-1-105, and is amended to read as follows:

"~~4-103 4-1-105.~~ Divisions of ~~act code.~~ This ~~act code~~ is divided into six ~~parts~~ chapters. ~~Part-II Chapter 1~~ relates to the ~~creation of a board authority of the department of revenue~~ to administer this act and the powers and functions of the ~~board department~~. ~~Part-III Chapter 2~~ relates to the establishment of state stores and the keeping and selling of liquors. ~~Part-III Chapter 3~~ relates to the ~~formation of "local option areas" and the holding of election therein~~ control of liquor, wine, and beer. ~~Part IV Chapter 4~~ relates to prohibitions, interdictions, penalties and procedure on prosecution and on appeal license administration. ~~Part-V Chapter 5~~ relates to property acquired by the board, and the financing and accounting by the board and application of the profits identification cards. ~~Part-VI Chapter 6~~ relates to general and

~~miscellaneous matters enforcement."~~

Section 3. Section 4-107, R.C.M. 1947, is renumbered section 4-1-301, and is amended to read as follows:

"~~4-107 4-1-301.~~ General powers and duties of the ~~board department~~. The ~~board department of revenue~~ shall have the powers and duties ~~herein specified and the administration of to administer~~ the State Liquor Control Act of Montana and the Montana Beer Code Alcoholic Beverage Code, including the general control, management and supervision of all state liquor stores, ~~but the board is authorized to delegate to the state liquor administrator the general control, management and supervision of all state liquor stores, including the power to purchase supplies for same and the power to hire and discharge employees of the board, subject, however, to such regulations and restrictions as the board may impose upon the state liquor administrator."~~

Section 4. Section 4-109, R.C.M. 1947, is renumbered section 4-1-307, and is amended to read as follows:

"~~4-109 4-1-307.~~ Principal office of ~~board department of revenue~~. The principal office of the ~~board department of revenue~~ shall be in the city of Helena."

Section 5. Section 4-112, R.C.M. 1947, is renumbered section 4-1-302, and is amended to read as follows:

"~~4-112 4-1-302.~~ Functions, powers and duties of ~~board department of revenue~~. The ~~board department of revenue~~ shall

1 have the following functions, duties and powers:

2 (a) To buy, import, and have in its possession for
3 sale, and sell, liquors, in the manner set forth in this ~~act~~
4 code;

5 (b) To control the possession, sale and delivery of
6 liquors in accordance with the provisions of this ~~act~~ code;

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

10 (d) To lease, furnish and equip any building or land
11 required for the operation of this ~~act~~ code;

12 (e) To buy or lease all plant and equipment it may
13 consider necessary and useful in carrying into effect the
14 objects and purposes of this ~~act~~ code;

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

23 (g) To determine the nature, form and capacity of all
24 packages to be used for containing liquor kept or sold under
25 this ~~act~~ code; ~~provided that all spirituous and vinous~~

1 ~~liquors shall be purchased and sold only in bottled~~
2 ~~containers in the original packages, and not in barrels or~~
3 ~~bulk, it being the intent and purpose of this act to prevent~~
4 ~~the rectification or dilution of such liquors;~~

5 (h) To grant and issue licenses under and in pursuance
6 to this ~~act~~ code;

7 (i) Without in any way limiting, or being limited by
8 the foregoing, to do all such things as are deemed necessary
9 or advisable by the ~~board~~ department for the purpose of
10 carrying into effect the provisions of this ~~act~~ code, or the
11 regulations made thereunder."

12 Section 6. Section 4-113, R.C.M. 1947, is renumbered
13 section 4-1-303, and is amended to read as follows:

14 "~~4-113 4-1-303~~. Regulations may be made by ~~board~~
15 department of revenue--scope of regulations. (1) The ~~board~~
16 department of revenue may make such regulations, not
17 inconsistent with this ~~act~~ code, as to the ~~board~~ department
18 of revenue ~~seem~~ necessary, for carrying out the provisions
19 of this ~~act~~ code, and for the efficient administration
20 thereof.

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

(a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the ~~officers, clerks and~~ ~~separate employees~~ of the board liquor division, and regulating their conduct while in the discharge of their duties;

(c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this ~~act code~~;

(d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store;

(e) Prescribing, subject to this ~~act code~~, the ~~days~~ and hours during which state liquor stores ~~and hotels, and~~ ~~clubs retail establishments~~ licensed to sell beer under this ~~act~~ shall be kept open for the sale of ~~liquor~~ alcoholic beverages;

(f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of liquor kept for sale under this ~~act code~~;

(g) Prescribing an official ~~serially numbered~~ seal which shall be attached to every package of liquor sold or sealed under this ~~act code~~;

(h) Prescribing forms to be used for the purpose of

this ~~act code~~ or of the regulations made thereunder, and the terms and conditions in permits and licenses issued and granted under this ~~act code~~;

~~(i) Prescribing the kinds and quantities of liquor which may be purchased under permits of any class, including the quantity which may be purchased at any one time or within any specified period of time;~~

~~(j) (i)~~ Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

~~(k) (i)~~ Prescribing the manner of giving and serving notices required by this ~~act code~~ or the regulations thereunder;

~~(l) (k)~~ Prescribing the fees payable in respect of permits and licenses issued under this ~~act code~~ for which no fees are prescribed in this ~~act code~~, and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;

~~(m) Prescribing, subject to the provisions of this act, any advertisement of the application, if required by the board and the conditions and qualifications necessary for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, and the number of licensed clubs in any municipality, and providing for the inspection of clubs;~~

(a) (1) Prescribing, subject to the provisions of this act code, the conditions and qualifications necessary for the obtaining of a liquor or beer license, and the books and records to be kept and the returns to be made by the licensees and ~~the number of such licensed premises in any municipality~~ and providing for the inspection of such licensed premises;

(a) (2) Specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

(a) (3) Specifying and regulating the time and periods when, and the manner, methods and means by which, vendors and brewers shall deliver liquor under this act code, and the time and periods when, and the manner, methods and means by which liquor, under this act code, may be lawfully conveyed or carried;

(a) (4) Governing the conduct, management and equipment of any premises licensed to sell liquor or beer under this act code;

~~(a) (5) Subject to this act, to make regulations respecting the sale and consumption of beer in a club, holding a club license;~~

(a) (6) Providing for the imposition and collection of ~~the tax to be collected or levied under section 4-147 [4-347],~~ taxes and making regulations respecting returns, to

~~be made by a brewer, and respecting the accounting and payment, by a brewer to the board, department of revenue of the tax, taxes to be collected by him under said section 4-147 [4-347].~~

(3) Whenever it is provided in this act code that any act, matter or thing, may be done, if permitted or authorized by the regulations, or may be done in accordance with the regulations or as provided by the regulations, the ~~board department of revenue~~, subject to the restrictions set out in subsection (1) hereof, shall have the power to make regulations respecting such act, matter or thing."

Section 7. Section 4-114, R.C.M. 1947, is renumbered section 4-2-101, and is amended to read as follows:

"4-114 4-2-101. Establishment of state liquor stores--hours--kinds and prices of liquor. The ~~board department of revenue~~ shall establish and maintain at the county seats and such other places as the ~~board department~~ deems advisable, one or more stores to be known as "state liquor stores," for the sale of liquor in accordance with the provisions of this act code and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the store to be classified during the immediate past fiscal year; stores

1 shall be classified as follows: stores having done a
 2 business of four hundred and fifty thousand dollars
 3 (\$450,000) or over during the immediate past fiscal year
 4 shall be "Class A" stores; stores having done a business of
 5 one hundred and forty thousand dollars (\$140,000) and up to
 6 four hundred and fifty thousand dollars (\$450,000) during
 7 the immediate past fiscal year shall be "Class B" stores;
 8 and all stores having done a business of less than one
 9 hundred and forty thousand dollars (\$140,000) during the
 10 immediate past fiscal year shall be "Class C" stores; in
 11 opening new stores the ~~board~~ department shall estimate the
 12 volume of business which said store will do the first year
 13 and classify said store according to the estimate of
 14 business; the ~~board~~ department shall ~~contract~~ ENTER INTO AN
 15 AGENCY AGREEMENT or employ the necessary help to operate
 16 said stores and shall designate the duties to be performed
 17 by the ~~agent~~ or employees; the ~~board~~ department may, from
 18 time to time, fix the prices at which the various classes,
 19 varieties and brands of liquor may be sold, and prices shall
 20 be the same at all state stores. Such state liquor stores
 21 shall be and remain open during such period of the day as
 22 the ~~board~~ department shall deem advisable, provided,
 23 however, that such stores shall be closed for the
 24 transaction of business between the close of normal business
 25 Saturday p.m. ~~through~~ up to the opening of normal business

1 Tuesday a.m. as set by ~~board~~ department regulation and
 2 including legal holidays ~~and election days.~~"

3 Section 8. Section 4-116, R.C.M. 1947, is renumbered
 4 section 4-2-105, and is amended to read as follows:

5 "~~4-116 4-2-105.~~ Provisions concerning sale of liquor
 6 ~~and beer by vendors.~~ A ~~vendor~~ store manager may sell to any
 7 person such liquor as that person is entitled to purchase in
 8 conformity with the provisions of this ~~act~~ code and the
 9 regulations made thereunder, provided that no delivery shall
 10 take place until the purchaser has paid the purchase price."

11 Section 9. Section 4-117, R.C.M. 1947, is renumbered
 12 section 4-2-201, and is amended to read as follows:

13 "~~4-117 4-2-201.~~ No reduction for quantity sales of
 14 liquor. No reductions shall be made by the ~~Montana liquor~~
 15 ~~control-board~~ department for sales of liquor in quantity."

16 Section 10. Section 4-120, R.C.M. 1947, is renumbered
 17 section 4-2-107, and is amended to read as follows:

18 "~~4-120 4-2-107.~~ Liquor not to be consumed on premises
 19 of state store. No officer, clerk or servant of the ~~board~~
 20 department, employed in the state store, shall allow any
 21 liquor to be consumed on the premises of a state store, nor
 22 shall any person consume any liquor on such premises."

23 Section 11. Section 4-121, R.C.M. 1947, is renumbered
 24 section 4-2-104, and is amended to read as follows:

25 "~~4-121 4-2-104.~~ When sales of liquor forbidden. No

1 sale or delivery of liquor shall be made on or from the
2 premises of any state liquor store, nor shall any store be
3 open for the sale of liquor

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

5 ~~(b) on any day on which polling takes place at any~~
6 ~~national or state election held in the electoral district in~~
7 ~~which the store is situated;~~

8 ~~(c) on any day on which polling takes place at any~~
9 ~~municipal election held in the municipality in which the~~
10 ~~store is situated;~~

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

13 Section 12. Section 4-122, R.C.M. 1947, is renumbered
14 section 4-2-103, and is amended to read as follows:

15 "4-122 ~~4-2-103~~. Conveyance of liquors--opening liquor
16 during transit forbidden. It shall be lawful to carry or
17 convey liquor to any state store, and to and from any
18 warehouse or depot established by the board department for
19 the purposes of this act code, and when permitted so to do
20 by this act code and the regulations made thereunder, and in
21 accordance therewith, it shall be lawful for any common
22 carrier, or other person, to carry or convey liquor sold by
23 a vendor from a state store, or beer, when lawfully sold by
24 a brewer, from the premises wherein such beer was
25 manufactured, or from premises where the beer may be

1 lawfully kept and sold, to any place to which the same may
2 be lawfully delivered under this act code, and the
3 regulations made thereunder;

4 Provided that no such common carrier or any other
5 person, shall open, or break, or allow to be opened or
6 broken, any package or vessel containing liquor, or drink or
7 use, or allow to be drunk or used, any liquor therefrom,
8 while being so carried or conveyed."

9 Section 13. Section 4-139, R.C.M. 1947, is renumbered
10 section 4-1-205, and is amended to read as follows:

11 "~~4-139 4-1-205. Hospitals and sanitariums~~ Licensed
12 hospital or health care facility -- restrictions --
13 violations. Any person in charge of an institution regularly
14 conducted as a ~~hospital or sanitarium for the care of~~
15 ~~persons in ill health, or as a home devoted exclusively to~~
16 ~~the care of aged people~~ licensed / hospital or health care
17 facility, may administer liquor purchased by him to any
18 patient or inmate of the institution ~~who is in need of the~~
19 ~~care, either by way of external application or otherwise for~~
20 ~~emergency medical purposes~~, and may charge for the liquor so
21 administered; but no liquor shall be administered by any
22 person under this section except to bona fide patients or
23 inmates of the institution of which he is in charge ~~and in~~
24 ~~cases of actual need~~, and every person in charge of an
25 institution who administers liquor in evasion or violation

1 of this ~~act code~~ shall be guilty of an offense against this
2 ~~act code~~."

3 Section 14. Section 4-140, R.C.M. 1947, is renumbered
4 section 4-1-202, and is amended to read as follows:

5 "~~4-140 4-1-202~~. Application of ~~act code~~. (1) Nothing
6 in this ~~act code~~ shall prevent any brewer, distiller, or
7 other person duly licensed, under the provisions of any
8 statute of the United States of America, for the manufacture
9 of liquor, from having or keeping liquor in a place and in
10 the manner authorized by or under any such statute.

11 It is hereby declared to be the policy of the state of
12 Montana that the manufacture of liquor including the
13 distillation, rectification, bottling and processing as
14 these terms are defined under the provisions of the laws of
15 the United States shall be authorized and permitted by any
16 brewer, distiller, rectifier or other person duly licensed
17 under any provision of any statute of the United States of
18 America in a place and in the manner authorized by or under
19 any statute of the United States provided the Montana state
20 ~~liquor-control-board department of revenue~~ may make such
21 regulations as the ~~board-deem department deems~~ necessary
22 with respect thereto, not inconsistent with this ~~act code~~,
23 or with the statutes of the United States of America or
24 regulations issued under the provisions of the federal
25 Alcohol Administration Act, title 27, United States Code

1 sections 201 through 212 inclusive or regulations issued
2 under the provisions of the Internal Revenue Code, title 26,
3 United States Code, sections 5001 through ~~section~~ 5693,
4 inclusive.

5 (2) Nothing in this ~~act code~~ shall prevent--

6 (a) The sale of liquor by any person to the ~~board~~
7 ~~department~~;

8 (b) The purchase, importation and sale of liquor by
9 the ~~board department~~ for the purposes of and in accordance
10 with this ~~act code~~."

11 Section 15. Section 4-141, R.C.M. 1947, is renumbered
12 section 4-1-203, and is amended to read as follows:

13 "~~4-141 4-1-203~~. Preparations not subject to ~~act code~~.

14 (1) Subject to the provisions of this section, nothing in
15 this ~~act code~~ shall, by reason only that such preparation
16 contains alcohol, prevent the manufacture, sale, purchase or
17 consumption--

18 (a) of any extract, essence or tincture or other
19 preparation containing alcohol, which is prepared according
20 to a formula of the United States Pharmacopoeia, or
21 according to a formula approved of by the ~~board department~~;
22 or

23 (b) of any proprietary or patent medicine prepared
24 according to a formula approved of by the ~~board department~~.

25 (2) The ~~board department~~, if of opinion that any such

proprietary or patent medicine, extract, essence, tincture or preparation which contains alcohol, or any other preparation of a solid, semisolid or liquid nature containing alcohol which, or any extract from which, can be used as a beverage or as the ingredient of any beverage, may prohibit the sale thereof by retail within the state, or the possession of the same for sale by retail within the state, except by a state liquor store, or by persons duly licensed by the ~~board department~~ to keep and sell the same by retail in accordance with this act and the regulations made thereunder.

(3) The ~~board department~~ shall notify the manufacturer or vendor of such proprietary or patent medicine, extract, essence, tincture or preparation, of the said prohibition and from and after the date of such notification any person within the state selling or keeping for sale any such proprietary or patent medicine, extract, essence, tincture or preparation so prohibited as aforesaid shall be guilty of an offense under this ~~act code~~."

Section 16. Section 4-150, R.C.M. 1947, is renumbered section 4-1-201, and is amended to read as follows:

~~"4-150 4-1-201. Sale of liquor, unlawful, when foreign substance in liquor forbidden~~ possession of liquor, when unlawful. (1) Except as provided by this ~~act~~ code, no person shall, within the state, by himself, his

clerk, servant, or agent, expose or keep for sale, or directly or indirectly or upon any pretense, or upon any device, sell, or offer to sell, or in consideration of the purchase or transfer of any property, or for any other consideration, or at the time of the transfer of any property, give to any other person any liquor.

~~(2) No person shall have, keep or sell any beer, or malt liquor, to which has been added any foreign substance.~~

~~(3) (2) No person shall have or keep any liquor within the state which has not been purchased from a the state vendor of the Montana liquor control board or from a druggist authorized to sell the same; provided, however, that nothing in this act code shall prohibit any person entering this state from any other state, or from any foreign country, from having in his possession not to exceed one (1) three (3) wine gallon gallons of alcoholic liquor or beer, which liquor or beer shall have been purchased in another state or foreign country but no person claiming to have so entered the state, shall at any time, have in his possession more than one (1) three (3) wine gallon gallons of intoxicating liquor which shall not have been purchased from a state liquor store. This subsection shall not apply to the board department or to the keeping or having of liquor by brewers, distillers and other persons duly licensed by the United States for the manufacture of such~~

liquor; nor to the keeping or having of any proprietary or patent medicines or of any extracts, essences, tinctures or preparations where such having and keeping is authorized by this ~~act~~ code.

~~(4)~~ ~~(3)~~ Nothing contained in this section shall apply to the possession by a sheriff or his bailiff of liquor seized under execution or other judicial or extra-judicial process nor to sales under executions or other judicial or extra-judicial process to the board department, or in the case of beer to a brewer, beer licensee, club licensee or canteen licensee."

Section 17. Section 4-152, R.C.M. 1947, is renumbered section 4-2-105, and is amended to read as follows:

"~~4-152~~ 4-2-105. Place and time of selling liquor. No ~~vendor~~ store manager, and no person acting as the clerk or servant of or in any capacity for any ~~vendor~~ manager, shall sell liquor in any other place or at any other time or otherwise than as authorized by this ~~act~~ code and the regulations."

Section 18. Section 4-153, R.C.M. 1947, is renumbered section 4-1-304, and is amended to read as follows:

"~~4-153~~ 4-1-304. ~~Board members~~ Liquor division ~~employees~~ not to be interested in liquor sales—unlawful to give or receive gift, commission or remuneration. (1) No ~~member officer~~ or employee of the board liquor division

shall be directly or indirectly interested or engaged in any other business or undertaking dealing in liquor, whether as owner, part owner, partner, member of syndicate, shareholder, agent or employee, and whether for his own benefit or in a fiduciary capacity for some other person.

(2) No member or employee of the board division or any employee of the state shall solicit or receive directly or indirectly any commission, remuneration or gift whatsoever from any person or corporation having sold, selling or offering liquor for sale to the state or board division in pursuance of this ~~act~~ code.

(3) No person selling or offering for sale to, or purchasing liquor from, the state ~~or the board liquor division~~, shall either directly or indirectly offer to pay any commission, profit or remuneration, or make any gift to any member or employee of the board division or to any employee of the state, or to anyone on behalf of such member or employee.

(4) The prohibition contained in subsection (3) of this section does not prohibit the board division from receiving samples of liquor for the purpose of chemical testing, subject to the following limitations:

(a) Each manufacturer, distiller, compounder, rectifier, importer, or wholesale distributor, or any other person, firm, or corporation proposing to sell any

spirituous liquors to the Montana liquor ~~control-board~~
~~division~~ shall submit, without cost to the ~~board division~~
 prior to the original purchase, an analysis of each brand
 and may submit a representative sample not exceeding
 twenty-five (25) fluid ounces of such merchandise to the
 board.

(b) It shall be the duty of the ~~board division~~, when a
 brand of liquor has been accepted for testing by the ~~board~~
~~division~~, to forward the sample, unopened and in its
 entirety, to a qualified chemical laboratory for analysis.

(c) The ~~board division~~ shall maintain written records
 of all samples received; such records shall show the brand
 name, amount and from whom received, date received, the
 laboratory or chemist to whom forwarded, the ~~board's~~
~~division's~~ action on the brand, and the person to whom
 delivered or other final disposition of the sample.

(5) No liquor, wine, or other spirituous beverage
 shall be withdrawn from the regular warehouse inventory or
 from the state liquor stores of the Montana liquor ~~control~~
~~board division~~, for any purpose whatsoever other than by
 sale at the prevailing state retail prices, or for
 destroying damaged or defective merchandise. The ~~board~~
~~division~~ shall maintain a written record including the type,
 brand, and container size; number of bottles or other units;
 signatures of witnesses; and method of destruction or other

disposition of damaged or defective warehouse or state store
 merchandise."

Section 19. Section 4-154, R.C.M. 1947, is renumbered
 section 4-6-101, and is amended to read as follows:

"~~4-154 4-6-101~~. Transfer of ~~liquor~~ alcoholic beverages
 except as provided by ~~act~~ code unlawful. Except as provided
 in this ~~act~~ code, no person shall, within the state, by
 himself, his clerk, servant, or agent, attempt to purchase,
 or directly or indirectly or upon any pretense or upon any
 device, purchase, or in consideration of the sale or
 transfer of any property, or for any other consideration, or
 at the time of the transfer of any property, take or accept
 from any other person any ~~liquor~~ alcoholic beverage."

Section 20. Section 4-156, R.C.M. 1947, is renumbered
 section 4-6-106, and is amended to read as follows:

"~~4-156 4-6-106~~. Consumption of ~~liquor~~ alcoholic
beverage on druggists' premises prohibited. No person,
 within the state of Montana, shall consume any ~~liquor~~
alcoholic beverage on any premises where ~~liquor~~ an alcoholic
beverage is kept for sale by a druggist, nor shall any
 druggist permit any ~~liquor~~ alcoholic beverage to be consumed
 on such premises."

Section 21. Section 4-158, R.C.M. 1947, is renumbered
 section 4-3-102, and is amended to read as follows:

"~~4-158 4-3-102~~. Liquor container must have been sealed

with official seal ~~powers and duties of peace officers.~~

~~(1) Except in the case of--~~

(a) liquor imported by the state, or by the ~~board~~
~~department~~; or

(b) liquor had and kept by a person, and in a place and
manner referred to in section ~~4-440~~ 4-1-202; or

~~(c) beer and malt liquor, lawfully had or kept under~~
~~this act code~~; or

(d) any liquor kept for sale by a druggist under
~~section 4-434 this code~~ no liquor shall be kept or had by
any person within the state unless the package, not
including a decanter or other receptacle containing the
liquor for immediate consumption, in which the liquor is
contained has, while containing that liquor, been sealed
with the official seal prescribed under this act code.

~~(2) Any inspector or peace officer who finds liquor,~~
~~which he has reasonable cause to believe is had or kept by~~
~~any person in violation of the provisions of this act, may~~
~~without warrant, forthwith seize and remove the same and the~~
~~packages in which the liquor is kept, and upon conviction of~~
~~the person for a violation of any provision of this section~~
~~the liquor and all packages containing the same shall, in~~
~~addition to any other penalty prescribed by this act, ipso~~
~~facto be forfeited to the state of Montana."~~

Section 22. There is a new section to be numbered

4-6-205, R.C.M. 1947, which reads as follows:

4-6-205. Unlawful alcoholic beverage -- seizure --
forfeiture. Any investigator or peace officer who finds an
alcoholic beverage, which he has reasonable cause to believe
is had or kept by any person in violation of the provisions
of this code, may forthwith seize and remove the same and
the packages in which the alcoholic beverage is kept, and
upon conviction of the person for a violation of any
provision of this section the alcoholic beverage and all
packages containing the same shall, in addition to any other
penalty prescribed by this code, ipso facto be forfeited to
the state of Montana.

Section 23. Section 4-160, R.C.M. 1947, is renumbered
section 4-6-103, and is amended to read as follows:

~~"4-160 4-6-103. Sales to intoxicated persons providing~~
~~alcoholic beverage~~ prohibited. (1) No ~~wearer~~ store manager,
~~beer retail licensee, or club licensee,~~ nor any employee of
~~a wearer store manager, beer or retail licensee, or club~~
~~licensee, shall may~~ sell any liquor alcoholic beverage, or
permit any liquor alcoholic beverage to be sold, to any
person apparently under the influence of ~~liquor~~ an alcoholic
beverage.

~~(2) No person may give an alcoholic beverage to a~~
~~person apparently under the influence of alcohol."~~

Section 24. Section 4-161, R.C.M. 1947, is renumbered

section 4-6-104, and is amended to read as follows:

"~~4-464~~ ~~4-6-104~~. Age limit for sale of ~~liquor~~ alcoholic beverages. Except in the case of ~~liquor~~ an alcoholic beverage given to a person under the age of eighteen (18) years by his parent or guardian for beverage or medicinal purposes, or administered to him by his physician or dentist for medicinal purposes, or sold to him by a vendor or druggist upon the prescription of a physician, no person shall sell, give, or otherwise supply ~~liquor~~ an alcoholic beverage to any person under the age of eighteen (18) years, or permit any person under that age to consume ~~liquor~~ an alcoholic beverage."

Section 25. Section 4-208, R.C.M. 1947, is renumbered section 4-6-203, and is amended to read as follows:

"~~4-208~~ ~~4-6-203~~. Search warrants—issuance. ~~(4)~~ Upon information on oath by any ~~inspector~~ investigator appointed under this ~~act~~ code or by any peace officer showing reasonable cause to believe that ~~liquor~~ is alcoholic beverages are unlawfully kept or had, or kept or had for unlawful purposes, in any building or premises, it shall be lawful for any ~~justice court~~ by warrant ~~under his hand~~ to authorize and empower the ~~inspector~~ investigator or peace officer, or any other person named therein, to enter and search the building or premises and every part thereof; and for that purpose to break open any door, lock, or fastening

of the building or premises or any part thereof, or any closet, cupboard, box, or other receptacle therein which might contain ~~liquor~~ alcoholic beverages."

Section 26. Section 4-209, R.C.M. 1947, is renumbered section 4-6-207, and is amended to read as follows:

"~~4-209~~ ~~4-6-207~~. Seizure of ~~liquor~~ alcoholic beverage and conveyance—~~forfeiture~~ of conveyance and ~~liquor~~ alcoholic beverage to state. Whenever an ~~inspector~~ investigator or any peace officer in making or attempting to make a search under and in pursuance of authority of law, shall find in any motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance of any description ~~liquor~~ an alcoholic beverage which is unlawfully kept or had, or kept or held for unlawful purposes contrary to the provisions of this ~~act~~ code, he may forthwith seize the ~~liquor~~ alcoholic beverage and packages in which the same is contained, and the motor vehicle, motor car, automobile, vessel, boat, canoe or conveyance in which ~~such liquor~~ the alcoholic beverage is found; and upon the conviction of the occupant or person in charge of the vehicle, motor car, automobile, vessel, boat, canoe or conveyance, or of any other person, for having or keeping such ~~liquors~~ alcoholic beverages contrary to any of the provisions of this ~~act~~ code in any such vehicle, motor car, automobile, vessel, boat, canoe or conveyance, the court in which the conviction of

any such person is had may, in addition to the sentence imposed under authority of law, declare the ~~liquor~~ alcoholic beverage or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana."

Section 27. Section 4-210, R.C.M. 1947, is renumbered section 4-6-208, and is amended to read as follows:

"~~4-210~~ 4-6-208. Force may be used in seizure of ~~liquor~~ alcoholic beverages, when--retention of seized ~~liquor~~ alcoholic beverage--forfeiture--hearing. (1) Where ~~liquor~~ alcoholic beverage is found by any ~~inspector~~ investigator or peace officer on any premises or in any place in such quantities as to satisfy the ~~inspector~~ investigator or peace officer that such ~~liquor~~ alcoholic beverage is being had or kept contrary to any of the provisions of this ~~act~~ code, it shall be lawful for the ~~inspector~~ investigator or peace officer to forthwith seize and remove, by force if necessary, any ~~liquor~~ alcoholic beverage so found, and the packages in which the ~~liquor~~ alcoholic beverage was had or kept and immediately turn said ~~liquor~~ alcoholic beverage over to the Montana ~~liquor--control--board~~ department of revenue.

(2) The Montana ~~liquor--control--board~~ department of revenue shall commence an action in the district court of the county in which the ~~liquor~~ alcoholic beverage is found and seized against said ~~liquor~~ alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The ~~said liquor~~ alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana ~~liquor--control--board~~ department of revenue claims the right to the possession of ~~said liquor~~ the alcoholic beverage and shall demand that all persons who claim any right to the possession of ~~said liquor~~ the alcoholic beverage shall show the nature of their claim or claims and that the court declare ~~said liquor~~ the alcoholic beverage contraband and that the court order ~~said liquor~~ alcoholic beverage be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where ~~said liquor~~ the alcoholic beverage was seized if a newspaper is published in said county.

(5) In all actions brought under this ~~act~~ code, proof of the absence of the official seal of the Montana ~~liquor control board department of revenue~~ upon the bottle, jug, package, container or containers of ~~such liquor~~ an alcoholic beverage on which a seal is required shall be prima facie evidence that ~~said liquor~~ the alcoholic beverage is contraband liquor and prima facie evidence of unlawful possession thereof in the defendants and each of them and in all other persons excepting the Montana ~~liquor control board department of revenue~~, and the court shall order all such ~~liquor alcoholic beverage~~ contraband and forfeited to the state of Montana."

Section 28. Section 4-211, R.C.M. 1947, is renumbered section 4-6-209, and is amended to read as follows:

"~~4-211 4-6-209~~. Disposal of forfeited ~~liquor alcoholic beverage~~—report by officers of seizure. (1) In every case in which a court makes any order for the forfeiture of ~~liquor alcoholic beverages~~ under any of the provisions of this act, and in every case in which any claimant to ~~liquor an alcoholic beverage~~ under the provisions of section ~~4-210 4-6-207~~, fails to establish his claim and right thereto, the ~~liquor alcoholic beverage~~ in question and the packages in which the ~~liquor alcoholic beverage~~ is kept shall forthwith be delivered to the ~~board department~~. The ~~board department~~ shall thereupon, determine the market value of all forfeited

~~liquor alcoholic beverage~~ which is found to be suitable for sale in the state liquor stores, and the ~~board department~~ shall pay the amount so determined to the state treasurer, after deducting therefrom the expenses necessarily incurred by the ~~board department~~ for transporting the forfeited ~~liquor alcoholic beverage~~ to the state liquor warehouses, and the ~~liquor alcoholic beverage~~ suitable for sale shall be taken into stock by the ~~board department~~ and sold under the provisions of this ~~act~~ code. All forfeited ~~liquor alcoholic beverage~~ which is found to be unsuitable for sale in state liquor stores shall be destroyed under competent supervision as may from time to time be directed by the ~~board department~~.

(2) In every case in which ~~liquor an alcoholic beverage~~ is seized by a peace officer it shall be his duty to forthwith make or cause to be made to the ~~board department~~ a report in writing, of the particulars of such seizure."

Section 29. Section 4-212, R.C.M. 1947, is renumbered section 4-6-210, and is amended to read as follows:

"~~4-212 4-6-210~~. Inspection of carriers' records--when authorized. For the purpose of obtaining information concerning any matter relating to the administration or enforcement of this ~~act~~ code, the ~~board department~~ or any person appointed by it in writing for the purpose may inspect the freight and express books and records, and all

waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 30. Section 4-213, R.C.M. 1947, is renumbered section 4-6-211, and is amended to read as follows:

"~~4-213~~ ~~4-6-211~~. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the ~~board~~ department or by a person so appointed by it shall be guilty of an offense against this ~~act~~ code."

Section 31. Section 4-214, R.C.M. 1947, is renumbered section 4-6-303, and is amended to read as follows:

"~~4-214~~ ~~4-6-303~~. Description of offense--sufficiency of. In describing the offense respecting the sale or keeping for sale or other disposal of ~~liquor~~ alcoholic beverages, or the having, keeping, giving, purchasing or the consumption of ~~liquor~~ alcoholic beverages in any information, summons, conviction, warrant, or proceeding

under this ~~act~~ code, it shall be sufficient to state the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of ~~liquor~~ alcoholic beverages, simply without stating the name or kind of such ~~liquor~~ alcoholic beverage or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of ~~liquor~~ alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity."

Section 32. Section 4-215, R.C.M. 1947, is renumbered section 4-6-304, and is amended to read as follows:

"~~4-215~~ ~~4-6-304~~. Description of offense--sufficiency-- defenses need not be negatived. The description of any offense under this ~~act~~ code, in the words of this ~~act~~ code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this ~~act~~ code, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or negatived, no proof in relation to the matter so specified

1 nor negatived shall be required on the part of the informant
2 or complainant."

3 Section 33. Section 4-216, R.C.M. 1947, is renumbered
4 section 4-6-305, and is amended to read as follows:

5 "4-216 ~~4-6-305~~. Sufficiency of evidence. In any
6 prosecution under this ~~act~~ code for the sale or keeping for
7 sale or other disposal of ~~liquor~~ alcoholic beverages, or the
8 having, keeping, giving, purchasing, or consuming of ~~liquor~~
9 alcoholic beverages, it shall not be necessary that any
10 witness should depose to the precise description or quantity
11 of the ~~liquor~~ alcoholic beverages sold, disposed of, kept,
12 had, given, purchased, or consumed, or the precise
13 consideration (if any) received therefor, or to the fact of
14 the sale or other disposal having taken place with his
15 participation or to his own personal or certain knowledge;
16 but conviction may be based upon circumstantial evidence
17 reasonably tending to establish the guilt of the accused
18 beyond a reasonable doubt."

19 Section 34. Section 4-217, R.C.M. 1947, is renumbered
20 section 4-6-306, and is amended to read as follows:

21 "4-217 ~~4-6-306~~. Proof of violation—sufficiency. In
22 proving the sale, disposal, gift, or purchase, gratuitous or
23 otherwise, or consumption of ~~liquor~~ alcoholic beverages, it
24 shall not be necessary in any prosecution to show that any
25 money actually passed or any ~~liquor~~ alcoholic beverages was

1 actually consumed, if the court hearing the case is
2 satisfied that a transaction in the nature of a sale,
3 disposal, gift, or purchase actually took place, or that any
4 consumption of ~~liquor~~ alcoholic beverages was about to take
5 place; and proof of consumption or intended consumption of
6 ~~liquor~~ alcoholic beverages on premises on which such
7 consumption is prohibited, by some person not authorized to
8 consume ~~liquor~~ an alcoholic beverage thereon, shall be
9 evidence that such ~~liquor~~ alcoholic beverage was sold or
10 given to or purchased by the person consuming, or being
11 about to consume, or carrying away the same, as against the
12 occupant of the said premises."

13 Section 35. Section 4-218, R.C.M. 1947, is renumbered
14 section 4-6-307, and is amended to read as follows:

15 "4-218 ~~4-6-307~~. Analyst's report as prima facie
16 evidence of contents. In any prosecution under this ~~act~~
17 code, or the regulations made thereunder, production by a
18 police officer, policeman, constable, inspector or peace
19 officer, of a certificate or report signed or purporting to
20 be signed by a United States or state analyst as to the
21 analysis or ingredients of any ~~liquor~~ alcoholic beverage or
22 other fluid or any preparation, compound, or substance, such
23 certificate or report shall be prima facie evidence of the
24 facts stated in such certificate or report and of the
25 authority of the person giving or making the same without

1 any proof of appointment or signature."

2 Section 36. Section 4-219, R.C.M. 1947, is renumbered
3 section 4-6-308 and is amended to read as follows:

4 "~~4-219 4-6-308~~. Presumption of intoxicating ~~liquor~~
5 ~~beverage~~ arises, when. The court trying a case shall, in the
6 absence of proof to the contrary, be at liberty to infer
7 that the ~~liquor~~ alcoholic beverage in question is
8 intoxicating from the fact that a witness described it as
9 intoxicating, or by a name which is commonly applied to an
10 intoxicating ~~liquor~~ beverage."

11 Section 37. Section 4-220, R.C.M. 1947, is renumbered
12 section 4-6-309, and is amended to read as follows:

13 "~~4-220 4-6-309~~. Inferences from facts of ~~act code~~
14 claimed to be violation. Upon the hearing of any charge of
15 selling or purchasing ~~liquor~~ an alcoholic beverage, or of
16 unlawfully having or keeping ~~liquor~~ an alcoholic beverage,
17 contrary to any of the provisions of this ~~act code~~, the
18 court trying the case shall have the right to draw
19 inferences of fact from the kind and quantity of ~~liquor~~
20 alcoholic beverages found in the possession of the person
21 accused, or in any building, premises, vehicle, motorcar,
22 automobile, vessel, boat, canoe, conveyance, or place
23 occupied or controlled by him, and from the frequency with
24 which ~~liquor~~ the alcoholic beverage is received thereat or
25 therein or is removed therefrom, and from the circumstances

1 under which it is kept or dealt with."

2 Section 38. Section 4-224, R.C.M. 1947, is renumbered
3 section 4-6-302, and is amended to read as follows:

4 "~~4-224 4-6-302~~. Appeals. An appeal shall lie from any
5 conviction or order made in the prosecution of any offense
6 against any of the provisions of this ~~act code~~ and the
7 practice and procedure on any appeal from any such
8 conviction or order, and all proceedings thereon shall be
9 governed by the law applicable to appeal in criminal cases."

10 Section 39. Section 4-225, R.C.M. 1947, is renumbered
11 section 4-6-201, and is amended to read as follows:

12 "~~4-225 4-6-201~~. ~~Inspectors~~ Investigators and
13 prosecuting officers may be employed by ~~board~~ department of
14 revenue. The ~~board~~ department of revenue may appoint one or
15 more ~~inspectors~~ investigators or prosecuting officers, who,
16 under its direction, shall perform such duties as it may
17 require, and who shall be paid such salaries, fees and
18 expenses as the said ~~board~~ department of revenue may fix."

19 Section 40. Section 4-226, R.C.M. 1947, is renumbered
20 section 4-1-306, and is amended to read as follows:

21 "~~4-226 4-1-306~~. Property and moneys acquired belong to
22 state--expenses of administration, how paid. All property,
23 whether real or personal, all moneys acquired, administered,
24 possessed or received by the ~~board~~ department and all
25 profits earned in the administration of this ~~act code~~, shall

be the property of the state, and all expenses, debts and liabilities incurred by the ~~board department~~ in connection with the administration of this ~~act code~~, shall be paid by the ~~board department~~ from the moneys received by the ~~board department~~ under such administration."

Section 41. Section 4-229, R.C.M. 1947, is renumbered section 4-1-406, and is amended to read as follows:

"4-229 4-1-406. Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the ~~board department of revenue~~. The ~~board department~~ is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The ~~board department~~ shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the ~~board department~~ shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the ~~board department~~ solely from funds derived from the operation of state liquor stores. The ~~board department~~ shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it collected, and also the net proceeds from the operation of

state liquor stores."

Section 42. Section 4-233, R.C.M. 1947, is renumbered section 4-1-104, and is amended to read as follows:

"4-233 4-1-104. Intent and construction of ~~act code~~. The purpose and intent of this ~~act code~~ are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this ~~act code~~, and every section and provision of this ~~act code~~ shall be construed accordingly. The provisions of this ~~act code~~ dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a ~~board department~~ and otherwise provide the means by which such state control shall be made effective, and nothing in this ~~act code~~ shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state."

Section 43. Section 4-238, R.C.M. 1947, is renumbered section 4-6-401, and is amended to read as follows:

"4-238 4-6-401. Premises where liquor illegally sold ~~common~~ public nuisance. Any room, house, building, boat, vehicle, structure or place where ~~intoxicating liquor is~~ alcoholic beverages are knowingly manufactured, sold, or bartered, in violation of ~~the State Liquor Control Act of Montana this code or section 94-8-107~~ and all property knowingly kept and used in maintaining the same is hereby

1 declared to be a ~~common nuisance~~, "public nuisance" and any
 2 person who maintains such a ~~common~~ nuisance shall be guilty
 3 of a misdemeanor, and upon conviction thereof shall be fined
 4 not less than one hundred dollars (\$100.00), nor more than
 5 five hundred dollars ~~(\$500.00)~~ (\$500) and by imprisonment
 6 not less than thirty days, nor more than six months."

7 Section 44. Section 4-240, R.C.M. 1947, is renumbered
 8 section 4-1-401, and is amended to read as follows:

9 "4-240 ~~4-1-401~~. License tax on liquor — amount —
 10 distribution of proceeds. The department of revenue is
 11 hereby authorized and directed to charge, receive and
 12 collect at the time of sale and delivery of any liquor under
 13 any provisions of the laws of the state of Montana a license
 14 tax of five percent (5%) of the retail selling price on all
 15 liquor so sold and delivered. Said tax shall be charged and
 16 collected on all liquor brought into the state and taxed by
 17 the department of revenue. The retail selling price shall
 18 be computed by adding to the cost of said liquor the state
 19 markup as designated by ~~said board~~ the department. Said
 20 five percent (5%) license tax shall be figured in the same
 21 manner as the state excise tax and shall be in addition to
 22 said state excise tax. The department of revenue shall
 23 retain the amount of such five percent (5%) license tax so
 24 received in a separate account. Four-fifths (4/5) of these
 25 revenues shall be distributed to the counties according to

1 the amount of liquor sold in each county. One-fifth (1/5)
 2 of these revenues shall be deposited in the general fund.
 3 Provided, however, in the case of purchases of liquor by a
 4 retail liquor licensee for use in his business, the
 5 department shall make such regulations as are necessary to
 6 apportion that proportion of license tax so generated to the
 7 county where the licensed establishment is located, for use
 8 as provided in section ~~4-241~~ 4-1-402, R.C.M. 1947. The
 9 department of revenue shall pay quarterly to each county
 10 treasurer the proportion of the license tax due each county.

11 The county treasurer of each county shall retain
 12 one-fourth (1/4) of said license tax, and shall, within
 13 thirty (30) days after receipt thereof, apportion the
 14 remaining three-fourths (3/4) thereof to the treasurers of
 15 the incorporated cities and towns within his county, said
 16 apportionment to be based in each instance upon the
 17 proportion which the gross sale of liquor in such
 18 incorporated city or town bears to the gross sale of liquor
 19 in all of the incorporated cities and towns in his said
 20 county."

21 Section 45. Section 4-301, R.C.M. 1947, is renumbered
 22 section 4-1-102, and is amended to read as follows:

23 "~~4-301 4-1-102. Citation of act declaration~~
 24 Declaration of policy--as to sale of beer. This act may be
 25 ~~cited as the "Montana Beer Act."~~ It is hereby declared to

be the policy of the state of Montana that the manufacture, transportation, distribution, sale and possession of "beer," as that term is hereinafter defined in this ~~act~~ code and which contains not more than ~~four~~ seven per centum (4 7%) of alcohol by weight, shall be controlled and regulated ~~by and under the provisions of the "Montana Beer Act" and the "Montana Retail Liquor License Act" as provided under this code.~~ Beer, porter, ale, stout and malt liquors containing more than ~~four~~ seven per centum (4 7%) of alcohol by weight and which are defined as "liquor" ~~by the "State Liquor Control Act of Montana,"~~ shall be subject to the regulations and controls provided ~~by the "State Liquor Control Act of Montana," (section 4-404 through section 4-474, inclusive, Revised Codes of Montana, 1947, as amended) and the regulations and controls provided by the "Montana Retail Liquor License Act" (sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended) for liquor.~~

Section 46. Section 4-303, R.C.M. 1947, is renumbered section 4-3-304, and is amended to read as follows:

"~~4-303~~ 4-3-304. Closing hours for licensed retail ~~beer~~ establishments. Hereafter all licensed establishments wherein ~~beer is defined by subsection (b) of section 4-302,~~ is alcoholic beverages are sold, offered for sale or given away at retail shall be closed during the following hours:

~~(a) Sunday from two A.M. to one P.M.;~~

~~(b)~~ (a) On any ~~other~~ day between two A.M. and eight A.M.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of ~~beer~~ alcoholic beverages, then the sale of ~~beer~~ alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this ~~act~~ code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the owner and employees of such licensed establishments shall be excluded therefrom except as provided in section 4-3-305.

Section 47. Section 4-304, R.C.M. 1947, is renumbered section 4-3-305, and is amended to read as follows:

"~~4-304~~ 4-3-305. Sale of ~~beer~~ alcoholic beverages during closed hours forbidden—lawful business need not be closed. During the hours when the said licensed establishments where ~~beer is~~ alcoholic beverages are sold at retail are required by this ~~act~~ code to be closed, it shall be unlawful to sell, offer for sale or give away any ~~beer~~ such alcoholic beverages, and during such hours all persons save employees of such licensed establishments shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel, restaurant, bus depot, railway terminal, or other lawful

business other than that of the sale of intoxicating liquor or beer, then such other lawful business need not be closed, but only the part thereof where such beer or liquor is sold."

Section 48. Section 4-308, R.C.M. 1947, is renumbered section 4-3-202, and is amended to read as follows:

"~~4-308 4-3-202. Beer, when declared nonintoxicating sales, when permitted, Beer containing one-half of one per cent (1/2 of 1%), or more, of alcohol by volume, and not more than three and two tenths per cent (3.2%) of alcohol by weight, is hereby declared to be nonintoxicating, and such beer and other beer containing more than three and two tenths per cent (3.2%), but not more than four per cent (4%) of alcohol by weight may be manufactured and/or sold or transported in and into this state or possessed therein in the manner and under the conditions prescribed in this act and not otherwise. The sale of beer by the Montana liquor control board department is hereby prohibited, save and except ale, porter and stout containing more than four per cent (4%) of alcohol by weight.~~"

Section 49. Section 4-309, R.C.M. 1947, is renumbered section 4-3-201, and is amended to read as follows:

"~~4-309 4-3-201. Possession, manufacture or disposal of beer in other manner than prescribed unlawful. It shall be unlawful to manufacture or sell, or dispose of, or possess~~

for the purpose of sale, beer of any kind or character of an alcoholic content greater than herein prescribed, or other than in the manner permitted by this ~~act~~ code."

Section 50. Section 4-310, R.C.M. 1947, is renumbered section 4-4-101, and is amended to read as follows:

"~~4-310 4-4-101. Applications for sale or manufacture of beer—qualifications of applicant. Any person, desiring to manufacture, import or and sell beer under the provisions of this act code, shall first apply to the board department for a permit so to do and pay with such application the license fee herein prescribed; the board department shall require of such applicant satisfactory evidence that the applicant is of good moral character and a law-abiding person. Upon being satisfied from such application, or otherwise, that such applicant is qualified as herein provided, the board department shall issue such license to such person, which license shall be at all times prominently displayed in the place of business of such applicant. If the board department shall find that such applicant is not qualified, no license shall be granted and such license fee shall be returned.~~"

Section 51. Section 4-311, R.C.M. 1947, is renumbered section 4-3-203, and is amended to read as follows:

"~~4-311 4-3-203. Brewers' monthly report -- power of board department to inspect books and premises. Every~~

brewer, licensed to do business in this state, shall, on or before the fifteenth day of each month, make an exact return to the board department of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the board department, and the board department shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him."

Section 52. Section 4-313, R.C.M. 1947, is renumbered section 4-3-204, and is amended to read as follows:

"~~4-313 4-3-204~~. Sale of beer by brewers to whom. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any licensed wholesaler, ~~retailer,~~ ~~club or common carrier holding and having a license under this act.~~"

Section 53. Section 4-317, R.C.M. 1947, is renumbered section 4-3-206, and is amended to read as follows:

"~~4-317 4-3-206~~. Licenses of brewers—persons to whom brewers may sell beer—~~barrelage tax~~. (4) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section ~~4-344 4-4-401~~ and upon presenting satisfactory evidence to the board

department as required by section ~~4-340 4-4-101~~, shall be licensed by the board department in accordance with the provisions of this ~~act code~~ and such regulations as may be prescribed by the board department, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

~~(2) In addition to the annual license tax imposed by section 4-344, a tax of three dollars (\$3) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-344.~~"

Section 54. Section 4-317.1, R.C.M. 1947, is renumbered section 4-4-102, and is amended to read as follows:

"~~4-347.1 4-4-102~~. Right of brewers to maintain and operate storage depots—annual licenses. It shall be lawful for any brewer duly licensed to manufacture beer in the

1 state of Montana, upon the payment to the ~~board department~~
 2 of an annual license fee, in addition to all other fees and
 3 taxes required to be paid by such brewer, of four hundred
 4 dollars (\$400.00) for each storage depot, to own, lease,
 5 maintain and operate, in any city or town in the state of
 6 Montana, a building for use as a storage depot, equipped
 7 with refrigeration and cooling apparatus, for receiving,
 8 handling, and storing beer therein and distributing and
 9 selling beer therefrom, as brewers are permitted to sell and
 10 distribute beer under the provisions of this ~~act code~~."

11 Section 55. Section 4-317.7, R.C.M. 1947, is
 12 renumbered section 4-3-212, and is amended to read as
 13 follows:

14 "~~4-317.7~~ 4-3-212. Agreements filed with department of
 15 revenue. An exact copy of all agreements, contracts or
 16 franchises between a brewer and a wholesaler shall be filed
 17 with the department of revenue as a public document and
 18 shall be available to any of the parties to a dispute. The
 19 department, upon the instigation of any action in a court of
 20 record, shall file an exact certified copy of the agreement
 21 with the court for the court's consideration in determining
 22 any matter before it. Any contracts, agreements or
 23 franchises not upon record with the ~~board department~~ shall
 24 not be considered by any court as having any force or
 25 effect."

1 Section 56. Section 4-313, R.C.M. 1947, is renumbered
 2 section 4-4-103, and is amended to read as follows:

3 "~~4-313~~ 4-4-103. Wholesalers' licenses--application for
 4 and issuance--subwarehouse--imported beer handled through
 5 warehouse or subwarehouse. Any person desiring to sell and
 6 distribute beer as a wholesaler under the provisions of this
 7 ~~act code~~ shall apply to the ~~board department~~ for a license
 8 to do so and tender with his application the license fee
 9 hereinafter provided for and the ~~board department~~ is hereby
 10 empowered, authorized and directed to issue ~~one--[4]~~
 11 ~~wholesale license for every thirty (30) retail beer licenses~~
 12 ~~figured on the number of retail beer licenses issued in the~~
 13 ~~state~~ wholesale licenses to qualified applicants in
 14 accordance with the provisions of this ~~act code~~; such
 15 license shall be at all times prominently displayed in the
 16 place of business of such wholesaler.

17 To qualify for a wholesaler's license the applicant
 18 shall ~~have been~~ be a resident of Montana ~~for a period of~~
 19 ~~five (5) years immediately prior to making application, or~~
 20 ~~if said applicant is a Montana corporation said corporation~~
 21 ~~shall have been organized for a period of five (5) years~~
 22 ~~immediately prior to making application~~; provided, however,
 23 any individual or partnership which has been licensed as a
 24 beer wholesaler may, upon incorporation in accordance with
 25 the laws of the state of Montana, transfer such license to

1 the corporation if a majority of the capital stock thereof
 2 is held by said individual or the members of said
 3 partnership; or if applicant is a foreign corporation said
 4 corporation shall ~~have been~~ be authorized to do business in
 5 Montana ~~for a period of five (5) years immediately prior to~~
 6 ~~making application~~; and said applicant shall have a fixed
 7 place of business, sufficient capital, the facilities,
 8 storehouse, receiving house or warehouse for the receiving
 9 of, storage, handling and moving of beer in large and
 10 jobbing quantities for distribution and sale in original
 11 packages to other licensed wholesalers or licensed
 12 retailers. Each wholesaler shall be entitled to only one
 13 (1) wholesale license, which license shall be issued for his
 14 principal place of business in Montana; a duplicate license
 15 may be issued for one (1) subwarehouse only in Montana for
 16 each wholesale licensee, which said duplicate license shall
 17 at all times be prominently displayed at said subwarehouse;
 18 ~~licenses already issued which are in excess of said~~
 19 ~~limitations and which are of issue on the date of the~~
 20 ~~passage and approval of this act, shall be renewable, but no~~
 21 ~~new wholesale beer licenses shall be issued until the number~~
 22 ~~of licenses shall be reduced to within the above limitation.~~

23 All beer manufactured outside of the state of Montana
 24 and shipped into Montana shall be consigned to and shipped
 25 to a licensed wholesaler, and by him unloaded into his

1 warehouse in Montana or subwarehouse in Montana; said
 2 wholesaler shall distribute said beer from such warehouse or
 3 subwarehouse; said wholesaler shall keep records at his
 4 principal place of business of all beer including the name
 5 or kind received, on hand, sold and distributed; said
 6 records may at all times be inspected by any member or
 7 representative of the ~~board~~ department; any beer which has
 8 been shipped into Montana and has not been shipped to and
 9 distributed from a warehouse of a licensed wholesaler shall
 10 be seized by any peace officer or representative of the
 11 ~~board~~ department and may be confiscated in the manner as
 12 provided for the confiscation of intoxicating liquor."

13 Section 57. Section 4-319, R.C.M. 1947, is renumbered
 14 section 4-3-213, and is amended to read as follows:

15 "~~4-319 4-3-213~~. Monthly report of wholesaler. Every
 16 wholesaler, licensed to do business in this state, as herein
 17 provided, shall on or before the fifteenth day of each
 18 month, make an exact return to the ~~board~~ department of the
 19 amount of beer manufactured in this state, sold and
 20 delivered by him, and also of the amount of beer
 21 manufactured in places outside of the state, sold and
 22 delivered by him, during the previous month, and of his
 23 inventory in the manner and form as shall be prescribed by
 24 the ~~board~~ department, and the ~~board~~ department shall have
 25 the right at any time to make an examination of the said

1 wholesaler's books and of his premises, and otherwise check
2 the accuracy of such return or to check the alcoholic
3 content of beer which he may have on hand."

4 Section 58. Section 4-320, R.C.M. 1947, is renumbered
5 section 4-6-403, and is amended to read as follows:

6 "~~4-320 4-6-403~~. Penalty for brewer's and wholesalers'
7 failure to ~~file statement payment of pay~~ tax. With such
8 return, the said wholesaler shall pay to the board the
9 amount of tax upon all beer not manufactured in this state,
10 on the basis hereinafter provided, which shall have been
11 sold by him during such previous month. Any such tax owed
12 by a brewer or wholesaler under this code not paid within
13 the time herein provided for shall be delinquent and a
14 penalty of five per cent (5%) thereof shall be added thereto
15 and the whole thereof shall bear interest at the rate of one
16 per cent (1%) per month from the date of delinquency until
17 paid, and any brewer or wholesaler who fails, neglects or
18 refuses to make the return to the board department provided
19 for in ~~section sections~~ 4-349 4-3-203 or 4-3-213, or refuses
20 to allow such examination provided for in ~~section sections~~
21 4-349 4-3-203 or 4-3-213, or fails to make an accurate
22 return according to the manner prescribed, shall be deemed
23 guilty of having committed a misdemeanor and upon conviction
24 thereof shall be fined in an amount not exceeding one
25 thousand dollars (\$1,000.00)."

1 Section 59. Section 4-321, R.C.M. 1947, is renumbered
2 section 4-3-214, and is amended to read as follows:

3 "~~4-321 4-3-214~~. To whom wholesaler may sell. It shall
4 be lawful for any wholesaler to sell and deliver beer
5 purchased or acquired by him to a wholesaler, retailer, ~~club~~
6 or to a common carrier, holding and having a license under
7 this act."

8 Section 60. Section 4-325, R.C.M. 1947, is renumbered
9 section 4-3-217, and is amended to read as follows:

10 "~~4-325 4-3-217~~. Penalty for brewer's failure to make
11 returns—lien of taxes—enforcement—release. If any brewer
12 subject to the payment of the tax provided for in
13 ~~subdivision (2) [(2)]~~ of section 4-347 ~~4-1-405~~ or any
14 wholesaler subject to the payment of the tax provided for in
15 section ~~4-324 4-1-404~~, shall fail, neglect or refuse to make
16 any return required by ~~Montana Beer Act~~ this code, or shall
17 fail to make payment of such tax within the time herein
18 provided, the ~~board department~~ shall, forthwith after such
19 time has expired, proceed to inform itself as best it may
20 regarding the matters and things required to be set forth in
21 such return and from such information as it may be able to
22 obtain, to make a statement showing such matters and things
23 and determine and fix the amount of such tax due the state
24 from such delinquent brewer or wholesaler and shall add
25 thereto a penalty of five per cent (5%) thereof for the

1 first failure, willful neglect or refusal; ten per cent
 2 (10%) for the second; fifteen per cent (15%) for the third;
 3 and twenty-five per cent (25%) for the fourth, and each
 4 subsequent failure, neglect or refusal, which shall be in
 5 addition to the five per cent (5%) penalty hereinbefore
 6 provided for nonpayment of such tax within the time
 7 hereinbefore provided. Said tax and the penalties added
 8 thereto shall bear interest at the rate of one per cent (1%)
 9 per month from the date such returns should have been made
 10 and said tax paid. The board department shall then proceed
 11 to collect such tax with penalties and interest. Upon
 12 request of the board department it shall be the duty of the
 13 attorney general to commence and prosecute to final
 14 determination in any court of competent jurisdiction an
 15 action to collect such tax. All taxes due from any brewer
 16 or wholesaler under the provisions of ~~Montana-Beer-Let~~ this
 17 code, together with all penalties and interest thereon,
 18 shall be a lien upon any and all property of such brewer or
 19 wholesaler upon the filing by the board department of a
 20 duplicate copy of the statement so made by the board
 21 department, or a certified copy of any return filed with
 22 ~~said-board the department~~, in the office of the county clerk
 23 of the county where such property is situated, which lien
 24 shall have precedence over any other claim, lien or demand
 25 thereafter filed or recorded and may be enforced in the name

1 of the state of Montana in the same manner as other liens
 2 are enforced by law. No action shall be maintained to
 3 enjoin the collection of such tax or any part thereof. When
 4 the amount due the state is paid in full and before the
 5 entry of foreclosure decree, the board department shall
 6 release the said lien by filing in the office of the county
 7 clerk wherein is filed the said lien a written release
 8 thereof. At any time prior to the payment of said taxes,
 9 penalty and interest, before the entry of foreclosure
 10 decree, the board department may release from the operation
 11 of said lien a part of said property to enable the brewer or
 12 wholesaler to mortgage, sell or otherwise dispose of the
 13 same in order to procure funds with which to pay said taxes,
 14 penalty and interest, provided there remains, in the
 15 judgment of the board department, sufficient property
 16 subject to said lien to ensure the payment of the whole of
 17 said unpaid taxes, penalty and interest."

18 Section 61. Section 4-326, R.C.M. 1947, is renumbered
 19 section 4-3-218, and is amended to read as follows:

20 "~~4-326~~ 4-3-218. Carriers' reports of beer transported.
 21 Every railroad and every motor carrier transporting beer
 22 manufactured out of this state from points without this
 23 state and delivering the same to points within this state
 24 shall, on or before the fifteenth day of each month, make an
 25 exact return to the board department of the amount of such

beer so transported and delivered by such railroad or motor carrier during the previous month, and shall state in such return the name and address of the consignor, the name and address of the consignee, the date of delivery, and the amount delivered."

Section 62. Section 4-327, R.C.M. 1947, is renumbered section 4-4-104, and is amended to read as follows:

"~~4-327~~ ~~4-4-104~~. Retailers' license--application and issuance--display required--check of alcoholic content by ~~board department~~. Any person desiring to possess and have for sale beer, under the provisions of this ~~act~~ code, for the purpose of selling it at retail, shall first apply to the ~~board department~~ for a permit so to do and tender with such application the license fee herein provided for. Upon being satisfied from such application or otherwise that the applicant is qualified as herein provided, the ~~board department~~ shall issue a license to such person, which license shall at all times be prominently displayed in the place of business of the applicant. If the ~~board department~~ shall find that the applicant is not qualified, no license shall be granted and the license fee tendered shall be by the ~~board department~~ returned. The ~~board department~~ shall have the right and is hereby given authority to make, at any time, an examination of the books of account of any such retailer and of his premises and otherwise check his methods

of conducting business and the alcoholic contents of the beer kept by him for sale. A person may not sell beer at retail without a valid license issued under this code."

Section 63. Section 4-328, R.C.M. 1947, is renumbered section 4-3-302, and is amended to read as follows:

"~~4-328~~ ~~4-3-302~~. Sale of beer by retailer--consumption on premises. It shall be lawful for such retailer to sell and serve beer either on draught or in ~~bottles~~ containers to the public to be consumed on the premises of such retailer."

Section 64. Section 4-330, R.C.M. 1947, is renumbered section 4-3-301, and is amended to read as follows:

"~~4-330~~ ~~4-3-301~~. Purchase of beer by retailer--persons to whom beer may not be sold, delivered or given by brewers, wholesalers or retailers. It shall be unlawful for ~~such a~~ licensed retailer to purchase or acquire beer from anyone except a brewer or wholesaler ~~or retailer~~ licensed under the provisions of this ~~act~~ code.

It shall be unlawful for any brewer, wholesaler or retailer, his or her employee or employees to sell, deliver or give away, or cause or permit to be sold, delivered or given away, any beer to:

1. Any person under the age of eighteen (18) years;
2. Any intoxicated person or any person actually, apparently or obviously intoxicated;

~~3.--in habitual drunkard, or~~

4. ~~An interdicted person.~~

~~Any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-305 of the Montana Beer Act.~~

Section 65. Section 4-332, R.C.M. 1947, is renumbered section 4-4-105, and is amended to read as follows:

"4-332 4-4-105. Special permits to sell beer-- application and issuance--fee. (1) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event, shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

The application of any such association or corporation shall be presented ten (10) days in advance and shall

describe the location of such enclosure wherein such event is held, the nature of such event, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when events are being held upon such grounds and during the period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of fifteen dollars (\$15) per day for each day beer is sold, or to be sold at those events lasting two (2) or more days, but in no event less than the sum of thirty dollars (\$30), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this act code, shall in the discretion of the board department, without notice or hearing as provided in section 4-407, 4-4-302, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans'

organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ~~five ten~~ dollars ~~(\$5.00)~~ (\$10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the ~~board~~ department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 66. Section 4-333, R.C.M. 1947, is renumbered section 4-4-201, and is amended to read as follows:

"~~4-333~~ 4-4-201. Issuance of retail beer licenses -- limit on number of ~~off-premises~~ beer licenses -- ~~lapse and cancellation~~ wine license amendments -- retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved ~~by a majority of the board by the department~~ as a fit and proper person, firm or corporation to sell beer; provided, that ~~the number of retail beer licenses that the board may issue shall be determined as follows:~~

(a) ~~The~~ the number of retail beer licenses that the

~~board~~ department may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit:

In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, ~~not more than two (2) retail beer licenses to be used in conjunction with retail liquor licenses and~~ not more than one (1) additional retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, ~~two (2) retail beer licenses for the first five hundred (500) inhabitants and one (1) retail beer license for each additional five hundred (500) inhabitants, which said retail beer licenses shall be used in conjunction with retail liquor licenses, and~~ one (1) additional beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000) inhabitants and within a distance of five (5) miles from the

1 corporate limits of such cities, ~~five (5) retail beer~~
 2 ~~licenses for the first two thousand (2000) inhabitants and~~
 3 ~~one (1) retail beer license for each additional one thousand~~
 4 ~~(1000) inhabitants which said retail beer licenses shall be~~
 5 ~~used in conjunction with retail liquor licenses, and two (2)~~
 6 additional retail beer licenses for the first two thousand
 7 (2000) inhabitants or major fraction thereof and one (1)
 8 additional retail beer license for each additional two
 9 thousand (2000) inhabitants which shall not be used in
 10 conjunction with retail liquor licenses. The number of the
 11 inhabitants in such cities and towns, exclusive of the
 12 number of inhabitants residing within a distance of five (5)
 13 miles from the corporate limits thereof, shall govern the
 14 number of retail beer licenses that may be issued for use
 15 within such cities and towns and within a distance of five
 16 (5) miles from the corporate limits thereof; provided, that
 17 where two (2) or more incorporated municipalities are
 18 situated within a distance of five (5) miles from each
 19 other, the total number of retail beer licenses that may be
 20 issued for use in both of such municipalities and within a
 21 distance of five (5) miles from their respective corporate
 22 limits, shall be determined on the basis of the combined
 23 populations of both of such municipalities and shall not
 24 exceed the foregoing limitations. The said distance of five
 25 (5) miles from the corporate limits of any incorporated city

1 or incorporated town shall be measured in a straight line
 2 from the nearest entrance of the premises proposed for
 3 licensing to the nearest corporate boundary of such city or
 4 town. Retail beer licenses of issue on the date of the
 5 passage and approval of this act and which are in excess of
 6 the foregoing limitations shall be renewable, but no new
 7 licenses shall be issued in violation of such limitations;
 8 provided, that such limitations shall not prevent the
 9 issuance of a nontransferable and nonassignable retail beer
 10 license to any post of a nationally chartered veterans'
 11 organization or any lodge of a recognized national fraternal
 12 organization, if such veterans' or fraternal organization
 13 has been in existence for a period of five (5) years or more
 14 prior to January 1, 1949. No incorporated city or
 15 incorporated town may by ordinance restrict the number of
 16 licenses that the ~~board department~~ may issue; provided that
 17 no retail beer license may be issued by the ~~board department~~
 18 for any premises situated within any zone of such city or
 19 town wherein the sale of beer is prohibited by ordinance, a
 20 certified copy of which has been filed with the ~~board~~
 21 ~~department~~. The ~~board department~~ shall have discretion to
 22 deny the issuance of a retail beer license if it shall
 23 determine that the premises proposed for licensing are off
 24 regular police beats and cannot be properly policed by local
 25 authorities.

(b) The number of retail beer licenses that the ~~board~~ department may issue for use at premises situated outside of any incorporated city or incorporated town and outside of the area within a distance of five (5) miles from the incorporated limits thereof, or for use at premises situated within any unincorporated town shall be as determined by the ~~board~~ department in the exercise of its sound discretion; provided, that no retail beer license shall be issued for any premises so situated unless the ~~board~~ department shall determine that the issuance of such license is required by public convenience and necessity.

~~(2) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by a majority of the board as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the board may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the board in the exercise of its sound discretion, and the board may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause. The annual license fee for a license to sell beer at retail~~

~~for off-premise consumption shall be the same as for a retail beer license.~~

~~(3) From and after February 1, 1949, any retail license issued pursuant to this act (including any retail license to sell beer for off-premise consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuse for such period the board shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility of like business, provided such licensee has secured written authority from the board to close his licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the liquor control board determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.~~

~~(4)~~ (2) A person holding a license to sell beer for consumption on the premises at retail may apply to the department for an amendment to the license permitting the holder to sell wine as well as beer. The ~~department~~ division may issue such amendment if it finds, on a

satisfactory showing by the applicant, that the sale of wine for consumption on the premises would be supplementary to a restaurant or prepared food business. A person holding a beer-and-wine license may sell wine ~~subject to the limitations imposed by this title on selling beer for consumption on the premises~~. He may buy wine only at retail from the department. Nonretention of the beer license, for whatever reason, shall mean automatic loss of the wine amendment license.

~~(5)~~ (3) The annual license fee for a license to sell wine on the premises, when issued as an amendment to a beer only license shall be two hundred dollars (\$200).

(4) A retail license to sell beer in the original packages for off-premise consumption only may be issued to any person, firm or corporation who shall be approved by the department as a fit and proper person, firm or corporation to sell beer and whose premises proposed for licensing are operated as a bona fide grocery store or a drugstore licensed as a pharmacy. The number of such licenses that the department may issue shall not be limited by the provisions of subsection (1) of this section, but shall be determined by the department in the exercise of its sound discretion, and the department may in the exercise of its sound discretion grant or deny any application for any such license or suspend or revoke any such license for cause.

The annual license fee for a license to sell beer at retail for off-premises consumption shall be the same as for a retail beer license."

Section 67. Section 4-338, R.C.M. 1947, is renumbered section 4-3-104, and is amended to read as follows:

~~"4-338 4-3-104.~~ Purchase of beer must be from licensed brewer, wholesaler or retailer. It shall be unlawful for the operator of any ~~such railroad train, as a~~ common carrier, or its employees, to make sale of or dispose of any beer or malt liquors except such as shall have been lawfully acquired or purchased from a brewery, or wholesaler ~~or~~ retailer duly licensed."

Section 68. Section 4-341, R.C.M. 1947, is renumbered section 4-4-401, and is amended to read as follows:

~~"4-341 4-4-401.~~ Fees for licenses--expiration dates--regulation by cities and towns. Each licensee, under the provisions of this ~~act~~ code, shall pay an annual license fee as follows:

Each "brewer," wherever located, whose product is sold or offered for sale within the state, five hundred dollars ~~(\$500.00)~~ (\$500);

Each "wholesaler" four hundred dollars ~~(\$400.00)~~ (\$400);

Each "retailer" two hundred dollars ~~(\$200.00)~~ (\$200);

Any unit of a nationally chartered veterans'

organization fifty dollars ~~(\$50.00)~~ (\$50);

~~Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars (\$25.00) (\$25).~~

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana ~~liquor control board department of revenue~~ with the consent of the said ~~board department~~ provided that said transferee shall qualify under this ~~act code~~. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana ~~liquor control board department of revenue~~ based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana ~~liquor control board department of revenue, the cities and towns may also impose a fee on a licensee of the board department for selling beer at retail in the city or town providing said fee shall be reasonable and not in excess of the amount imposed by the state limits set by section 4-4-406.~~ This ~~act code~~ shall not be construed or interpreted so as to repeal, amend, modify, change, or alter any provisions of the ~~Montana Beer Act this code~~ which

require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana."

Section 69. Section 4-342, R.C.M. 1947, is renumbered as section 4-4-402, and is amended to read as follows:

"~~4-342~~ ~~4-4-402~~. Denial of application for license or renewal -- suspension or revocation -- actions. The ~~board department~~ may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under ~~the Montana Beer Act this code~~. If the ~~board department~~, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this ~~act code~~, or any rules, or regulations of the ~~board department~~, it may, in its discretion, and in addition to the other penalties herein prescribed, reprimand a licensee, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof, ~~under the procedures herein provided. If the board shall, in its sound discretion, determine to invoke such procedures for the purpose of refusing to grant a license or refusing to grant a renewal thereof to any applicant, or for revoking or~~

~~suspending any license previously granted, it shall give~~
~~applicant or licensee, as the case may be, fifteen (15)~~
~~days' notice in writing of its intended action, addressed~~
~~and forwarded by registered mail to the applicant or~~
~~licensee at the address given in the application for~~
~~license, or upon the existing license, as the case may be,~~
~~stating generally the basis and reasons for its intended~~
~~action and the proposed action. Within said fifteen (15)~~
~~day period said applicant or licensee may, in cases of~~
~~intention to refuse to grant a license, or intention to~~
~~refuse to grant a renewal thereof, institute proceedings in~~
~~the nature of a writ of review, or, in case of intention to~~
~~revoke or suspend a license, institute proceedings in~~
~~injunction, and in any event in the district court of the~~
~~county wherein the premises of applicant or licensee are~~
~~located for the purpose of having the intended action of the~~
~~board judicially reviewed and inquired into for (a) abuse of~~
~~discretion on the part of the board, (b) failure of the~~
~~board to observe, or its departure from, or disregard of the~~
~~applicable law governing the board in the particular~~
~~circumstances, or (c) for arbitrary or tyrannical action by~~
~~the board. The board shall in all cases certify to the~~
~~court its complete record in the matter and the issues shall~~
~~be heard on the merits by the court upon such record and~~
~~upon such further legal evidence as the parties may present.~~

~~If the court in any such proceedings determines that such~~
~~licensee has, in fact, violated any provisions of this act~~
~~or any regulations of the board, the court shall dismiss~~
~~such proceedings, and the board shall proceed to such~~
~~administrative determination as to it seems proper in the~~
~~circumstances. Pending determination of such matter on the~~
~~merits the court may, based upon a showing of undue hardship~~
~~to a licensee and upon the posting of a proper bond in an~~
~~amount, and conditioned upon such terms as the court may~~
~~prescribe in the presence of the surrounding circumstances,~~
~~stay the effective date of the intended action of the board~~
~~for such time as to the court may seem proper. If no stay~~
~~order is issued by the court or any stay order once issued~~
~~has expired, the board shall issue its order of suspension~~
~~or of revocation of license or its order denying the license~~
~~applied for, or renewal thereof. If the court shall, on the~~
~~other hand, determine that good cause did not exist for the~~
~~intended action of the board, or that the board abused its~~
~~discretion, or otherwise acted unlawfully with respect to~~
~~its intended action, on any of the grounds herein stated,~~
~~the court shall issue its order and decree accordingly and~~
~~the board shall comply therewith. Either party to the~~
~~proceedings in the district court may appeal from its~~
~~decision to the supreme court of the state of Montana, by~~
~~following the procedures applicable to such appeals in civil~~

~~actions or impose a civil penalty not to exceed one thousand five hundred dollars (\$1500), subject to the opportunity for a hearing under the Montana Administrative Procedure Act."~~

Section 70. Section 4-344, R.C.M. 1947, is renumbered section 4-6-301, and is amended to read as follows:

"~~4-344~~ 4-6-301. Jurisdiction of courts. ~~As to~~ to ~~misdemeanor actions. The the~~ district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this ~~act~~ code."

Section 71. Section 4-346, R.C.M. 1947, is renumbered section 4-6-402, and is amended to read as follows:

"~~4-346~~ 4-6-402. Action to enjoin nuisance -- injunction -- order of court -- bond. An action to enjoin any nuisance defined in this ~~act~~ code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such nuisance until the conclusion of the trial. If a temporary

injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor or beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one (1) year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred dollars ~~(\$500.00)~~ (\$500), nor more than one thousand dollars ~~(\$1,000.00)~~ (\$1,000), payable to the state of Montana, and conditioned that liquor or beer will not thereafter be manufactured, sold or bartered therein or thereon, and that he will pay all fines, costs,

1 and damages that may be assessed for any violations of this
2 ~~act code~~ upon said property."

3 Section 72. Section 4-347, R.C.M. 1947, is renumbered
4 section 4-1-407, and is amended to read as follows:

5 "4-347 ~~4-1-407~~. Revenue to be paid to state
6 treasurer--disposition of revenue. Except as provided in
7 section ~~4-347, 4-1-408~~ of this ~~act code~~, all fees, charges,
8 taxes and revenues collected by or under authority of the
9 Montana ~~liquor control board department, under the Montana~~
10 ~~Beer Act~~ shall be paid over to the state treasurer on or
11 before the tenth (10th) day of each and every month who
12 shall deposit said funds to the credit of the state general
13 fund."

14 Section 73. Section 4-347.1, R.C.M. 1947, is
15 renumbered section 4-1-408, and is amended to read as
16 follows:

17 "4-347.1 ~~4-1-408~~. Revenue allocation. All revenue
18 received from taxes on beer under sections ~~4-347 4-1-404~~ and
19 ~~4-344 4-1-405~~, R.C.M. 1947, over and above one dollar and
20 fifty cents (\$1.50) per barrel of thirty-one (31) gallons
21 shall be deposited with the state treasurer to the credit of
22 the incorporated cities and towns beer tax account in the
23 earmarked revenue fund. The state treasurer shall, monthly,
24 distribute this amount of money to the incorporated cities
25 and towns in the direct proportion that the population of

1 each city and town bears to the total population of all
2 incorporated cities and towns as shown in the latest
3 official federal census. For cities and towns incorporated
4 after the latest official federal census, the census shall
5 be determined as of the date of incorporation as evidenced
6 by the certificate of the incorporating officials of that
7 city or town. If a city or town disincorporates, it shall
8 cease to receive any funds under this section and the amount
9 previously distributed to the city or town shall be
10 distributed to the remaining incorporated cities and towns.
11 All funds received by cities and towns under this section
12 shall be expended for state purposes such as law
13 enforcement, maintenance of the transportation system, and
14 public health."

15 Section 74. Section 4-349, R.C.M. 1947, is renumbered
16 section 4-3-219, and is amended to read as follows:

17 "4-349 ~~4-3-219~~. Brewers and wholesalers not to supply
18 fixtures, etc., to retailers, except as specified--~~brewers~~
19 ~~not to be interested in retailer financially~~. (a) It shall
20 be unlawful for any brewer or wholesaler to lease, furnish,
21 give or pay for any premises, furniture, fixtures,
22 equipment, signs, or any other advertising matter or any
23 other property to any retail licensee, used or to be used in
24 the dispensation of beer in and about the interior or
25 exterior of the place of business of any licensed retailer

or furnish, give or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars ~~(\$15.00)~~ (\$15) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than six hundred thirty (630) square inches in area, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

4. Maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

~~(b) No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of~~

~~any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.~~

~~(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance of credit in violation hereof shall be regarded and~~

~~construed as rendering or receiving financial assistance,
and the licenses of both brewers, wholesalers and retail
licensees involved in violation hereof shall be suspended or
revoked, as determined by the board in its discretion."~~

Section 75. There is a new section to be numbered
4-3-220, R.C.M. 1947, which reads as follows:

4-3-220. Financial interest in retailers prohibited.

No brewer or wholesaler shall advance or loan money to, or
furnish money for, or pay for or on behalf of any retailer,
for any license or tax which may be required to be paid for
any retailer, and no brewer or wholesaler shall be
financially interested, either directly or indirectly, in
the conduct or operation of the business of a retailer, as
herein defined. A brewer or wholesaler shall be deemed to
have such a financial interest within the meaning of this
section if (1) such brewer or wholesaler owns or holds any
interest in, or a lien or mortgagee against the retailer or
his premises; or (2) if such brewer or wholesaler is under
any contract with a retailer concerning future purchases
and/or sale of merchandise by one from, or to the other; (3)
if any retailer holds an interest as a stockholder, or
otherwise, in the business of the wholesaler.

Section 76. There is a new section to be numbered
4-3-221, R.C.M. 1947, which reads as follows:

4-3-221. Seven day credit limitation. No sale or

delivery of beer shall be made to any retail licensee,
except for cash paid within seven (7) days after the
delivery thereof, and in no event shall any brewer or
wholesaler extend more than seven (7) days' credit on
account of such beer to a retail licensee, nor shall any
retail licensee accept or receive delivery of such beer
without agreement to pay in cash therefor within seven (7)
days from delivery thereof. A correctly dated check which
is honored upon presentment shall be considered as cash
within the meaning of this code. Any extension or
acceptance of credit in violation hereof shall be regarded
and construed as rendering or receiving financial
assistance, and the licenses of both brewers, wholesalers
and retail licensees involved in violation hereof shall be
suspended or revoked, as determined by the department in its
discretion.

Section 77. Section 4-359, R.C.M. 1947, is renumbered
section 4-3-222, and is amended to read as follows:

~~"4-359~~ 4-3-222. Limitations on advertising of beer. It
shall be lawful to advertise beer containing not more than
~~four seven~~ per centum (4 7%) of alcohol by weight, as herein
defined and regulated, subject to (a) the restrictions on
brewers contained in section 4-349 ~~4-3-219~~ of this act code,
and subject to (b) the restrictions on retailers, to wit: No
retail licensee ~~under the Montana Beer Act~~ shall display, or

permit to be displayed, on the exterior portion or surface of such retailer's place of business, or on the exterior portion or surface of any building of which said place of business is a part, or on any premises adjacent thereto, whether any of such premises be owned or leased by the retailer, any sign, poster or advertisement bearing the name, brand name, trade name, trade-mark or other designation indicating the manufacturer, brewer, wholesaler or place of manufacture, of any beer whatsoever."

Section 78. Section 4-401, R.C.M. 1947, is renumbered section 4-1-103, and is amended to read as follows:

"~~4-404~~ ~~4-1-103~~. Declaration of policy as to retail sale of liquor. It is hereby declared as the policy of the state that it is necessary to further regulate and control the sale and distribution within the state of alcoholic beverages, and to eliminate certain illegal traffic in liquor now existing, and to ensure the entire control of the sale of liquor in the Montana ~~liquor control board~~ department of revenue, it is advisable and necessary, in addition to the operation of the state liquor stores now provided by law, that the said ~~board~~ department be empowered and authorized to grant licenses to persons qualified under this ~~act~~ code, to sell liquor purchased by them at state liquor stores at retail posted price in accordance with this ~~act~~ code and under rules and regulations promulgated by the

said ~~board~~ department, and under its strict supervision and control, and to provide severe penalty for the sale of liquor except by and in state liquor stores and by persons licensed under this ~~act~~ code. The restrictions, regulations and provisions contained in this ~~act~~ code are enacted by the legislature for the protection, health, welfare and safety of the people of the state."

Section 79. Section 4-403, R.C.M. 1947, is renumbered section 4-4-202, and is amended to read as follows:

"~~4-403~~ ~~4-4-202~~. ~~Issuance of retail liquor licenses-- limit on number of licenses-- retail wine licenses-- lapse and cancellation.~~ All beverage license quota. (1) Except as otherwise provided by law, a license to sell liquor, beer and wine at retail, an all-beverages license, in accordance with the provisions of this ~~act~~ code and the regulations of the Montana ~~liquor control board~~ department of revenue, may be issued to any person who shall be approved by a ~~majority of the board~~ the department as a fit and proper person to sell liquor such beverages; provided, that ~~the number of retail liquor licenses which the board may issue shall be determined as follows:~~

(a) ~~The~~ the number of ~~retail liquor~~ all beverage licenses that the ~~board~~ department may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate

1 limits of such cities and towns shall be determined on the
 2 basis of population as shown by the most recent official
 3 United States census authorized by Congress, to wit: In
 4 incorporated towns of five hundred (500) inhabitants or less
 5 and within a distance of five (5) miles from the corporate
 6 limits of such towns, not more than two (2) retail ~~liquor~~
 7 licenses; in incorporated cities or incorporated towns of
 8 more than five hundred (500) inhabitants and not over three
 9 thousand (3000) inhabitants and within a distance of five
 10 (5) miles from the corporate limits of such cities and
 11 towns, three (3) retail ~~liquor~~ licenses for the first one
 12 thousand (1000) inhabitants and one (1) retail ~~liquor~~
 13 license for each additional one thousand (1000) inhabitants;
 14 in incorporated cities of over three thousand (3000)
 15 inhabitants and within a distance of five (5) miles from the
 16 corporate limits thereof, five (5) retail ~~liquor~~ licenses
 17 for the first three thousand (3000) inhabitants and one (1)
 18 retail ~~liquor~~ license for each additional one thousand five
 19 hundred (1500) inhabitants. The number of the inhabitants
 20 in such cities and towns, ~~and in addition exclusive of~~ the
 21 number of inhabitants residing within a distance of five (5)
 22 miles from the corporate limits thereof, shall govern the
 23 number of retail ~~liquor~~ licenses that may be issued for use
 24 within such cities and towns and within a distance of five
 25 (5) miles from the corporate limits thereof; provided,

1 however, that where two (2) or more incorporated
 2 municipalities are situated within a distance of five (5)
 3 miles from each other, the total number of retail ~~liquor~~
 4 licenses that may be issued for use in both of such
 5 municipalities and within a distance of five (5) miles from
 6 their respective corporate limits, shall be determined on
 7 the basis of the combined population of both of such
 8 municipalities and shall not exceed the foregoing
 9 limitations. Notwithstanding the preceding sentence, the
 10 total population for determining the quota of a city may
 11 include, with the city's population, the population residing
 12 outside, but within five (5) miles of the city limits in a
 13 case where the number of persons residing outside but within
 14 five (5) miles of the city exceeds the number of persons
 15 residing within the city. Such a determination may be made
 16 only upon a special census taken by the department or its
 17 agent at the expense of the applicant for a license under
 18 this section. The said distance of five (5) miles from the
 19 corporate limits of any incorporated city or incorporated
 20 town shall be measured in a straight line from the nearest
 21 entrance of the premises proposed for licensing to the
 22 nearest corporate boundary of such city or town. Retail
 23 ~~liquor~~ all-beverages licenses of issue on the date of the
 24 passage and approval of this ~~act~~ code and which are in
 25 excess of the foregoing limitations shall be renewable, but

1 no new licenses shall be issued in violation of such
 2 limitations; provided that such limitations shall not
 3 prevent the issuance of a nontransferable and nonassignable
 4 (as to ownership only) retail ~~liquor~~ license to any post of
 5 a nationally chartered veterans' organization or any lodge
 6 of a recognized national fraternal organization, if such
 7 veterans' or fraternal organization has been in existence
 8 for a period of five (5) years or more prior to January 1,
 9 1949. No incorporated city or incorporated town may by
 10 ordinance restrict the number of licenses that the ~~board~~
 11 ~~department~~ may issue; provided that no retail license may be
 12 issued by the ~~board department~~ for any premises situated
 13 within any zone of a city or town wherein the sale of liquor
 14 is prohibited by ordinance, a certified copy of which has
 15 been filed with the ~~board department~~. The ~~board department~~
 16 shall have discretion to deny the issuance of a retail
 17 license if it shall determine that the premises proposed for
 18 licensing are off regular police beats and cannot be
 19 properly policed by local authorities.

20 (b) ~~The~~ the number of retail ~~liquor~~ all-beverages
 21 licenses that the ~~board department~~ may issue for use at
 22 premises situated outside of any incorporated city or
 23 incorporated town and outside of the area within a distance
 24 of five (5) miles from the corporate limits thereof, shall
 25 be not more than one (1) license for each seven hundred

1 fifty (750) population of the county, after excluding the
 2 population of incorporated cities and incorporated towns in
 3 such county and ~~the population residing within a distance of~~
 4 ~~five (5) miles from the corporate limits thereof.~~

5 ~~(2) From and after February 1, 1949, any retail license~~
 6 ~~issued pursuant to this act not actually used in a going~~
 7 ~~establishment for a period of ninety (90) days, shall~~
 8 ~~automatically lapse. Upon determining the fact of nonuser~~
 9 ~~for such period the board shall cancel such license of~~
 10 ~~record and no portion of the fee paid therefor shall be~~
 11 ~~refundable. The provisions of this subsection shall not~~
 12 ~~apply to the license of any licensee whose premises are~~
 13 ~~operated on a seasonal basis in connection with a bona fide~~
 14 ~~lodge, park, hotel, tourist facility or like business,~~
 15 ~~provided such licensee has secured written authority from~~
 16 ~~the board to close his licensed premises for a specified~~
 17 ~~period of greater than ninety (90) days' duration, and~~
 18 ~~providing further that should the liquor control board~~
 19 ~~determine that such lapse was reasonably beyond the control~~
 20 ~~of the licensee, then the lapse provision set out above~~
 21 ~~shall not apply.~~

22 ~~(3) Resort licenses. It is the intent and purpose of~~
 23 ~~this act to encourage the growth of quality recreational~~
 24 ~~resort facilities in undeveloped areas of the state and to~~
 25 ~~provide for the orderly growth of existing recreational~~

1 sites by the establishment of resort areas within which
 2 retail liquor licenses may be issued by the board under the
 3 terms and as more particularly prescribed below, in
 4 addition to the licenses as otherwise set forth in this act.
 5 The board may issue resort retail liquor licenses in a
 6 resort area.
 7 For the purposes of this section, a resort area is
 8 defined as a recreational facility meeting the
 9 qualifications determined by the board as hereinafter
 10 provided.

11 The board shall determine that the area for which
 12 licenses are to be issued is a resort area, such
 13 determination to be made under and pursuant to rules and
 14 regulations to be promulgated within one hundred eighty
 15 (180) days after the passage and approval of this act. In
 16 addition to the other requirements of this act, a resort
 17 area for the purposes of qualification for the issuance of
 18 resort retail liquor licenses must have a current actual
 19 valuation of resort or recreational facilities, including
 20 land and improvements theorey of not less than five hundred
 21 thousand dollars (\$500,000), at least half of which
 22 valuation must be for a structure or structures within the
 23 resort area, and must be under the sole ownership or control
 24 of one person or entity at the time of the filing of the
 25 resort area plat referred to in the next paragraph. The

1 word control shall mean lands held under lease, option, or
 2 permit. Before first adopting such rules and regulations in
 3 regard to resort liquor licenses, the board shall publish a
 4 notice of the hearing to be held on said rules and
 5 regulations in a regularly published newspaper in the cities
 6 of Billings, Bozeman, Butte, Great Falls, Helena, Miles
 7 City, Kalispell, and Missoula, Montana, said publication to
 8 be published in said newspapers at least once a week for
 9 four consecutive weeks, the last of said publications being
 10 at least ten (10) but not more than thirty (30) days prior
 11 to the date set for said hearing, which shall be held in
 12 Helena, Montana, at a time and place designated by the
 13 board.

14 The resort area must be determined by the resort
 15 developer or landowner by a plat setting forth the resort
 16 boundaries designating the ownership of the lands within the
 17 resort area which plat must be verified by the resort
 18 developer or landowner, and filed with the board prior to
 19 the filing of any applications by individuals for licenses
 20 within the resort area. Such plat must show the location
 21 and general design of the buildings, and other improvements
 22 to be built in said area in which resort retail liquor
 23 licenses are to, or may, be located. A master plan for the
 24 development of the said area may be filed by the resort
 25 developer in satisfaction of this section.

~~Upon such filing the board shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board. At least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-425 herein.~~

~~Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.~~

~~When the board has accepted a plat and a given resort~~

~~area has been determined, applications may then be filed with the board by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.~~

~~If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the board may establish.~~

~~In addition to the restrictions on sale or transfer of a license as provided in section 4-410 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.~~

~~The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.~~

~~A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-403 (1) (a) above and a resort retail liquor license shall be issued by~~

1 ~~the board on the basis that the board has determined that~~
 2 ~~such license is justified by public convenience and~~
 3 ~~necessity, following a hearing as provided in section~~
 4 ~~4-407.1.~~

5 ~~If any clause, sentence, paragraph, section, or any~~
 6 ~~part of this act shall be declared and adjudged to be~~
 7 ~~invalid and/or unconstitutional, such invalidity or~~
 8 ~~unconstitutionality shall not affect, impair, invalidate or~~
 9 ~~nullify the remainder of this act."~~

10 Section 80. There is a new section to be numbered
 11 4-4-203, R.C.M. 1947, which reads as follows:

12 4-4-203. Lapse of license for nonuse. From and after
 13 February 1, 1949, any retail license issued pursuant to this
 14 code (including any retail license to sell beer for
 15 off-premises consumption), not actually used in a going
 16 establishment for a period of ninety (90) days, shall
 17 automatically lapse. Upon determining the fact of nonuser
 18 for such period the department shall cancel such license of
 19 record and no portion of the fee paid therefor shall be
 20 refundable. The provisions of this subsection shall not
 21 apply to the license of any licensee whose premises are
 22 operated on a seasonal basis in connection with a bona fide
 23 dude ranch, resort, park hotel, tourist facility or like
 24 business, provided such licensee has secured written
 25 authority from the department to close, has licensed

1 premises for a specified period of greater than ninety (90)
 2 days' duration, and providing further that should the
 3 department determine that such lapse was reasonably beyond
 4 the control of the licensee, then the lapse provision set
 5 out above shall not apply.

6 Section 81. There is a new section to be numbered
 7 4-4-204, R.C.M. 1947, which reads as follows:

8 4-4-204. Resort licenses. It is the intent and
 9 purpose of this section to encourage the growth of quality
 10 recreational resort facilities in undeveloped areas of the
 11 state and to provide for the orderly growth of existing
 12 recreational sites by the establishment of resort areas
 13 within which retail liquor licenses may be issued by the
 14 department under the terms and as more particularly
 15 prescribed below. In addition to the licenses as otherwise
 16 set forth in this act, the department may issue resort
 17 retail liquor licenses in a resort area.

18 For the purposes of this section, a resort area is
 19 defined as a recreational facility meeting the
 20 qualifications determined by the department as hereinafter
 21 provided.

22 The department shall determine that the area for which
 23 licenses are to be issued is a resort area, such
 24 determination to be made under and pursuant to rules and
 25 regulations to be first promulgated on or before December

1 31, 1975. In addition to the other requirements of this
2 code, a resort area for the purposes of qualification for
3 the issuance of resort retail liquor license must have a
4 current actual valuation of resort or recreational
5 facilities, including land and improvements thereon, of not
6 less than five hundred thousand dollars (\$500,000), at least
7 half of which valuation must be for a structure or
8 structures within the resort area, and must be under the
9 sole ownership or control of one person or entity at the
10 time of the filing of the resort area plat referred to in
11 the next paragraph. The word control shall mean lands held
12 under lease, option, or permit. Before first adopting such
13 rules and regulations in regard to resort liquor licenses,
14 the department shall publish a notice of the hearing to be
15 held on said rules and regulations in a regularly published
16 newspaper in the cities of Billings, Bozeman, Butte, Great
17 Falls, Helena, Miles City, Kalispell and Missoula, Montana,
18 said publication to be published in said newspapers at least
19 once a week for four consecutive weeks, the last of said
20 publications being at least ten (10) but not more than
21 thirty (30) days prior to the date set for said hearing,
22 which shall be held in Helena, Montana, at a time and place
23 designated by the department.

24 The resort area must be determined by the resort
25 developer or landowner by a plat setting forth the resort

1 boundaries designating the ownership of the lands within the
2 resort area which plat must be verified by the resort
3 developer or landowner, and filed with the department prior
4 to the filing of any applications by individuals for
5 licenses within the resort area. Such plat must show the
6 location and general design of the buildings, and other
7 improvements to be built in said area in which resort retail
8 liquor licenses are to, or may, be located. A master plan
9 for the development of the said area may be filed by the
10 resort developer in satisfaction of this section.

11 Upon such filing the department shall forthwith
12 schedule a public hearing to be held in Helena, Montana, to
13 determine whether the facility proposed by the resort
14 developer or landowner is a resort area within the meaning
15 of the rules and regulations of the department. At least
16 thirty (30) days prior to the date of the hearing, the
17 department shall publish notice thereof with a description
18 of the location of the proposed resort area in a newspaper
19 published in the county or counties in which the resort is
20 located, once a week for four (4) consecutive weeks. Each
21 resort developer or landowner shall, at the time of filing
22 his application, pay to the department an amount sufficient
23 to cover the costs of said publication. Persons may present
24 statements to the department at the hearing in person or in
25 writing in opposition or support of the plat. Within thirty

(30) days of the hearing the department shall accept or reject the plat. If rejected the department must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the department may be reviewed pursuant to the review procedure set forth in section 4-4-402.

Once filed with the department, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the department, which approval shall be according to public convenience and necessity.

When the department has accepted a plat and a given resort area has been determined, applications may then be filed with the department by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.

If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete and the time of such application, the department shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the

department may establish.

In addition to the restrictions on sale or transfer of a license as provided in section 4-4-206 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.

The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.

A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-4-202 above and a resort retail liquor license shall be issued by the department on the basis that the department has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-4-302.

Section 82. Section 4-406, R.C.M. 1947, is renumbered section 4-4-404, and is amended to read as follows:

"4-406 4-4-404. Fee for and expiration of licenses. Effective July 1, 1944, and at the same date of each year thereafter, the Montana ~~liquor control board~~ department of revenue shall issue licenses for the retail sale of ~~beer and/or alcoholic beverages~~ liquor on an annual basis, and at such fees as are prescribed by law, and such licenses shall expire at midnight of June 30th of the succeeding year.

1 ~~Provided that when the applicant shall have had a beer~~
 2 ~~license or beer and liquor licenses for 1943, he shall pay~~
 3 ~~the fees required for such license or licenses for the first~~
 4 ~~half of 1944 before he shall be qualified to be issued such~~
 5 ~~license or licenses for the year commencing June 30, 1944.~~
 6 The department shall notify each applicant for an original
 7 license or renewal that he should inform himself of
 8 applicable provisions of federal law which may require a
 9 permit from a federal agency."

10 Section 83. Section 4-407, R.C.M. 1947, is renumbered
 11 section 4-4-301, and is amended to read as follows:

12 ~~"4-407 4-4-301.~~ Application for license--penalty for
 13 false statements. Prior to the issuance of a license as
 14 herein provided, the applicant shall file with the Montana
 15 ~~liquor control board~~ department of revenue an application in
 16 writing, signed by the applicant, and containing such
 17 information and statements relative to the applicant and the
 18 premises where the liquor alcoholic beverage is to be sold,
 19 as may be required by the ~~Montana liquor board~~ department.

20 The application shall be verified by the affidavit of
 21 the person making the same before a person authorized to
 22 administer oaths. If any false statement is made in any
 23 part of said application, the applicant, or applicants,
 24 shall be deemed guilty of a misdemeanor and upon conviction
 25 thereof the license, if issued, shall be revoked and the

1 applicant, or applicants, subjected to the penalties
 2 provided by law."

3 Section 84. Section 4-407.1, R.C.M. 1947, is
 4 renumbered section 4-4-302, and is amended to read as
 5 follows:

6 ~~"4-407.1 4-4-302.~~ Notice of application--publication--
 7 protest. When an application has been filed with the Montana
 8 ~~liquor control board~~ department of revenue for a license to
 9 sell ~~liquor~~ alcoholic beverages at retail, or to transfer
 10 such license, the ~~board~~ department shall promptly publish in
 11 a newspaper of general circulation in the city, town or
 12 county from whence such application shall come, a notice
 13 that such applicant has made application for such license,
 14 and that protests against the issuance of a license to the
 15 applicant will be heard at a time and place stated in the
 16 notice, which shall be ~~at a special or regular meeting of~~
 17 ~~the Montana liquor control board~~ in the city of Helena,
 18 Montana. Notice of application for a new license shall be
 19 published once a week for four (4) consecutive weeks.
 20 Notice of application for transfer of a license shall be
 21 published once a week for two (2) consecutive weeks. Notice
 22 may be substantially in the following form:

23 NOTICE OF APPLICATION FOR RETAIL ~~LIQUOR~~

24 ALL BEVERAGE LICENSE

25 Notice is hereby given that on the day of

19.., one (name of applicant) filed an application for a retail ~~liquor~~ all beverage license with the Montana ~~liquor control-board~~ department of revenue, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of —M, on the day of, 19.., at the office of the Montana ~~liquor-control-board~~ department of revenue, in Helena, Montana.

Dated

Signed

ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this ~~act~~ code be issued if the said Montana ~~liquor control-board~~ department of revenue shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of the ~~Montana Retail Liquor License Act~~ this code will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana ~~liquor-control-board~~ department of revenue, an amount sufficient to cover the costs of publishing said notice."

Section 85. Section 4-408, R.C.M. 1947, is renumbered

section 4-4-303, and is amended to read as follows:

"~~4-408~~ 4-4-303. Investigation of application. Upon receipt of ~~an~~ a completed application for a license under this ~~act~~ code, accompanied by the necessary license fee and bond, the ~~board~~ department of revenue shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this ~~act~~ code and the rules and regulations promulgated by the ~~board~~ department are met and complied with."

Section 86. Section 4-408.1, R.C.M. 1947, is renumbered section 4-4-304, and is amended to read as follows:

"~~4-408.1~~ 4-4-304. Fingerprints required of licensees. All applicants for a Montana retail ~~liquor~~ all beverage or beer license, including corporate officers and managers, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license."

Section 87. Section 4-409.1, R.C.M. 1947, is renumbered section 4-4-106, and is amended to read as follows:

1 ~~"4-409, 4-4-106.~~ Special permits to sell ~~liquor~~
 2 ~~alcoholic beverages~~—application and issuance—fee. Any post
 3 of a nationally chartered veterans' organization or any
 4 lodge of a recognized national fraternal organization, not
 5 otherwise licensed under this act, shall in the discretion
 6 of the ~~board department of revenue,~~ without notice or
 7 hearing as provided in section ~~4-407, 4-4-302,~~ be entitled
 8 to a special permit to sell ~~liquor~~ all alcoholic beverages
 9 at such post or lodge, to members and their guests only, to
 10 be consumed within the hall or building of such post or
 11 lodge.

12 The application of such nationally chartered veterans'
 13 organization or lodge of a recognized national fraternal
 14 organization, shall describe the location of the hall or
 15 building where the special permit shall be used and the date
 16 it will be used. Such application shall be accompanied by a
 17 permit fee of ~~ten TWENTY~~ dollars ~~(\$40.00) (\$10) (\$20).~~

18 The special permit issued shall be for a twenty-four
 19 (24) hour period ending at 2 a.m. only and the ~~board~~
 20 department shall not issue more than twelve (12) such
 21 permits to any such post or lodge during a calendar year.
 22 ~~Such post or lodge must have either a retail license or~~
 23 ~~special permit to sell beer before being entitled to a~~
 24 ~~special permit to sell liquor."~~

25 Section 88. Section 4-410, R.C.M. 1947, is renumbered

1 section 4-4-206, and is amended to read as follows:

2 ~~"4-410 4-4-206.~~ Contents of license -- posting --
 3 privilege -- transfer -- expiration. [1] Every license
 4 issued under this ~~act code~~ shall set forth the name of the
 5 person to whom issued, the location by street and number, or
 6 other appropriate specific description of location if no
 7 street address exists, of the premises where the business is
 8 to be carried on under said license, and such other
 9 information as the ~~board department~~ shall deem necessary.
 10 If the licensee is a partnership or if more than one person
 11 has any interest in the business operated under the license,
 12 the names of all persons in the partnership or interested in
 13 the business must appear on the license. Every license must
 14 be posted in a conspicuous place on the premises wherein the
 15 business authorized under the license is conducted and such
 16 license shall be exhibited upon request to any authorized
 17 representative of the ~~board department~~ or to any peace
 18 officer of the state of Montana.

19 [2] Any license issued under the provisions of this
 20 ~~act code~~ shall be considered a privilege personal to the
 21 licensee named in the license and shall be good until the
 22 expiration of the license, unless sooner revoked or
 23 suspended. A license may be transferred to the executor or
 24 administrator of the estate of any deceased licensee when
 25 such estate consists in whole or in part of the business of

1 selling liquor under a license and in such event the license
2 may descend or be disposed of with the business to which it
3 is applicable under appropriate probate proceedings.

4 {3} In the event of a major loss or damage to licensed
5 premises by unforeseen natural causes, or in case of
6 expiration of lease of the licensed premises, or in the
7 event of eviction or increase of rent by the landlord, in
8 case of rented, licensed premises, or in case of proposed
9 removal of license to premises as substantially suited for
10 the retail liquor business as the premises vacated, the
11 licensee may apply to the board department for a transfer of
12 the license to a different premises, the board department
13 may in its discretion permit a transfer in such cases if it
14 appears to the board department that such a transfer is
15 required to do justice to the licensee applying for the
16 transfer. The board department shall in no event, nor for
17 any cause, permit a transfer to a different premises where
18 the sanitary, health and service facilities are less
19 satisfactory than such facilities which exist or had existed
20 at the premises from which the transfer is proposed to be
21 made.

22 {4} Upon a bona fide sale of the business operated
23 under any license the license may be transferred to a
24 qualified purchaser. No transfer of any license as to
25 person or location shall be effective unless and until

1 approved by the board department and any licensee or
2 transferee or proposed transferee who operates or attempts
3 to operate under any supposedly transferred license prior to
4 the approval of such transfer by the board department,
5 endorsed upon the license in writing, shall be considered as
6 operating without a license and the license affected may be
7 revoked or suspended by the board department. ~~HOWEVER, THE~~
8 ~~DEPARTMENT MAY, WITHIN ITS DISCRETION PERMIT A QUALIFIED~~
9 ~~PURCHASER TO OPERATE THE BUSINESS TO BE TRANSFERRED PENDING~~
10 ~~FINAL APPROVAL, PROVIDING THE APPLICATION FOR TRANSFER HAS~~
11 ~~BEEN FILED WITH THE DEPARTMENT. The board shall not in any~~
12 ~~event permit the transfer of any license beyond the quota~~
13 ~~area within which such license was originally issued, any~~
14 ~~such license which is not within a quota area may not be~~
15 ~~transferred to any premises within a quota area.~~

16 (a) A license may be transferred to a new ownership
17 and to a location outside the quota area for which it was
18 originally issued only when the following criteria are met:

19 (i) the total number of all-beverages licenses in the
20 original quota area exceeded the quota for that area by at
21 least twenty-five percent (25%) in the most recent census;
22 and

23 (ii) the total number of all-beverages licenses in the
24 quota area to which the license would be transferred did not
25 exceed that area's quota by more than twenty-five percent

~~(25X) in the most recent census; and~~

~~(iii) the department finds, after a public hearing, that the public convenience and necessity would be served by such a transfer.~~

~~(b) A license transferred between quota areas under this section may not be pledged as security, or MAY NOT be transferred TO ANOTHER PERSON, except for a transfer by inheritance upon the death of the licensee. If the licensee is a corporation or a business entity other than a natural person, ownership interests in the licensee may not be pledged as security or transferred except by inheritance if the value of such ownership interests exceed the fair market value of the real property and inventory owned by the licensee. A LICENSE TRANSFERRED BETWEEN QUOTA AREAS UNDER THIS SECTION MAY BE HELD ONLY BY NATURAL PERSONS. FOR THE PURPOSE OF THIS SECTION, NATURAL PERSONS SHALL NOT INCLUDE LIMITED PARTNERSHIPS OR OTHER BUSINESS ENTITIES OF ANY KIND IN WHICH EACH NATURAL PERSON IS NOT A FULL PARTICIPANT IN THE OWNERSHIP AND OPERATION OF THE BUSINESS AUTHORIZED BY THE LICENSE.~~

Except as above provided, no license shall be transferred or sold, nor shall it be used for any place of business not described in the license, provided however, that such license may be subject to mortgage and other valid liens, in which event the name of the mortgagee, upon

application to and approval of the ~~board department~~, must be endorsed on the license. All licenses shall expire at midnight of June thirtieth of each year."

Section 89. Section 4-411, R.C.M. 1947, is renumbered section 4-4-207 and is amended to read as follows:

"4-411 4-4-207. Limit one license to person ~~beer~~ license, when required ~~business in name of licensee~~. No person shall be granted more than one ~~all-beverages~~ license in any year. ~~No person, club, or fraternal organization shall be entitled to a license under this act unless such person, club, or fraternal organization shall have a beer license issued under the laws of Montana. No business may be carried on under any license issued under this chapter except in the name of the licensee.~~"

Section 90. Section 4-412, R.C.M. 1947, is renumbered section 4-4-108, and is amended to read as follows:

"4-412 4-4-108. ~~Persons disqualified for license.~~ License as privilege ~~criteria for decision on application. No license shall be issued by the board to:~~

1. ~~A person who has been convicted of being the keeper or is keeping a house of ill fame.~~

2. ~~A person who has been convicted of pandering or other crime or misdemeanor opposed to decency and morality, under the laws of the federal government or any state of the United States.~~

~~3. A person whose license issued under this act has been revoked for cause.~~

~~4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.~~

~~5. A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board.~~

~~6. A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.~~

~~7. A person who is not the owner and operator of the business.~~

A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) the applicant is financially capable, with no ownership interest of his own or of any member of his immediate family NEITHER THE APPLICANT NOR ANY MEMBER OF HIS IMMEDIATE FAMILY HAS AN OWNERSHIP INTEREST in any other establishment licensed under this chapter for all beverages

sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;

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

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

Section 91. Section 4-413, R.C.M. 1947, is renumbered section 4-3-306, and is amended to read as follows:

"4-413 ~~4-3-306~~. Persons to whom ~~liquor~~ alcoholic beverage may not be sold or given. (1) No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any ~~liquor, beer or wine~~ alcoholic beverage to:

4- (a) Any person under the age of eighteen (18) years.

2- (b) Any intoxicated person or any person actually, apparently or obviously intoxicated.

~~3. A habitual drunkard.~~

~~4. An interdicted person.~~

5- (2) Any minor, or other person who knowingly

misrepresents his or her qualifications for the purpose of obtaining ~~liquor, beer or wine~~ an alcoholic beverage from such licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section ~~4-439~~ 94-5-610 provided, however, that nothing herein contained shall be construed as authorizing or permitting the sale of ~~liquor, beer or wine~~ an alcoholic beverage to any person in violation of any federal law."

Section 92. Section 4-415, R.C.M. 1947, is renumbered section 4-4-107, and is amended to read as follows:

"~~4-445~~ 4-4-107. ~~Restrictions on proximity of premises to churches and schools. Proximity to churches and schools restricted. No license shall be granted for any premises which shall be on the same street or avenue and within six hundred feet of a building occupied exclusively as a church, synagogue or other place of worship, or school, except a commercially operated school; the measurements to be taken in a straight line from the center of the nearest entrance of such school, church, synagogue or other place of worship to the center of the nearest entrance of the premises to be licensed; except, however, that no license shall be denied because such restriction may apply to any premises so located which are maintained as a bona fide hotel, restaurant, railway car, club or fraternal organization or society except similar places of business established and in~~

~~actual operation for one year prior to the passage and approval of this act. A retail licensee may not extend or relocate his premises within six hundred (600) feet of and on the same street as a building used exclusively as a church, synagogue, or other place of worship, or as a school other than a commercially operated or post-secondary school. This distance shall be measured in a straight line from the center of the nearest entrance of the place of worship or school to the nearest entrance of the licensee's premises. This section is a limitation upon the department's licensing authority. However, the department may renew a license for any establishment located in violation of this section if the establishment was either located on the site before the place of worship or school opened, or located in a bona fide hotel, restaurant, or fraternal organization building at the site since January 1, 1937.~~

Section 93. Section 4-416, R.C.M. 1947, is renumbered section 4-2-204, and is amended to read as follows:

"~~4-446~~ 4-2-204. ~~Board Department~~ to sell to licensees -- posted price. The ~~board department~~ is hereby authorized to sell through its stores all kinds of liquor, wine and cordials kept in stock to licensees licensed under this ~~act~~ code at the posted price thereof in the store in which said liquor is sold. All sales shall be upon a cash basis. The posted price as used herein shall mean the retail price of

1 such liquor as fixed and determined by the ~~Montana-liquor~~
2 ~~control-board department of revenue~~ and in addition thereto
3 an excise tax as in this act provided."

4 Section 94. Section 4-417, R.C.M. 1947, is renumbered
5 section 4-1-403, and is amended to read as follows:

6 "~~4-417 4-1-403~~. Excise liquor tax--collection. The
7 ~~Montana-liquor-control-board department of revenue~~ is hereby
8 authorized and directed to charge, receive and collect at
9 the time of the sale and delivery of any liquor as
10 authorized under any provision of the laws of the state of
11 Montana an excise tax at the rate of sixteen per centum
12 (16%) of the retail selling price on all liquor so sold and
13 delivered. The Montana ~~liquor-control-board department of~~
14 ~~revenue~~ shall retain the amount of such excise tax received
15 in a separate account and shall deposit with the state
16 treasurer, to the credit of the general fund, such sums so
17 collected and received not later than the tenth (10th) day
18 of each and every month."

19 Section 95. Section 4-413, R.C.M. 1947, is renumbered
20 section 4-2-205, and is amended to read as follows:

21 "~~4-413 4-2-205~~. Duplicate invoices of sales required.
22 The state liquor store shall upon each and every sale of
23 liquor to any licensee, issue a duplicate invoice of the
24 liquor purchased as provided by ~~said-board the department~~, a
25 copy of which shall be delivered to the licensee and one

1 copy retained at such store. The invoice shall show the
2 date of purchase, name of employee making the sale, the
3 quantity of each kind of liquor purchased, the price paid
4 therefor, the name of the licensee and the number of the
5 license, with such other information as may be required by
6 the ~~board department~~. The licensee shall keep and retain
7 his duplicate invoice of all purchases made by him from the
8 state liquor store, which shall at all times be subject to
9 inspection by the duly authorized officers, agents and
10 employees of the ~~board department~~."

11 Section 96. Section 4-419, R.C.M. 1947, is renumbered
12 section 4-6-102, and is amended to read as follows:

13 "~~4-419 4-6-102~~. Sale of liquor not purchased from
14 state store forbidden -- penalty. It shall be unlawful for
15 any licensee to sell or keep for sale and/or have on his
16 premises for any purpose whatever, any liquor except that
17 purchased from the state liquor store, and any licensee
18 found in possession of, or selling and keeping for sale, any
19 liquor which was not purchased from a state liquor store,
20 shall, upon conviction, be fined not less than five hundred
21 dollars ~~(\$500.00)~~ (\$500) nor more than fifteen hundred
22 dollars ~~(\$1500.00)~~ (\$1500), or by imprisonment for not less
23 than three (3) months nor more than one (1) year, or both
24 such fine and imprisonment, and if the ~~board department~~
25 shall be satisfied that any such liquor was knowingly sold

1 or kept for sale within the licensed premises by such
2 licensee, or by his agents, servants or employees, it shall
3 be mandatory that said ~~board department~~ immediately revoke
4 the license of said licensee."

5 Section 97. Section 4-420, R.C.M. 1947, is renumbered
6 section 4-4-407, and is amended to read as follows:

7 "4-420 ~~4-4-407~~. Penalty for sale of alcoholic ~~liquor~~
8 ~~beverage~~ without license. Any person, who has not been
9 issued a license under this ~~act code~~, who shall sell or keep
10 for sale any alcoholic ~~liquor beverage~~, shall be guilty of a
11 felony and upon conviction thereof shall be fined not less
12 than one thousand dollars ~~(\$1000.00)~~ (\$1000) nor more than
13 five thousand dollars ~~(\$5,000.00)~~ (\$5,000), or be imprisoned
14 in the state prison for not less than one (1) nor more than
15 five (5) years, or both such fine and imprisonment."

16 Section 98. Section 4-421, R.C.M. 1947, is renumbered
17 section 4-3-307, and is amended to read as follows:

18 "4-421 ~~4-3-307~~. Sale of liquor at less than posted
19 price forbidden. It shall be unlawful for any licensee under
20 the provisions of this ~~act code~~ to resell any liquor
21 purchased by such licensee from a state liquor store ~~or the~~
22 ~~state of Montana~~ for a sum less than the posted price
23 established by the said store and paid by the licensee
24 therefor."

25 Section 99. Section 4-422, R.C.M. 1947, is renumbered

1 section 4-1-305, and is amended to read as follows:

2 "4-422 ~~4-1-305~~. Employees of ~~board liquor division~~ not
3 to deal in liquor. No member or employee of the ~~board liquor~~
4 ~~division of the department~~, including those engaged in the
5 sale of liquor at the various state liquor stores, shall be
6 directly or indirectly engaged in dealing in liquor whether
7 as owner, part owner, member of a syndicate, shareholder or
8 otherwise, whether for his own benefit or in a fiduciary
9 capacity for others."

10 Section 100. Section 4-423, R.C.M. 1947, is
11 renumbered section 4-6-206, and is amended to read as
12 follows:

13 "4-423 ~~4-6-206~~. Officers may seize illicit ~~liquor~~
14 ~~alcoholic beverages~~ -- forfeiture. Any sheriff, police
15 officer, or ~~inspector investigator~~ appointed under this ~~act~~
16 ~~code~~, who shall find any alcoholic ~~beverages~~, ~~beverage~~
17 ~~liquor or moonshine which is~~ kept or held by any person for
18 sale or other disposition in violation of this ~~act code~~, may
19 forthwith seize and remove the same, and keep the same as
20 evidence, and upon conviction of a person for violation of
21 the provisions hereof, the ~~said liquor~~ alcoholic beverage
22 and all packages containing the same shall be forfeited to
23 the state of Montana, and in addition the person so
24 violating the law shall be subject to the penalties herein
25 prescribed."

1 Section 101. Section 4-428, R.C.M. 1947, is
2 renumbered section 4-6-204, and is amended to read as
3 follows:

4 "~~4-428~~ 4-6-204. Officers may examine premises. The
5 ~~board department of revenue~~ or any duly authorized
6 representative thereof, or the sheriff of any county, shall
7 have the right at any time to make an examination of the
8 premises of ~~such a retail~~ licensee as to whether the law of
9 Montana and the rules and regulations of the ~~said board~~
10 ~~department~~ are being complied with, and shall also have a
11 right to inspect cars ~~or aircraft~~ of any ~~railway common~~
12 ~~carrier~~ system licensed under ~~act this code~~."

13 Section 102. Section 4-429, R.C.M. 1947, is
14 renumbered section 4-4-405, and is amended to read as
15 follows:

16 "~~4-429~~ 4-4-405. Renewal of suspended licenses. After
17 suspension or revocation of a license the ~~board department~~
18 shall have the power to renew the same if in its discretion
19 a proper showing therefor has been made."

20 Section 103. Section 4-430, R.C.M. 1947, is
21 renumbered section 4-4-406, and is amended to read as
22 follows:

23 "~~4-430~~ 4-4-406. City and county licenses--fees. The
24 city council of any incorporated town or city, or the county
25 commissioners outside of any incorporated town or city, may

1 provide for the issuance of licenses to persons to whom a
2 retail license has been issued under the provisions of this
3 ~~act code~~, and may fix license fees thereof, not to exceed a
4 sum equal to fifty per cent (50%) of the license fee
5 collected by the ~~board department~~ from such licensee under
6 this ~~act code~~."

7 Section 104. Section 4-439, R.C.M. 1947, is
8 renumbered section 4-6-404, and is amended to read as
9 follows:

10 "~~4-439~~ 4-6-404. Penalty for violating act--revocation
11 of license. Any person violating any of the provisions of
12 this ~~act code~~, shall upon conviction thereof, be deemed
13 guilty of a misdemeanor and punishable by such fine or
14 imprisonment, or both, as provided ~~by law in section~~
15 95-2206.3, R.C.M. 1947, except as is herein otherwise
16 provided. If any ~~such retail~~ licensee is convicted of any
17 offense under this ~~act code~~ his license shall be immediately
18 revoked, or in the discretion of the ~~board department~~
19 ~~suspended temporarily for a time to be determined by the~~
20 ~~board such other sanction imposed as may be authorized under~~
21 section 4-4-402. Further, if any person under the age of
22 eighteen (18) is convicted of an offense under this ~~act code~~
23 he shall be subject to a one hundred dollar (\$100) fine or
24 thirty (30) days in confinement. It shall be further
25 mandatory under the provisions of this ~~act code~~ that all

1 ~~such~~ licensees display in a prominent place in his premises
2 a placard as issued by the ~~board department~~ stating fully
3 the consequences for violations by persons under the age of
4 eighteen (18) years of the provisions of this ~~act code~~.

5 Any person who invites a person under the age of
6 eighteen (18) years into a public place where ~~liquor an~~
7 ~~alcoholic beverage~~ is sold and treats, gives or purchases
8 ~~liquor an alcoholic beverage~~ for such person, or permits
9 such person in a public place where ~~liquor an alcoholic~~
10 ~~beverage~~ is sold to treat, give or purchase liquor for him,
11 or holds out such person to be over the age of eighteen (18)
12 years to the owner of the ~~liquor~~ establishment, or his or
13 her employee or employees, shall be guilty of a
14 misdemeanor."

15 Section 105. Section 4-440, R.C.M. 1947, is
16 renumbered section 4-1-106, and is amended to read as
17 follows:

18 "4-440 4-1-106. Saving clause—scope of ~~act code~~. If
19 any clause, sentence, paragraph, section or any part of this
20 ~~act code~~ shall be declared and adjudged to be invalid and/or
21 unconstitutional, such invalidity or unconstitutionality
22 shall not affect, impair, invalidate or nullify the
23 remainder of this ~~act code~~. This ~~act code~~ shall apply to
24 the Montana ~~liquor control board department of revenue~~ as
25 now composed and existing, and to any board or commission or

1 ~~other entity~~ which may hereafter succeed the ~~above-said~~
2 ~~board department~~."

3 Section 106. Section 4-507, R.C.M. 1947, is
4 renumbered section 4-5-102, and is amended to read as
5 follows:

6 "4-507 4-5-102. Duties of the county clerk and
7 recorder. Upon making application to the county clerk and
8 recorder for an identification card, the applicant must
9 apply in person before the county clerk and recorder, who
10 shall ascertain and receive from the applicant:

- 11 1. The true and full name of the applicant;
- 12 2. The date of birth of the applicant, provided,
- 13 however, it shall be within the discretion of the officer to
- 14 require proof of the date of birth with a certified copy of
- 15 his or her birth certificate;
- 16 3. Place of birth of the applicant;
- 17 4. The height and weight of the applicant;
- 18 5. The color of eyes and hair of the applicant; and
- 19 6. A ~~Two~~, one and one-quarter inch (1 1/4") by one and
- 20 one-half inch (1 1/2") photograph of the applicant which
- 21 shall bear a true resemblance to the applicant. It shall be
- 22 within the discretion of the clerk and recorder to refuse a
- 23 photograph which does not present a true resemblance of the
- 24 applicant. The second photograph is to be filed with the
- 25 state."

Section 107. Section 4-508, R.C.M. 1947, is renumbered section 4-5-103, and is amended to read as follows:

"~~4-508 4-5-103~~. County clerk and recorder to forward application to the Montana ~~liquor-control-board department of revenue~~ for issuance of identification card. The county clerk and recorder shall forward the application, properly filled in and authenticated, to the Montana ~~liquor-control-board department of revenue~~, and that ~~board department~~ shall prepare an identification card upon a laminating machine. The identification card shall set forth all the information contained in the application, together with the photograph, and shall be signed by the ~~chairman of director of~~ the Montana ~~liquor-control-board department of revenue~~ or his designee."

Section 108. Section 4-509, R.C.M. 1947, is renumbered section 4-5-104, and is amended to read as follows:

"~~4-509 4-5-104~~. Montana ~~liquor-control-board department of revenue~~ to furnish application forms to county clerk and recorders. It shall be the duty of the Montana ~~liquor-control-board department of revenue~~ to prepare suitable application blanks and cause the same to be distributed to the various county clerk and recorders."

Section 109. Section 4-510, R.C.M. 1947, is

renumbered section 4-5-105, and is amended to read as follows:

"~~4-510 4-5-105~~. Fee to be charged. The county clerk and recorders shall charge and collect a fee of one dollar ~~(\$1) and fifty cents (\$1.50)~~ from the applicant at the time the application is prepared. ~~This fee~~ One dollar (\$1) thereof shall be transmitted to the Montana ~~liquor-control-board department of revenue~~ along with the application and shall be used to defray the cost of administering and executing the provisions of this ~~act~~ code. Any surplus shall revert to the general fund of the state of Montana. ~~The remaining fifty cents (\$1.50) shall be paid into the general fund of the county to defray the county's costs in administering this program.~~"

Section 110. There is a new section to be numbered 4-1-107, R.C.M. 1947, which reads as follows:

4-1-107. Definitions. As used in this code:

(1) ~~"AGENCY AGREEMENT"~~ MEANS AN AGREEMENT BETWEEN THE DEPARTMENT AND A PERSON APPOINTED TO SELL LIQUOR AS A COMMISSION MERCHANT, RATHER THAN AS AN EMPLOYEE.

~~(1)~~ (2) "Alcohol" means ethyl alcohol, also called ethanol or the hydrated oxide of ethyl.

~~(2)~~ (3) "Alcoholic beverage" means a compound produced and sold for human consumption as a drink that contains more than one-half of one percent (0.5%) of alcohol

by volume.

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

~~(4)~~—~~(5)~~ "Brewer" means a person who produces malt beverages.

~~(5)~~—~~(6)~~ "Department" means the Montana department of revenue.

~~(6)~~—~~(7)~~ "Immediate family" means a spouse, dependent children, or dependent parents.

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

~~(8)~~—~~(9)~~ "Liquor" means an alcoholic beverage except beer.

~~(9)~~—~~(10)~~ "Malt beverage" means an alcoholic beverage made by the fermentation of an infusion or decoction, or a combination of both, in potable brewing water, of malted barley with or without hops or their parts, or their products, and with or without other malted cereals and with or without the addition of unmalted or prepared cereals, other carbohydrates or products prepared therefrom, and with or without other wholesome products suitable for human food consumption.

~~(10)~~—~~(11)~~ "Package" means a container or receptacle used for holding an alcoholic beverage.

~~(11)~~—~~(12)~~ "Proof gallon" means a U. S. gallon of liquor at sixty degrees on the Fahrenheit scale that contains fifty percent (50%) of alcohol by volume.

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

~~(13)~~—~~(14)~~ "Residence" means a building, part of a building, or tent where a person resides, but does not include any part of a building that is not actually and exclusively used as a private residence.

~~(14)~~—~~(15)~~ "Rules and regulations" means rules and regulations published by the department pursuant to this act.

~~(15)~~—~~(16)~~ "State liquor facility" means a facility owned or under control of the department for the purpose of receiving, storing, transporting, or selling alcoholic beverages.

~~(16)~~—~~(17)~~ "State liquor store" means a retail store operated by the department in accordance with this code for the purpose of selling distilled spirits and wines.

~~(17)~~—~~(18)~~ "Storage depot" means a building or structure owned or operated by a brewer at any point in the state of Montana, off and away from the premises of a brewery, and which structure is equipped with refrigeration or cooling apparatus for the storage of beer, and from which a brewer

1 may sell or distribute beer as permitted by this code.

2 ~~(18)~~-(19) "Warehouse" means a building or structure
3 owned or operated by a licensed wholesaler for the
4 receiving, storage and distribution of beer as permitted by
5 this code.

6 ~~(19)~~-(20) "Wine" means an alcoholic beverage made from
7 the normal alcoholic fermentation of the juice of sound,
8 ripe, fruit or other agricultural products without addition
9 or abstraction, except as may occur in the usual cellar
10 treatment of clarifying and aging and that contains not less
11 than seven percent (7%) nor more than twenty-four percent
12 (24%) of alcohol by volume. Wine may be ameliorated to
13 correct natural deficiencies, sweetened and fortified in
14 accordance with applicable federal regulations and the
15 customs and practices of the industry. Other alcoholic
16 beverages not defined as above but made in the manner of
17 wine, labeled and sold as wine in accordance with federal
18 regulations are also wine.

19 Section 111. There is a new section to be numbered
20 4-1-204, R.C.M. 1947, which reads as follows:

21 4-1-204. Health professions exemption. A physician,
22 dentist, veterinarian or pharmacist, acting within the scope
23 of his professional responsibility and license to practice,
24 who prescribes, prepares, or administers alcohol or
25 substances containing alcohol, and sells or charges a fee,

1 does not violate the prohibitions of this title.

2 Section 112. There is a new section to be numbered
3 4-1-206, R.C.M. 1947, which reads as follows:

4 4-1-206. Local option. The electors of a county may,
5 by approving an initiative as provided under Title 37,
6 chapter 3, R.C.M. 1947, prohibit the sale and consumption of
7 liquor, or of all alcoholic beverages, within the county.
8 If such initiative is presented to the board of county
9 commissioners, the board may not approve it but shall submit
10 the proposal to the people under section 37-301.

11 Section 113. There is a new section to be numbered
12 4-1-405, R.C.M. 1947, which reads as follows:

13 4-1-405. In addition to the annual license tax imposed
14 by section 4-4-401, a tax of three dollars (\$3) per barrel
15 of thirty-one (31) gallons is hereby levied and imposed on
16 each and every barrel of beer sold by any duly licensed
17 brewer who manufactures beer in the state of Montana, which
18 said barrelage tax shall be due at the end of each month and
19 shall be payable with the brewer's monthly return or
20 statement required to be made to the department under the
21 provisions of section 4-3-203.

22 Section 114. There is a new section to be numbered
23 4-4-109, R.C.M. 1947, which reads as follows:

24 4-4-109. Passenger carrier licenses. Common carriers
25 serving Montana may serve beer and liquor to passengers in

1 aircraft over or railroad cars in the state of Montana, upon
 2 the issuance by the department of revenue of a retail beer
 3 and liquor license for that purpose. Such licenses shall be
 4 issued on an annual basis to common carriers making
 5 application therefor, and shall be effective from July 1 of
 6 the current year to July 1 of the following year. They
 7 shall be issued upon payment by the applicant of an annual
 8 license fee in the sum of three hundred dollars (\$300);
 9 provided, that licenses shall be issued for the remainder of
 10 the fiscal year commencing July 1, 1968, upon payment of a
 11 license fee in the sum of one hundred fifty dollars (\$150).

12 Section 115. There is a new section to be numbered
 13 4-4-110, R.C.M. 1947, which reads as follows:

14 4-4-110. Payment of liquor taxes by passenger
 15 carriers. Every airline or railroad operating in the state
 16 of Montana and selling liquor purchased outside this state
 17 for consumption within this state shall pay to the Montana
 18 department of revenue the excise taxes and state markup
 19 which would be applicable to such liquor if purchased from
 20 the state liquor store.

21 The amount of such excise taxes and state markup
 22 payable shall be determined by multiplying the following
 23 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 From said product, the carrier shall subtract the
 6 amount of excise taxes and state markup on purchases of
 7 liquor made within this state.

8 Section 116. There is a new section to be numbered
 9 4-4-111, R.C.M. 1947, which reads as follows:

10 4-4-111. Other accounting methods -- forms. (1) The
 11 method provided in section 4-4-110 shall be presumed to
 12 determine fairly and correctly the liquor purchased outside
 13 this state and sold for consumption within this state. Any
 14 carrier aggrieved by the application of such method may
 15 petition the department for use of some other method.
 16 Thereupon, if the department finds that the application of
 17 such method will be unjust to the carrier, it may allow the
 18 use of the method so petitioned for by the airline or may
 19 use such other method as will fairly reflect the liquor
 20 purchased outside this state and served for consumption
 21 within this state.

22 (2) The department shall prescribe report forms which
 23 shall be used by the carriers in reporting their sales and
 24 computing their liability for excise taxes and markup.
 25 Report forms shall be filed and payment of excise taxes and

state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

~~Section 117. There is a new section to be numbered 4-6-202, R.C.M. 1947, which reads as follows:~~

~~4-6-202. Arrest, entry of complaint, and lawful search and seizure authorized. The department shall enforce the provisions of this code, and may appoint certain of its investigators as peace officers for the purpose of enforcing this code. The powers of such persons under Title 95, R.C.M. 1947, are limited to violations of a provision of this code. Within these limits, a peace officer may arrest any person violating this code AND FOR THIS PURPOSE AN INVESTIGATOR SHALL HAVE THE AUTHORITY TO ARREST ANY PERSON VIOLATING THIS CODE, may enter complaint before any court of competent jurisdiction, and may lawfully search for and seize for use as evidence any unlawful or unlawfully possessed liquor, beer, licences or stamps AS IF SUCH INVESTIGATOR WERE A PEACE OFFICER, PROVIDED HE SHALL NOT BE AUTHORIZED TO CARRY A WEAPON MERELY BECAUSE OF THIS AUTHORITY. THE INVESTIGATORS, GIVEN THE ABOVE AUTHORITY, SHALL BE TRAINED TO MEET THE REQUIREMENTS OF THE POLICE OFFICERS STANDARDS OF TRAINING.~~

Section 117. There is a new section to be numbered

4-3-308, R.C.M. 1947, which reads as follows:

4-3-308. Refilling of liquor bottles prohibited. No person who sells, or offers for sale, liquor, nor the agent or employee of such person, may--

(1) place in any liquor bottle any liquor whatsoever other than those contained in such bottle at the time of stamping by the federal government; or

(2) possess any liquor bottle in which any liquor has been placed in violation of subsection (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

Section 118. Section 41-2004, R.C.M. 1947, is amended to read as follows:

"41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm, partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means ~~and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-202, Revised Codes of Montana, 1947 beverage so defined in the Alcoholic Beverages Code.~~

(6) "Beer" means any beverage ~~obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) alcohol by weight so defined in the Alcoholic Beverages Code.~~

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods."

SECTION 119. SECTION 4-404, R.C.M., 1947, IS RENUMBERED 4-4-403, AND IS AMENDED TO READ AS FOLLOWS:

"4-404-4-4-403. License fee for retail sale of liquor

within and without cities and towns of designated populations—census of population. Each licensee licensed under ~~the provisions of this act~~ the quotas of section 4-4-202 shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), ~~two~~ four hundred ~~(\$200.00)~~ dollars (\$400) per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred (\$300.00) dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~three five~~ hundred ~~(\$300.00)~~ dollars (\$500) per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, ~~measured~~ measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~four six~~ hundred fifty ~~(\$450.00)~~ dollars (\$650) per annum;

HOUSE OF REPRESENTATIVES

MARCH 17, 1975

HOUSE COMMITTEE ON B & I AMENDMENT TO SENATE BILL 1

1. Amend page 10, section 7, lines 16 and 17.

Following: "maintain"

Strike: "at the county seats and such other places"

Insert: "one or more stores, to be known as "state liquor stores,""

2. Amend page 10, section 7, lines 17 and 18.

Following: "department"

Strike: "deems advisable, one or more stores to be known as "state liquor stores,""

Insert: "finds feasible"

3. Amend page 103, section 88, subsection (4)(b), line 6.

Following: "section may not be"

Insert: "mortgaged or"

4. Amend page 103, section 88, subsection (4)(b), line 6.

Following: "security,"

Strike: "or"

Insert: "and"

5. Amend page 131, section 120, lines 15 and 16.

Following: "4-4-205;"

Strike: "4-404 is renumbered 4-4-403;"

AS SO AMENDED
BE CONCURRED IN

SENATE BILL NO. 1

INTRODUCED BY TOLMAGE, REGAN

A BILL FOR AN ACT ENTITLED: "AN ACT TO RECODIFY AND
GENERALLY REVISE THE ALCOHOLIC BEVERAGE CONTROL LAWS."

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

Section 1. Section 4-101, R.C.M. 1947, is renumbered
section 4-1-101, and is amended to read as follows:

~~"4-101 4-1-101. Citation of State Liquor Control Act—~~
~~declaration of policy—subject matters of regulation under~~
~~act. This act title may be cited as the "State Liquor~~
~~Control Act of Montana" "Montana Alcoholic Beverage Code".~~
It is hereby declared to be the policy of the state of
Montana to effectuate and ensure the entire control of the
manufacture, sale and distribution of liquor within the
state of Montana as that term is defined in this code in
~~section 4-102, Revised Codes of Montana, 1947, as amended by~~
~~chapter 200, laws of the thirty first legislative assembly~~
~~of Montana, in, and subject to, the authority of the state~~
of Montana through the Montana liquor control board
department of revenue, in accordance with the provisions of
~~the State Liquor Control Act of Montana (Title 4, chapter 1,~~
~~sections 4-101 through 4-171, inclusive, Revised Codes of~~
~~Montana, 1947, as amended or supplemented) and in accordance~~

~~with the provisions of the Retail Liquor License Act (Title~~
~~4, chapter 4, sections 4-401 through 4-441, inclusive,~~
~~Revised Codes of Montana, 1947, as amended or supplemented).~~

~~It is hereby declared to be the policy of the state of~~
~~Montana to effectuate and ensure that the control and~~
~~regulation by the state of Montana of the manufacture, sale~~
~~and distribution of beer, as that term is defined in the~~
~~Montana Beer Act (Title 4, chapter 3, sections 4-301 through~~
~~4-356, inclusive, Revised Codes of Montana, 1947, as amended~~
~~or supplemented) and regulated thereby, and containing four~~
~~per centum (4%) of alcohol by weight or less, and the~~
~~incidents of such manufacture, sale and distribution of such~~
~~beer, shall continue subject to, and be effectuated~~
~~exclusively under, the provisions of the Montana Beer Act,~~
~~as amended or supplemented, and not under the provisions of~~
~~the State Liquor Control Act of Montana. The terms "beer"~~
~~and "malt liquor" whenever used as a subject of regulation~~
~~and control by and under the state Liquor Control Act of~~
~~Montana shall refer to, and be construed as applicable only~~
~~to, beer, ale, porter, stout or other malt liquors~~
~~containing more than four per centum (4%) of alcohol by~~
~~weight, and such beer, ale, porter, stout and malt liquors~~
~~containing more than four per centum (4%) of alcohol by~~
~~weight, are hereby classified and defined as "liquor" and~~
~~shall be subject to regulation and control under the terms~~

~~of the State Liquor Control Act of Montana as amended or supplemented, and not under the provisions of the Montana Beer Act, as amended or supplemented. The said acts herein referred to shall be deemed~~ This code is an exercise of the police power of the state, in, and for the protection, of the welfare, health, peace, morals and safety of the people of the state and their provisions shall be construed for the accomplishment of such purposes."

Section 2. Section 4-103, R.C.M. 1947, is renumbered section 4-1-105, and is amended to read as follows:

~~"4-103 4-1-105. Divisions of act code. This act code is divided into six parts chapters. Part II Chapter 1 relates to the creation of a board authority of the department of revenue to administer this act and the powers and functions of the board department. Part II Chapter 2 relates to the establishment of state stores and the keeping and selling of liquors. Part III Chapter 3 relates to the formation of "legal option areas" and the holding of election therein control of liquor, wine, and beer. Part IV Chapter 4 relates to prohibitions, interdiction, penalties and procedure on prosecution and on appeal license administration. Part V Chapter 5 relates to property acquired by the board, and the financing and accounting by the board and application of the profits identification cards. Part VI Chapter 6 relates to general and~~

~~miscellaneous matters enforcement."~~

Section 3. Section 4-107, R.C.M. 1947, is renumbered section 4-1-301, and is amended to read as follows:

~~"4-107 4-1-301. General powers and duties of the board department. The board department of revenue shall have the powers and duties herein specified and the administration of to administer the State Liquor Control Act of Montana and the Montana Beer Code Alcoholic Beverage Code, including the general control, management and supervision of all state liquor stores, but the board is authorized to delegate to the state liquor administrator the general control, management and supervision of all state liquor stores, including the power to purchase supplies for same and the power to hire and discharge employees of the board, subject, however, to such regulations and restrictions as the board may impose upon the state liquor administrator."~~

Section 4. Section 4-109, R.C.M. 1947, is renumbered section 4-1-307, and is amended to read as follows:

~~"4-109 4-1-307. Principal office of board department of revenue. The principal office of the board department of revenue shall be in the city of Helena."~~

Section 5. Section 4-112, R.C.M. 1947, is renumbered section 4-1-302, and is amended to read as follows:

~~"4-112 4-1-302. Functions, powers and duties of board department of revenue. The board department of revenue shall~~

1 have the following functions, duties and powers:

2 (a) To buy, import, and have in its possession for
3 sale, and sell, liquors, in the manner set forth in this ~~act~~
4 code;

5 (b) To control the possession, sale and delivery of
6 liquors in accordance with the provisions of this ~~act~~ code;

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

10 (d) To lease, furnish and equip any building or land
11 required for the operation of this ~~act~~ code;

12 (e) To buy or lease all plant and equipment it may
13 consider necessary and useful in carrying into effect the
14 objects and purposes of this ~~act~~ code;

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

23 (g) To determine the nature, form and capacity of all
24 packages to be used for containing liquor kept or sold under
25 this ~~act~~ code; ~~provided that all spirituous and vinous~~

1 ~~liquors shall be purchased and sold only in bottled~~
2 ~~containers in the original packages, and not in barrels or~~
3 ~~bulk, it being the intent and purpose of this act to prevent~~
4 ~~the rectification or dilution of such liquors;~~

5 (h) To grant and issue licenses under and in pursuance
6 to this ~~act~~ code;

7 (i) Without in any way limiting, or being limited by
8 the foregoing, to do all such things as are deemed necessary
9 or advisable by the ~~board~~ department for the purpose of
10 carrying into effect the provisions of this ~~act~~ code, or the
11 regulations made thereunder."

12 Section 6. Section 4-113, R.C.M. 1947, is renumbered
13 section 4-1-303, and is amended to read as follows:

14 "~~4-113 4-1-303~~. Regulations may be made by ~~board~~
15 department of revenue—scope of regulations. (1) The ~~board~~
16 department of revenue may make such regulations, not
17 inconsistent with this ~~act~~ code, as to the ~~board~~ department
18 of revenue ~~seem~~ necessary, for carrying out the provisions
19 of this ~~act~~ code, and for the efficient administration
20 thereof.

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

(a) Regulating the equipment and management of state stores and warehouses in which liquor is kept or sold and prescribing the books and records to be kept therein;

(b) Prescribing the duties of the ~~officers, clerks and servants~~ employees of the ~~board~~ liquor division, and regulating their conduct while in the discharge of their duties;

(c) Governing the purchase of liquor and the furnishing of liquor to state stores established under this act code;

(d) Determining the classes, varieties and brands of liquor to be kept for sale at any state store;

(e) Prescribing, subject to this act code, the ~~days and hours~~ during which state liquor stores ~~and hotels, and clubs~~ retail establishments licensed to sell beer under this act shall be kept open for the sale of liquor alcoholic beverages;

(f) Providing for the issuing and distributing of price lists showing the price to be paid by purchasers for each class, variety or brand of liquor kept for sale under this act code;

(g) Prescribing an official ~~serially numbered~~ seal which shall be attached to every package of liquor sold or sealed under this act code;

(h) Prescribing forms to be used for the purpose of

this act code or of the regulations made thereunder, and the terms and conditions in permits and licenses issued and granted under this act code;

~~(i) Prescribing the kinds and quantities of liquor which may be purchased under permits of any class, including the quantity which may be purchased at any one time or within any specified period of time;~~

~~(j) (i)~~ Prescribing the form of records of purchase of liquor, and the reports to be made thereon to the board, and providing for inspection of the records so kept;

~~(k) (j)~~ Prescribing the manner of giving and serving notices required by this act code or the regulations thereunder;

~~(l) (k)~~ Prescribing the fees payable in respect of permits and licenses issued under this act code for which no fees are prescribed in this act code, and prescribing the fees for anything done or permitted to be done under the regulations made thereunder;

~~(m) Prescribing, subject to the provisions of this act, any advertisement of the application, if required by the board and the conditions and qualifications necessary for the obtaining of club licenses and the books and records to be kept and the returns to be made by clubs, and the number of licensed clubs in any municipality, and providing for the inspection of clubs;~~

~~(n)~~ (l) Prescribing, subject to the provisions of this ~~act~~ code, the conditions and qualifications necessary for the obtaining of a liquor or beer license, and the books and records to be kept and the returns to be made by the licensees and ~~the number of such licensed premises in any municipality and~~ providing for the inspection of such licensed premises;

~~(o)~~ (m) Specifying and describing the place and the manner in which liquor or beer may be lawfully kept or stored;

~~(p)~~ (n) Specifying and regulating the time and periods when, and the manner, methods and means by which, vendors and brewers shall deliver liquor under this ~~act~~ code, and the time and periods when, and the manner, methods and means by which liquor, under this ~~act~~ code, may be lawfully conveyed or carried;

~~(q)~~ (o) Governing the conduct, management and equipment of any premises licensed to sell liquor or beer under this ~~act~~ code;

~~(r)~~ Subject to this ~~act~~, to make regulations respecting the sale and consumption of beer in a club, holding a club license;

~~(s)~~ (p) Providing for the imposition and collection of ~~the tax to be collected or levied under section 4-147~~ [4-317], taxes and making regulations respecting returns, ~~to~~

~~be made by a brewer, and respecting the accounting and payment, by a brewer to the board, department of revenue of the tax taxes to be collected by him under said section 4-147 [4-317].~~

(3) Whenever it is provided in this ~~act~~ code that any act, matter or thing, may be done, if permitted or authorized by the regulations, or may be done in accordance with the regulations or as provided by the regulations, the ~~board department of revenue~~, subject to the restrictions set out in subsection (1) hereof, shall have the power to make regulations respecting such act, matter or thing."

Section 7. Section 4-114, R.C.M. 1947, is renumbered section 4-2-101, and is amended to read as follows:

"4-114 4-2-101. Establishment of state liquor stores—hours—kinds and prices of liquor. The ~~board department of revenue~~ shall establish and maintain ~~at the county seats and such other places~~ ONE OR MORE STORES, TO BE KNOWN AS "STATE LIQUOR STORES," as the ~~board department deems advisable, one or more stores to be known as "state liquor stores,"~~ FINDS FEASIBLE for the sale of liquor in accordance with the provisions of this ~~act~~ code and the regulations made thereunder; the stores shall be classified according to the volume of business which each store does each fiscal year; the volume of business to be used in figuring each store's classification shall be the volume of business done by the

1 store to be classified during the immediate past fiscal
 2 year; stores shall be classified as follows: stores having
 3 done a business of four hundred and fifty thousand dollars
 4 (\$450,000) or over during the immediate past fiscal year
 5 shall be "Class A" stores; stores having done a business of
 6 one hundred and forty thousand dollars (\$140,000) and up to
 7 four hundred and fifty thousand dollars (\$450,000) during
 8 the immediate past fiscal year shall be "Class B" stores;
 9 and all stores having done a business of less than one
 10 hundred and forty thousand dollars (\$140,000) during the
 11 immediate past fiscal year shall be "Class C" stores; in
 12 opening new stores the board department shall estimate the
 13 volume of business which said store will do the first year
 14 and classify said store according to the estimate of
 15 business; the board department shall ~~contract~~ ENTER INTO AN
 16 AGENCY AGREEMENT or employ the necessary help to operate
 17 said stores and shall designate the duties to be performed
 18 by the agent or employees; the board department may, from
 19 time to time, fix the prices at which the various classes,
 20 varieties and brands of liquor may be sold, and prices shall
 21 be the same at all state stores. Such state liquor stores
 22 shall be and remain open during such period of the day as
 23 the board department shall deem advisable, provided,
 24 however, that such stores shall be closed for the
 25 transaction of business between the close of normal business

1 Saturday p.m. ~~through~~ up to the opening of normal business
 2 Tuesday a.m. as set by board department regulation and
 3 including legal holidays ~~and election days.~~"

4 Section 8. Section 4-116, R.C.M. 1947, is renumbered
 5 section 4-2-106, and is amended to read as follows:

6 "~~4-116 4-2-106.~~ Provisions concerning sale of liquor
 7 ~~and beer by vendors.~~ A vendor store manager may sell to any
 8 person such liquor as that person is entitled to purchase in
 9 conformity with the provisions of this ~~act~~ code and the
 10 regulations made thereunder, provided that no delivery shall
 11 take place until the purchaser has paid the purchase price."

12 Section 9. Section 4-117, R.C.M. 1947, is renumbered
 13 section 4-2-201, and is amended to read as follows:

14 "~~4-117 4-2-201.~~ No reduction for quantity sales of
 15 liquor. No reductions shall be made by the ~~montana liquor~~
 16 ~~control board department~~ for sales of liquor in quantity."

17 Section 10. Section 4-120, R.C.M. 1947, is renumbered
 18 section 4-2-107, and is amended to read as follows:

19 "~~4-120 4-2-107.~~ Liquor not to be consumed on premises
 20 of state store. No officer, clerk or servant of the board
 21 department, employed in the state store, shall allow any
 22 liquor to be consumed on the premises of a state store, nor
 23 shall any person consume any liquor on such premises."

24 Section 11. Section 4-121, R.C.M. 1947, is renumbered
 25 section 4-2-104, and is amended to read as follows:

1 ~~"4-124 4-2-104.~~ When sales of liquor forbidden. No
 2 sale or delivery of liquor shall be made on or from the
 3 premises of any state liquor store, nor shall any store be
 4 open for the sale of liquor

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

6 ~~(b) on any day on which polling takes place at any~~
 7 ~~national or state election held in the electoral district in~~
 8 ~~which the store is situated;~~

9 ~~(c) on any day on which polling takes place at any~~
 10 ~~municipal election held in the municipality in which the~~
 11 ~~store is situated;~~

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

14 Section 12. Section 4-122, R.C.M. 1947, is renumbered
 15 section 4-2-103, and is amended to read as follows:

16 ~~"4-122 4-2-103.~~ Conveyance of liquors—opening liquor
 17 during transit forbidden. It shall be lawful to carry or
 18 convey liquor to any state store, and to and from any
 19 warehouse or depot established by the ~~board~~ department for
 20 the purposes of this act code, and when permitted so to do
 21 by this act code and the regulations made thereunder, and in
 22 accordance therewith, it shall be lawful for any common
 23 carrier, or other person, to carry or convey liquor sold by
 24 a vendor from a state store, or beer, when lawfully sold by
 25 a brewer, from the premises wherein such beer was

1 manufactured, or from premises where the beer may be
 2 lawfully kept and sold, to any place to which the same may
 3 be lawfully delivered under this act code, and the
 4 regulations made thereunder;

5 Provided that no such common carrier or any other
 6 person, shall open, or break, or allow to be opened or
 7 broken, any package or vessel containing liquor, or drink or
 8 use, or allow to be drunk or used, any liquor therefrom,
 9 while being so carried or conveyed."

10 Section 13. Section 4-139, R.C.M. 1947, is renumbered
 11 section 4-1-205, and is amended to read as follows:

12 ~~"4-139 4-1-205. Hospitals and sanitariums~~ Licensed
 13 hospital or health care facility — restrictions —
 14 violations. Any person in charge of an institution regularly
 15 conducted as a ~~hospital or sanitarium for the care of~~
 16 ~~persons in ill health, or as a home devoted exclusively to~~
 17 ~~the care of aged people~~ licensed hospital or health care
 18 facility, may administer liquor purchased by him to any
 19 patient or inmate of the institution ~~who is in need of the~~
 20 ~~same, either by way of external application or otherwise for~~
 21 ~~emergency medical purposes,~~ and may charge for the liquor so
 22 administered; but no liquor shall be administered by any
 23 person under this section except to bona fide patients or
 24 inmates of the institution of which he is in charge ~~and in~~
 25 ~~cases of actual need,~~ and every person in charge of an

institution who administers liquor in evasion or violation of this ~~act~~ code shall be guilty of an offense against this ~~act~~ code."

Section 14. Section 4-140, R.C.M. 1947, is renumbered section 4-1-202, and is amended to read as follows:

"~~4-140~~ 4-1-202. Application of ~~act~~ code. (1) Nothing in this ~~act~~ code shall prevent any brewer, distiller, or other person duly licensed, under the provisions of any statute of the United States of America, for the manufacture of liquor, from having or keeping liquor in a place and in the manner authorized by or under any such statute.

It is hereby declared to be the policy of the state of Montana that the manufacture of liquor including the distillation, rectification, bottling and processing as these terms are defined under the provisions of the laws of the United States shall be authorized and permitted by any brewer, distiller, rectifier or other person duly licensed under any provision of any statute of the United States of America in a place and in the manner authorized by or under any statute of the United States provided the Montana State ~~liquor control board~~ department of revenue may make such regulations as the ~~board~~ department ~~deems~~ necessary with respect thereto, not inconsistent with this ~~act~~ code, or with the statutes of the United States of America or regulations issued under the provisions of the federal

Alcohol Administration Act, title 27, United States Code sections 201 through 212 inclusive or regulations issued under the provisions of the Internal Revenue Code, title 26, United States Code, sections 5001 through ~~section~~ 5693, inclusive.

(2) Nothing in this ~~act~~ code shall prevent—

(a) The sale of liquor by any person to the ~~board~~ department;

(b) The purchase, importation and sale of liquor by the ~~board~~ department for the purposes of and in accordance with this ~~act~~ code."

Section 15. Section 4-141, R.C.M. 1947, is renumbered section 4-1-203, and is amended to read as follows:

"~~4-141~~ 4-1-203. Preparations not subject to ~~act~~ code.

(1) Subject to the provisions of this section, nothing in this ~~act~~ code shall, by reason only that such preparation contains alcohol, prevent the manufacture, sale, purchase or consumption—

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

(b) of any proprietary or patent medicine prepared according to a formula approved of by the ~~board~~ department.

1 (2) The ~~board~~ department, if of opinion that any such
 2 proprietary or patent medicine, extract, essence, tincture
 3 or preparation which contains alcohol, or any other
 4 preparation of a solid, semisolid or liquid nature
 5 containing alcohol which, or any extract from which, can be
 6 used as a beverage or as the ingredient of any beverage, may
 7 prohibit the sale thereof by retail within the state, or the
 8 possession of the same for sale by retail within the state,
 9 except by a state liquor store, or by persons duly licensed
 10 by the ~~board~~ department to keep and sell the same by retail
 11 in accordance with this act and the regulations made
 12 thereunder.

13 (3) The ~~board~~ department shall notify the manufacturer
 14 or vendor of such proprietary or patent medicine, extract,
 15 essence, tincture or preparation, of the said prohibition
 16 and from and after the date of such notification any person
 17 within the state selling or keeping for sale any such
 18 proprietary or patent medicine, extract, essence, tincture
 19 or preparation so prohibited as aforesaid shall be guilty of
 20 an offense under this ~~act~~ code."

21 Section 16. Section 4-150, R.C.M. 1947, is renumbered
 22 section 4-1-201, and is amended to read as follows:

23 "~~4-150 4-1-201. Sale of liquor, unlawful,~~
 24 ~~when foreign substance in liquor forbids~~ possession of
 25 liquor, when unlawful. (1) Except as provided by this ~~act~~

1 code, no person shall, within the state, by himself, his
 2 clerk, servant, or agent, expose or keep for sale, or
 3 directly or indirectly or upon any pretense, or upon any
 4 device, sell, or offer to sell, or in consideration of the
 5 purchase or transfer of any property, or for any other
 6 consideration, or at the time of the transfer of any
 7 property, give to any other person any liquor.

8 ~~(2) No person shall have, keep or sell any beer, or~~
 9 ~~salt liquor, to which has been added any foreign substance,~~

10 ~~(3) (2)~~ No person shall have or keep any liquor within
 11 the state which has not been purchased from a the state
 12 vendor of the Montana liquor control board or from a
 13 ~~druggist authorized to sell the same;~~ provided, however,
 14 that nothing in this ~~act~~ code shall prohibit any person
 15 entering this state from any other state, or from any
 16 foreign country, from having in his possession not to exceed
 17 ~~one (1)~~ three (3) wine gallon gallons of alcoholic liquor or
 18 beer, which liquor or beer shall have been purchased in
 19 another state or foreign country but no person claiming to
 20 have so entered the state, shall at any time, have in his
 21 possession more than ~~one (1)~~ three (3) wine gallon gallons
 22 of intoxicating liquor which shall not have been purchased
 23 from a state liquor store. This subsection shall not apply
 24 to the ~~board~~ department or to the keeping or having of
 25 liquor by brewers, distillers and other persons duly

1 licensed by the United States for the manufacture of such
2 liquor; nor to the keeping or having of any proprietary or
3 patent medicines or of any extracts, essences, tinctures or
4 preparations where such having and keeping is authorized by
5 this ~~act~~ code.

6 ~~(4)~~ (3) Nothing contained in this section shall apply
7 to the possession by a sheriff or his bailiff of liquor
8 seized under execution or other judicial or extra-judicial
9 process nor to sales under executions or other judicial or
10 extra-judicial process to the ~~board~~ department, or in the
11 case of beer to a brewer, beer licensee, club licensee or
12 canteen licensee."

13 Section 17. Section 4-152, R.C.M. 1947, is renumbered
14 section 4-2-105, and is amended to read as follows:

15 ~~"4-152 4-2-105.~~ Place and time of selling liquor. No
16 ~~vendor store manager~~, and no person acting as the clerk or
17 servant of or in any capacity for any ~~vendor manager~~, shall
18 sell liquor in any other place or at any other time or
19 otherwise than as authorized by this ~~act~~ code and the
20 regulations."

21 Section 18. Section 4-153, R.C.M. 1947, is renumbered
22 section 4-1-304, and is amended to read as follows:

23 ~~"4-153 4-1-304. Board members~~ Liquor division
24 employees not to be interested in liquor sales—unlawful to
25 give or receive gift, commission or remuneration. (1) No

1 ~~member officer~~ or employee of the ~~board~~ liquor division
2 shall be directly or indirectly interested or engaged in any
3 other business or undertaking dealing in liquor, whether as
4 owner, part owner, partner, member of syndicate,
5 shareholder, agent or employee, and whether for his own
6 benefit or in a fiduciary capacity for some other person.

7 (2) No member or employee of the ~~board~~ division or any
8 employee of the state shall solicit or receive directly or
9 indirectly any commission, remuneration or gift whatsoever
10 from any person or corporation having sold, selling or
11 offering liquor for sale to the state or ~~board~~ division in
12 pursuance of this ~~act~~ code.

13 (3) No person selling or offering for sale to, or
14 purchasing liquor from, the state ~~or the board~~ liquor
15 division, shall either directly or indirectly offer to pay
16 any commission, profit or remuneration, or make any gift to
17 any member or employee of the ~~board~~ division or to any
18 employee of the state, or to anyone on behalf of such member
19 or employee.

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

24 (a) Each manufacturer, distiller, compounder,
25 rectifier, importer, or wholesale distributor, or any other

1 person, firm, or corporation proposing to sell any
 2 spirituous liquors to the Montana liquor ~~control board~~
 3 division shall submit, without cost to the ~~board~~ division
 4 prior to the original purchase, an analysis of each brand
 5 and may submit a representative sample not exceeding
 6 twenty-five (25) fluid ounces of such merchandise to the
 7 board.

8 (b) It shall be the duty of the ~~board~~ division, when a
 9 brand of liquor has been accepted for testing by the ~~board~~
 10 division, to forward the sample, unopened and in its
 11 entirety, to a qualified chemical laboratory for analysis.

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

18 (5) No liquor, wine, or other spirituous beverage
 19 shall be withdrawn from the regular warehouse inventory or
 20 from the state liquor stores of the Montana liquor ~~control~~
 21 ~~board~~ division, for any purpose whatsoever other than by
 22 sale at the prevailing state retail prices, or for
 23 destroying damaged or defective merchandise. The ~~board~~
 24 division shall maintain a written record including the type,
 25 brand, and container size; number of bottles or other units;

1 signatures of witnesses; and method of destruction or other
 2 disposition of damaged or defective warehouse or state store
 3 merchandise."

4 Section 19. Section 4-154, R.C.M. 1947, is renumbered
 5 section 4-6-101, and is amended to read as follows:

6 "~~4-154~~ 4-6-101. Transfer of ~~liquor~~ alcoholic beverages
 7 except as provided by ~~act~~ code unlawful. Except as provided
 8 in this ~~act~~ code, no person shall, within the state, by
 9 himself, his clerk, servant, or agent, attempt to purchase,
 10 or directly or indirectly or upon any pretense or upon any
 11 device, purchase, or in consideration of the sale or
 12 transfer of any property, or for any other consideration, or
 13 at the time of the transfer of any property, take or accept
 14 from any other person any ~~liquor~~ alcoholic beverage."

15 Section 20. Section 4-156, R.C.M. 1947, is renumbered
 16 section 4-6-106, and is amended to read as follows:

17 "~~4-156~~ 4-6-106. Consumption of ~~liquor~~ alcoholic
 18 beverage on druggists' premises prohibited. No person,
 19 within the state of Montana, shall consume any ~~liquor~~
 20 alcoholic beverage on any premises where ~~liquor~~ an alcoholic
 21 beverage is kept for sale by a druggist, nor shall any
 22 druggist permit any ~~liquor~~ alcoholic beverage to be consumed
 23 on such premises."

24 Section 21. Section 4-158, R.C.M. 1947, is renumbered
 25 section 4-3-102, and is amended to read as follows:

~~"4-156 4-3-102.~~ Liquor container must have been sealed with official seal ~~powers and duties of peace officers.~~

~~(1) Except in the case of—~~

(a) liquor imported by the state, or by the ~~board~~ department; or

(b) liquor had and kept by a person, and in a place and manner referred to in section ~~4-140 4-1-202~~; or

~~(c) beer and malt liquor, lawfully had or kept under this act code; or~~

(d) any liquor kept for sale by a druggist under ~~section 4-134 this code~~ no liquor shall be kept or had by any person within the state unless the package, not including a decanter or other receptacle containing the liquor for immediate consumption, in which the liquor is contained has, while containing that liquor, been sealed with the official seal prescribed under this ~~act code~~.

~~(2) Any inspector or peace officer who finds liquor, which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this act, may without warrant, forthwith seize and remove the same and the packages in which the liquor is kept, and upon conviction of the person for a violation of any provision of this section the liquor and all packages containing the same shall, in addition to any other penalty prescribed by this act, ipso facto be forfeited to the state of Montana."~~

Section 22. There is a new section to be numbered 4-6-205, R.C.M. 1947, which reads as follows:

4-6-205. Unlawful alcoholic beverage — seizure — forfeiture. Any investigator or peace officer who finds an alcoholic beverage, which he has reasonable cause to believe is had or kept by any person in violation of the provisions of this code, may forthwith seize and remove the same and the packages in which the alcoholic beverage is kept, and upon conviction of the person for a violation of any provision of this section the alcoholic beverage and all packages containing the same shall, in addition to any other penalty prescribed by this code, ipso facto be forfeited to the state of Montana.

Section 23. Section 4-160, R.C.M. 1947, is renumbered section 4-6-103, and is amended to read as follows:

~~"4-160 4-6-103. Sales to intoxicated persons providing~~ alcoholic beverage prohibited. ~~(1) No vendor store manager, beer retail licensee, or club licensee, nor any employee of a vendor store manager, beer or retail licensee, or club licensee, shall~~ may sell any liquor alcoholic beverage, or permit any liquor alcoholic beverage to be sold, to any person apparently under the influence of ~~liquor~~ an alcoholic beverage.

~~(2) No person may give an alcoholic beverage to a person apparently under the influence of alcohol."~~

1 Section 24. Section 4-161, R.C.M. 1947, is renumbered
2 section 4-6-104, and is amended to read as follows:

3 "~~4-161~~ 4-6-104. Age limit for sale of ~~liquor~~ alcoholic
4 beverages. Except in the case of ~~liquor~~ an alcoholic
5 beverage given to a person under the age of eighteen (18)
6 years by his parent or guardian for beverage or medicinal
7 purposes, or administered to him by his physician or dentist
8 for medicinal purposes, or sold to him by a vendor or
9 druggist upon the prescription of a physician, no person
10 shall sell, give, or otherwise supply ~~liquor~~ an alcoholic
11 beverage to any person under the age of eighteen (18) years,
12 or permit any person under that age to consume ~~liquor~~ an
13 alcoholic beverage."

14 Section 25. Section 4-208, R.C.M. 1947, is renumbered
15 section 4-6-203, and is amended to read as follows:

16 "~~4-208~~ 4-6-203. Search warrants—issuance. ~~(1)~~ Upon
17 information on oath by any ~~inspector~~ investigator appointed
18 under this ~~act~~ code or by any peace officer showing
19 reasonable cause to believe that ~~liquor~~ is alcoholic
20 beverages are unlawfully kept or had, or kept or had for
21 unlawful purposes, in any building or premises, it shall be
22 lawful for any ~~justice court~~ by warrant under his hand to
23 authorize and empower the ~~inspector~~ investigator or peace
24 officer, or any other person named therein, to enter and
25 search the building or premises and every part thereof; and

1 for that purpose to break open any door, lock, or fastening
2 of the building or premises or any part thereof, or any
3 closet, cupboard, box, or other receptacle therein which
4 might contain ~~liquor~~ alcoholic beverages."

5 Section 26. Section 4-209, R.C.M. 1947, is renumbered
6 section 4-6-207, and is amended to read as follows:

7 "~~4-209~~ 4-6-207. Seizure of ~~liquor~~ alcoholic beverage
8 and conveyance—~~forfeiture of conveyance and liquor~~
9 alcoholic beverage to state. Whenever an ~~inspector~~ of
10 investigator or any peace officer in making or attempting to
11 make a search under and in pursuance of authority of law,
12 shall find in any motor vehicle, motor car, automobile,
13 vessel, boat, canoe or conveyance of any description ~~liquor~~
14 an alcoholic beverage which is unlawfully kept or had, or
15 kept or held for unlawful purposes contrary to the
16 provisions of this ~~act~~ code, he may forthwith seize the
17 ~~liquor~~ alcoholic beverage and packages in which the same is
18 contained, and the motor vehicle, motor car, automobile,
19 vessel, boat, canoe or conveyance in which ~~such liquor~~ the
20 alcoholic beverage is found; and upon the conviction of the
21 occupant or person in charge of the vehicle, motor car,
22 automobile, vessel, boat, canoe or conveyance, or of any
23 other person, for having or keeping such ~~liquors~~ alcoholic
24 beverages contrary to any of the provisions of this ~~act~~ code
25 in any such vehicle, motor car, automobile, vessel, boat,

canoe or conveyance, the court in which the conviction of any such person is had may, in addition to the sentence imposed under authority of law, declare the ~~liquor~~ alcoholic beverage or any part thereof so seized, and the package in which the same is contained, to be forfeited to the state of Montana; and the court may in and by decree, further declare the vehicle, motor car, automobile, vessel, boat, canoe or conveyance so seized to be forfeited to the state of Montana."

Section 27. Section 4-210, R.C.M. 1947, is renumbered section 4-6-208, and is amended to read as follows:

"~~4-210 4-6-208~~. Force may be used in seizure of ~~liquor~~ alcoholic beverages, when—retention of seized ~~liquor~~ alcoholic beverage—forfeiture—hearing. (1) Where ~~liquor~~ alcoholic beverage is found by any ~~inspector~~ investigator or peace officer on any premises or in any place in such quantities as to satisfy the ~~inspector~~ investigator or peace officer that such ~~liquor~~ alcoholic beverage is being had or kept contrary to any of the provisions of this ~~act~~ code, it shall be lawful for the ~~inspector~~ investigator or peace officer to forthwith seize and remove, by force if necessary, any ~~liquor~~ alcoholic beverage so found, and the packages in which the ~~liquor~~ alcoholic beverage was had or kept and immediately turn said ~~liquor~~ alcoholic beverage over to the Montana ~~liquor control board~~ department of

revenue.

(2) The Montana ~~liquor control board~~ department of revenue shall commence an action in the district court of the county in which the ~~liquor~~ alcoholic beverage is found and seized against said ~~liquor~~ alcoholic beverage and the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure. The ~~said liquor~~ alcoholic beverage shall be named as one of the defendants to said action.

(3) The complaint shall show the date and place of seizure, the name of the person or persons actually or apparently in possession or control thereof if any such person be present at the time of the seizure, the reasons the Montana ~~liquor control board~~ department of revenue claims the right to the possession of ~~said liquor~~ the alcoholic beverage and shall demand that all persons who claim any right to the possession of ~~said liquor~~ the alcoholic beverage shall show the nature of their claim or claims and that the court declare ~~said liquor~~ the alcoholic beverage contraband and that the court order ~~said liquor~~ the alcoholic beverage be forfeited to the state of Montana.

(4) Summons shall be issued, served or published as in other civil actions provided by Title 93, except that the summons shall be published in the county where ~~said liquor~~ the alcoholic beverage was seized if a newspaper is

1 published in said county.

2 (5) In all actions brought under this ~~act~~ code, proof
3 of the absence of the official seal of the Montana ~~liquor~~
4 ~~control board~~ department of revenue upon the bottle, jug,
5 package, container or containers of ~~such liquor~~ an alcoholic
6 beverage on which a seal is required shall be prima facie
7 evidence that ~~said liquor~~ the alcoholic beverage is
8 contraband liquor and prima facie evidence of unlawful
9 possession thereof in the defendants and each of them and in
10 all other persons excepting the Montana ~~liquor control board~~
11 department of revenue, and the court shall order all such
12 liquor alcoholic beverage contraband and forfeited to the
13 state of Montana."

14 Section 28. Section 4-211, R.C.M. 1947, is renumbered
15 section 4-6-209, and is amended to read as follows:

16 "~~4-211 4-6-209~~. Disposal of forfeited ~~liquor alcoholic~~
17 beverage—report by officers of seizure. (1) In every case
18 in which a court makes any order for the forfeiture of
19 liquor alcoholic beverages under any of the provisions of
20 this act, and in every case in which any claimant to ~~liquor~~
21 an alcoholic beverage under the provisions of section ~~4-210~~
22 4-6-207, fails to establish his claim and right thereto, the
23 liquor alcoholic beverage in question and the packages in
24 which the liquor alcoholic beverage is kept shall forthwith
25 be delivered to the ~~board~~ department. The ~~board~~ department

1 shall thereupon, determine the market value of all forfeited
2 liquor alcoholic beverage which is found to be suitable for
3 sale in the state liquor stores, and the ~~board~~ department
4 shall pay the amount so determined to the state treasurer,
5 after deducting therefrom the expenses necessarily incurred
6 by the ~~board~~ department for transporting the forfeited
7 liquor alcoholic beverage to the state liquor warehouses,
8 and the liquor alcoholic beverage suitable for sale shall be
9 taken into stock by the ~~board~~ department and sold under the
10 provisions of this ~~act~~ code. All forfeited liquor alcoholic
11 beverage which is found to be unsuitable for sale in state
12 liquor stores shall be destroyed under competent supervision
13 as may from time to time be directed by the ~~board~~
14 department.

15 (2) In every case in which ~~liquor~~ an alcoholic beverage
16 is seized by a peace officer it shall be his duty to
17 forthwith make or cause to be made to the ~~board~~ department a
18 report in writing, of the particulars of such seizure."

19 Section 29. Section 4-212, R.C.M. 1947, is renumbered
20 section 4-6-210, and is amended to read as follows:

21 "~~4-212 4-6-210~~. Inspection of carriers' records—when
22 authorized. For the purpose of obtaining information
23 concerning any matter relating to the administration or
24 enforcement of this ~~act~~ code, the ~~board~~ department or any
25 person appointed by it in writing for the purpose may

inspect the freight and express books and records, and all waybills, bills of lading, receipts, and documents in the possession of any railway company, express company, or other common carrier doing business within the state containing any information or record relating to any goods shipped or carried or consigned or received for shipment or carriage within the state."

Section 30. Section 4-213, R.C.M. 1947, is renumbered section 4-6-211, and is amended to read as follows:

"4-213 ~~4-6-211~~. Unlawful for carrier to refuse inspection of records. Every railway company, express company, or common carrier, and every officer or employee of any such company or common carrier, who neglects or refuses to produce and submit for inspection any book, record, or document referred to in the next preceding section when requested to do so by the ~~board~~ department or by a person so appointed by it shall be guilty of an offense against this ~~act~~ code."

Section 31. Section 4-214, R.C.M. 1947, is renumbered section 4-6-303, and is amended to read as follows:

"4-214 ~~4-6-303~~. Description of offense—sufficiency of. In describing the offense respecting the sale or keeping for sale or other disposal of ~~liquor~~ alcoholic beverages, or the having, keeping, giving, purchasing or the consumption of ~~liquor~~ alcoholic beverages in any

information, summons, conviction, warrant, or proceeding under this ~~act~~ code, it shall be sufficient to state the sale or keeping for sale or disposal, having, keeping, giving, purchasing, or consumption of ~~liquor~~ alcoholic beverages, simply without stating the name or kind of such ~~liquor~~ alcoholic beverage or the price thereof, or any person to whom it was sold or disposed of, or by whom it was taken or consumed, or from whom it was purchased or received, and it shall not be necessary to state the quantity of ~~liquor~~ alcoholic beverage so sold, kept for sale, disposed of, had, kept, given, purchased, or consumed, except in the case of offenses where the quantity is essential, and then it shall be sufficient to allege the sale or disposal of more or less than such quantity."

Section 32. Section 4-215, R.C.M. 1947, is renumbered section 4-6-304, and is amended to read as follows:

"4-215 ~~4-6-304~~. Description of offense—sufficiency—defenses need not be negatived. The description of any offense under this ~~act~~ code, in the words of this ~~act~~ code or in any words of like effect, shall be sufficient in law; and any exception, exemption, provision, excuse, or qualification, whether it occurs by way of proviso or in the description of the offense in this ~~act~~ code, may be proved by the defendant, but need not be specified or negatived in the information or complaint; but if it is so specified or

1 negated, no proof in relation to the matter so specified
2 nor negated shall be required on the part of the informant
3 or complainant."

4 Section 33. Section 4-216, B.C.M. 1947, is renumbered
5 section 4-6-305, and is amended to read as follows:

6 "~~4-216~~ 4-6-305. Sufficiency of evidence. In any
7 prosecution under this ~~act~~ code for the sale or keeping for
8 sale or other disposal of ~~liquor~~ alcoholic beverages, or the
9 having, keeping, giving, purchasing, or consuming of ~~liquor~~
10 alcoholic beverages, it shall not be necessary that any
11 witness should depose to the precise description or quantity
12 of the ~~liquor~~ alcoholic beverages sold, disposed of, kept,
13 had, given, purchased, or consumed, or the precise
14 consideration (if any) received therefor, or to the fact of
15 the sale or other disposal having taken place with his
16 participation or to his own personal or certain knowledge;
17 but conviction may be based upon circumstantial evidence
18 reasonably tending to establish the guilt of the accused
19 beyond a reasonable doubt."

20 Section 34. Section 4-217, B.C.M. 1947, is renumbered
21 section 4-6-306, and is amended to read as follows:

22 "~~4-217~~ 4-6-306. Proof of violation—sufficiency. In
23 proving the sale, disposal, gift, or purchase, gratuitous or
24 otherwise, or consumption of ~~liquor~~ alcoholic beverages, it
25 shall not be necessary in any prosecution to show that any

1 money actually passed or any ~~liquor~~ alcoholic beverages was
2 actually consumed, if the court hearing the case is
3 satisfied that a transaction in the nature of a sale,
4 disposal, gift, or purchase actually took place, or that any
5 consumption of ~~liquor~~ alcoholic beverages was about to take
6 place; and proof of consumption or intended consumption of
7 ~~liquor~~ alcoholic beverages on premises on which such
8 consumption is prohibited, by some person not authorized to
9 consume ~~liquor~~ an alcoholic beverage thereon, shall be
10 evidence that such ~~liquor~~ alcoholic beverage was sold or
11 given to or purchased by the person consuming, or being
12 about to consume, or carrying away the same, as against the
13 occupant of the said premises."

14 Section 35. Section 4-218, B.C.M. 1947, is renumbered
15 section 4-6-307, and is amended to read as follows:

16 "~~4-218~~ 4-6-307. Analyst's report as prima facie
17 evidence of contents. In any prosecution under this ~~act~~
18 code, or the regulations made thereunder, production by a
19 police officer, policeman, constable, inspector or peace
20 officer, of a certificate or report signed or purporting to
21 be signed by a United States or state analyst as to the
22 analysis or ingredients of any ~~liquor~~ alcoholic beverage or
23 other fluid or any preparation, compound, or substance, such
24 certificate or report shall be prima facie evidence of the
25 facts stated in such certificate or report and of the

1 authority of the person giving or making the same without
2 any proof of appointment or signature."

3 Section 36. Section 4-219, R.C.M. 1947, is renumbered
4 section 4-6-308 and is amended to read as follows:

5 "~~4-219 4-6-308~~. Presumption of intoxicating ~~liquor~~
6 beverage arises, when. The court trying a case shall, in the
7 absence of proof to the contrary, be at liberty to infer
8 that the ~~liquor~~ alcoholic beverage in question is
9 intoxicating from the fact that a witness described it as
10 intoxicating, or by a name which is commonly applied to an
11 intoxicating ~~liquor~~ beverage."

12 Section 37. Section 4-220, R.C.M. 1947, is renumbered
13 section 4-6-309, and is amended to read as follows:

14 "~~4-220 4-6-309~~. Inferences from facts of ~~act~~ code
15 claimed to be violation. Upon the hearing of any charge of
16 selling or purchasing ~~liquor~~ an alcoholic beverage, or of
17 unlawfully having or keeping ~~liquor~~ an alcoholic beverage,
18 contrary to any of the provisions of this ~~act~~ code, the
19 court trying the case shall have the right to draw
20 inferences of fact from the kind and quantity of ~~liquor~~
21 alcoholic beverages found in the possession of the person
22 accused, or in any building, premises, vehicle, motorcar,
23 automobile, vessel, boat, canoe, conveyance, or place
24 occupied or controlled by him, and from the frequency with
25 which ~~liquor~~ the alcoholic beverage is received thereat or

1 therein or is removed therefrom, and from the circumstances
2 under which it is kept or dealt with."

3 Section 38. Section 4-224, R.C.M. 1947, is renumbered
4 section 4-6-302, and is amended to read as follows:

5 "~~4-224 4-6-302~~. Appeals. An appeal shall lie from any
6 conviction or order made in the prosecution of any offense
7 against any of the provisions of this ~~act~~ code and the
8 practice and procedure on any appeal from any such
9 conviction or order, and all proceedings thereon shall be
10 governed by the law applicable to appeal in criminal cases."

11 Section 39. Section 4-225, R.C.M. 1947, is renumbered
12 section 4-6-201, and is amended to read as follows:

13 "~~4-225 4-6-201~~. ~~Inspectors~~ Investigators and
14 prosecuting officers may be employed by ~~board~~ department of
15 revenue. The ~~board~~ department of revenue may appoint one or
16 more ~~inspectors~~ investigators or prosecuting officers, who,
17 under its direction, shall perform such duties as it may
18 require, and who shall be paid such salaries, fees and
19 expenses as the said ~~board~~ department of revenue may fix."

20 Section 40. Section 4-226, R.C.M. 1947, is renumbered
21 section 4-1-306, and is amended to read as follows:

22 "~~4-226 4-1-306~~. Property and moneys acquired belong to
23 state—expenses of administration, how paid. All property,
24 whether real or personal, all moneys acquired, administered,
25 possessed or received by the ~~board~~ department and all

profits earned in the administration of this ~~act~~ code, shall be the property of the state, and all expenses, debts and liabilities incurred by the ~~board department~~ in connection with the administration of this ~~act~~ code, shall be paid by the ~~board department~~ from the moneys received by the ~~board department~~ under such administration."

Section 41. Section 4-229, R.C.M. 1947, is renumbered section 4-1-406, and is amended to read as follows:

"4-229 ~~4-1-406~~. Disposition of money received. All moneys received from the sale of liquor at the state liquor stores shall be deposited in the revolving fund in the state treasury to the credit of the ~~board department of revenue~~. The ~~board department~~ is hereby authorized to purchase liquor from moneys deposited to its account in the revolving fund. The ~~board department~~ shall transfer from its account in the revolving fund to its account in the earmarked revenue fund such moneys which are necessary to pay its administrative expense, subject to the limits imposed by legislative appropriation. No obligation created or incurred by the ~~board department~~ shall ever be, or become, a debt or claim against the state of Montana, but shall be payable by the ~~board department~~ solely from funds derived from the operation of state liquor stores. The ~~board department~~ shall pay into the state treasury to the credit of the general fund the receipts from all taxes and licenses by it

collected, and also the net proceeds from the operation of state liquor stores."

Section 42. Section 4-233, R.C.M. 1947, is renumbered section 4-1-104, and is amended to read as follows:

"4-233 ~~4-1-104~~. Intent and construction of ~~act~~ code. The purpose and intent of this ~~act~~ code are to prohibit transactions in liquor which take place wholly within the state of Montana except under state control as specifically provided by this ~~act~~ code, and every section and provision of this ~~act~~ code shall be construed accordingly. The provisions of this ~~act~~ code dealing with the importation, sale and disposition of liquor within the state through the instrumentality of a ~~board department~~ and otherwise provide the means by which such state control shall be made effective, and nothing in this ~~act~~ code shall be construed as forbidding, affecting or regulating any transaction which is not subject to the legislative authority of the state."

Section 43. Section 4-238, R.C.M. 1947, is renumbered section 4-6-401, and is amended to read as follows:

"4-238 ~~4-6-401~~. Premises where liquor illegally sold ~~cause~~ public nuisance. Any room, house, building, boat, vehicle, structure or place where ~~intoxicating liquor is~~ alcoholic beverages are knowingly manufactured, sold, or bartered, in violation of ~~the State Liquor Control Act of Montana~~ this code or section 94-8-107 and all property

1 knowingly kept and used in maintaining the same is hereby
 2 declared to be a ~~common nuisance~~, a public nuisance and any
 3 person who maintains such a ~~common~~ nuisance shall be guilty
 4 of a misdemeanor, and upon conviction thereof shall be fined
 5 not less than one hundred dollars (\$100.00), nor more than
 6 five hundred dollars ~~(\$500.00)~~ (\$500) and by imprisonment
 7 not less than thirty days, nor more than six months."

8 Section 44. Section 4-240, R.C.M. 1947, is renumbered
 9 section 4-1-401, and is amended to read as follows:

10 ~~"4-240 4-1-401.~~ License tax on liquor — amount —
 11 distribution of proceeds. The department of revenue is
 12 hereby authorized and directed to charge, receive and
 13 collect at the time of sale and delivery of any liquor under
 14 any provisions of the laws of the state of Montana a license
 15 tax of five percent (5%) of the retail selling price on all
 16 liquor so sold and delivered. Said tax shall be charged and
 17 collected on all liquor brought into the state and taxed by
 18 the department of revenue. The retail selling price shall
 19 be computed by adding to the cost of said liquor the state
 20 markup as designated by ~~said board~~ the department. Said
 21 five percent (5%) license tax shall be figured in the same
 22 manner as the state excise tax and shall be in addition to
 23 said state excise tax. The department of revenue shall
 24 retain the amount of such five percent (5%) license tax so
 25 received in a separate account. Four-fifths (4/5) of these

1 revenues shall be distributed to the counties according to
 2 the amount of liquor sold in each county. One-fifth (1/5)
 3 of these revenues shall be deposited in the general fund.
 4 Provided, however, in the case of purchases of liquor by a
 5 retail liquor licensee for use in his business, the
 6 department shall make such regulations as are necessary to
 7 apportion that proportion of license tax so generated to the
 8 county where the licensed establishment is located, for use
 9 as provided in section ~~4-241 4-1-402~~, R.C.M. 1947. The
 10 department of revenue shall pay quarterly to each county
 11 treasurer the proportion of the license tax due each county.

12 The county treasurer of each county shall retain
 13 one-fourth (1/4) of said license tax, and shall, within
 14 thirty (30) days after receipt thereof, apportion the
 15 remaining three-fourths (3/4) thereof to the treasurers of
 16 the incorporated cities and towns within his county, said
 17 apportionment to be based in each instance upon the
 18 proportion which the gross sale of liquor in such
 19 incorporated city or town bears to the gross sale of liquor
 20 in all of the incorporated cities and towns in his said
 21 county."

22 Section 45. Section 4-301, R.C.M. 1947, is renumbered
 23 section 4-1-102, and is amended to read as follows:

24 ~~"4-301 4-1-102. Citation of act declaration~~
 25 Declaration of policy ~~as to sale of beer. This act may be~~

~~cited as the "Montana Beer Act."~~ It is hereby declared to be the policy of the state of Montana that the manufacture, transportation, distribution, sale and possession of "beer," as that term is hereinafter defined in this ~~act~~ code and which contains not more than ~~four~~ seven per centum (4 7%) of alcohol by weight, shall be controlled and regulated ~~by and under the provisions of the "Montana Beer Act" and the "Montana Retail Liquor License Act" as provided under this~~ code. Beer, porter, ale, stout and malt liquors containing more than ~~four~~ seven per centum (4 7%) of alcohol by weight and which are defined as "liquor" by the ~~"State Liquor Control Act of Montana,"~~ shall be subject to the regulations and controls provided by the ~~"State Liquor Control Act of Montana," (section 4-101 through section 4-171, inclusive, Revised Codes of Montana, 1947, as amended) and the regulations and controls provided by the "Montana Retail Liquor License Act" (sections 4-401 through 4-441, inclusive, Revised Codes of Montana, 1947, as amended) for~~ liquor.

Section 46. Section 4-303, R.C.M. 1947, is renumbered section 4-3-304, and is amended to read as follows:

~~"4-303 4-3-304.~~ Closing hours for licensed retail ~~beer~~ establishments. Hereafter all licensed establishments wherein ~~beer as defined by subsection (b) of section 4-302,~~ is alcoholic beverages are sold, offered for sale or given

away at retail shall be closed during the following hours:

~~(a) Sunday from two A.M. to one P.M.†~~

~~(b) (a)~~ On any ~~other~~ day between two A.M. and eight A.M.; provided, however, that when any municipal incorporation has by ordinance further restricted the hours of sale of ~~beer~~ alcoholic beverages, then the sale of ~~beer~~ alcoholic beverages is prohibited within the limits of any such city or town during the time such sale is prohibited by this ~~act~~ code and in addition thereto during the hours that it is prohibited by such ordinance. During such hours all persons except the owner and employees of such licensed establishments shall be excluded therefrom except as provided in section 4-3-305."

Section 47. Section 4-304, R.C.M. 1947, is renumbered section 4-3-305, and is amended to read as follows:

~~"4-304 4-3-305.~~ Sale of ~~beer~~ alcoholic beverages during closed hours forbidden—lawful business need not be closed. During the hours when the said licensed establishments where ~~beer is~~ alcoholic beverages are sold at retail are required by this ~~act~~ code to be closed, it shall be unlawful to sell, offer for sale or give away any ~~beer~~ such alcoholic beverages, and during such hours all persons save employees of such licensed establishments shall be excluded therefrom; provided, however, that when a licensed establishment is operated in conjunction with a hotel,

1 restaurant, bus depot, railway terminal, or other lawful
2 business other than that of the sale of intoxicating liquor
3 or beer, then such other lawful business need not be closed,
4 but only the part thereof where such beer or liquor is
5 sold."

6 Section 48. Section 4-308, R.C.M. 1947, is renumbered
7 section 4-3-202, and is amended to read as follows:

8 ~~"4-308 4-3-202. Beer, when declared nonintoxicating—~~
9 ~~sales, when permitted, Beer containing one-half of one per~~
10 ~~cent (1/2 of 1%), or more, of alcohol by volume, and not~~
11 ~~more than three and two-tenths per cent (3.2%) of alcohol by~~
12 ~~weight, is hereby declared to be nonintoxicating, and such~~
13 ~~beer and other beer containing more than three and~~
14 ~~two-tenths per cent (3.2%), but not more than four per cent~~
15 ~~(4%) of alcohol by weight may be manufactured and/or sold or~~
16 ~~transported in and into this state or possessed therein in~~
17 ~~the manner and under the conditions prescribed in this act~~
18 ~~and not otherwise. The sale of beer by the Montana liquor~~
19 ~~control board department is hereby prohibited, save and~~
20 ~~except ale, porter and stout containing more than four per~~
21 ~~cent (4%) of alcohol by weight."~~

22 Section 49. Section 4-309, R.C.M. 1947, is renumbered
23 section 4-3-201, and is amended to read as follows:

24 ~~"4-309 4-3-201. Possession, manufacture or disposal of~~
25 beer in other manner than prescribed unlawful. It shall be

1 unlawful to manufacture or sell, or dispose of, or possess
2 for the purpose of sale, beer of any kind or character of an
3 alcoholic content greater than herein prescribed, or other
4 than in the manner permitted by this act code."

5 Section 50. Section 4-310, R.C.M. 1947, is renumbered
6 section 4-4-101, and is amended to read as follows:

7 ~~"4-310 4-4-101. Applications for sale or manufacture~~
8 ~~of beer—qualifications of applicant. Any person, desiring~~
9 ~~to manufacture, import or and sell beer under the provisions~~
10 ~~of this act code, shall first apply to the board department~~
11 ~~for a permit so to do and pay with such application the~~
12 ~~license fee herein prescribed; the board department shall~~
13 ~~require of such applicant satisfactory evidence that the~~
14 ~~applicant is of good moral character and a law-abiding~~
15 ~~person. Upon being satisfied from such application, or~~
16 ~~otherwise, that such applicant is qualified as herein~~
17 ~~provided, the board department shall issue such license to~~
18 ~~such person, which license shall be at all times prominently~~
19 ~~displayed in the place of business of such applicant. If~~
20 ~~the board department shall find that such applicant is not~~
21 ~~qualified, no license shall be granted and such license fee~~
22 ~~shall be returned."~~

23 Section 51. Section 4-311, R.C.M. 1947, is renumbered
24 section 4-3-203, and is amended to read as follows:

25 ~~"4-311 4-3-203. Brewers' monthly report — power of~~

~~board department~~ to inspect books and premises. Every brewer, licensed to do business in this state, shall, on or before the fifteenth day of each month, make an exact return to the ~~board department~~ of the amount of beer manufactured by him and the amount sold by him in the previous month, and of his inventory, in the manner and form as shall be prescribed by the ~~board department~~, and the ~~board department~~ shall have the right at any time to make an examination of any brewer's books and of his premises, and otherwise check the accuracy of any such return, or to check the alcoholic content of beer manufactured by him."

Section 52. Section 4-313, R.C.M. 1947, is renumbered section 4-3-204, and is amended to read as follows:

"~~4-313 4-3-204~~. Sale of beer by brewers—to whom. It shall be lawful for any brewer to sell or dispose of beer manufactured by him to any licensed wholesaler, ~~retailer, club or common carrier holding and having a license under this act.~~"

Section 53. Section 4-317, R.C.M. 1947, is renumbered section 4-3-206, and is amended to read as follows:

"~~4-317 4-3-206~~. Licenses of brewers—persons to whom brewers may sell beer—~~barrelage tax~~. (1) Any brewer duly licensed as such by the United States of America, who manufactures beer in the state of Montana, upon payment of the annual license fee imposed by section ~~4-344 4-4-401~~ and

upon presenting satisfactory evidence to the ~~board department~~ as required by section ~~4-340 4-4-101~~, shall be licensed by the ~~board department~~ in accordance with the provisions of this ~~act code~~ and such regulations as may be prescribed by the ~~board department~~, to sell and deliver:

(a) Beer to a vendor;

(b) Beer to any licensees who are entitled to purchase beer from a brewer under this act; or

(c) Beer to the public, subject to the limitations and restrictions contained in this act; or to do any one or more of such acts of sale and delivery of beer.

~~(2) In addition to the annual license tax imposed by section 4-341, a tax of three dollars (\$3) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the board under the provisions of section 4-341."~~

Section 54. Section 4-317.1, R.C.M. 1947, is renumbered section 4-4-102, and is amended to read as follows:

"~~4-317.1 4-4-102~~. Right of brewers to maintain and operate storage depots—annual licenses. It shall be lawful

1 for any brewer duly licensed to manufacture beer in the
 2 state of Montana, upon the payment to the ~~board~~ department
 3 of an annual license fee, in addition to all other fees and
 4 taxes required to be paid by such brewer, of four hundred
 5 dollars (\$400.00) for each storage depot, to own, lease,
 6 maintain and operate, in any city or town in the state of
 7 Montana, a building for use as a storage depot, equipped
 8 with refrigeration and cooling apparatus, for receiving,
 9 handling, and storing beer therein and distributing and
 10 selling beer therefrom, as brewers are permitted to sell and
 11 distribute beer under the provisions of this ~~act~~ code."

12 Section 55. Section 4-317.7, R.C.M. 1947, is
 13 renumbered section 4-3-212, and is amended to read as
 14 follows:

15 "~~4-317.7~~ 4-3-212. Agreements filed with department of
 16 revenue. An exact copy of all agreements, contracts or
 17 franchises between a brewer and a wholesaler shall be filed
 18 with the department of revenue as a public document and
 19 shall be available to any of the parties to a dispute. The
 20 department, upon the instigation of any action in a court of
 21 record, shall file an exact certified copy of the agreement
 22 with the court for the court's consideration in determining
 23 any matter before it. Any contracts, agreements or
 24 franchises not upon record with the ~~board~~ department shall
 25 not be considered by any court as having any force or

1 effect."

2 Section 56. Section 4-318, R.C.M. 1947, is renumbered
 3 section ~~4-4-103~~, and is amended to read as follows:

4 "~~4-318~~ 4-4-103. Wholesalers' licenses—application for
 5 and issuance—~~subwarehouse~~—imported beer handled through
 6 warehouse or subwarehouse. Any person desiring to sell and
 7 distribute beer as a wholesaler under the provisions of this
 8 ~~act~~ code shall apply to the ~~board~~ department for a license
 9 to do so and tender with his application the license fee
 10 hereinafter provided for and the ~~board~~ department is hereby
 11 empowered, authorized and directed to issue ~~one~~ one ~~{1}~~
 12 ~~wholesale license for every thirty (30) retail beer licenses~~
 13 ~~figured on the number of retail beer licenses issued in the~~
 14 ~~state~~ wholesale licenses to qualified applicants in
 15 accordance with the provisions of this ~~act~~ code; such
 16 license shall be at all times prominently displayed in the
 17 place of business of such wholesaler.

18 To qualify for a wholesaler's license the applicant
 19 shall ~~have been~~ be a resident of Montana ~~for a period of~~
 20 ~~five (5) years immediately prior to making application, or~~
 21 ~~if said applicant is a Montana corporation said corporation~~
 22 ~~shall have been organized for a period of five (5) years~~
 23 ~~immediately prior to making application~~; provided, however,
 24 any individual or partnership which has been licensed as a
 25 beer wholesaler may, upon incorporation in accordance with

1 the laws of the state of Montana, transfer such license to
 2 the corporation if a majority of the capital stock thereof
 3 is held by said individual or the members of said
 4 partnership; or if applicant is a foreign corporation said
 5 corporation shall ~~have been~~ be authorized to do business in
 6 Montana ~~for a period of five (5) years immediately prior to~~
 7 ~~making application;~~ and said applicant shall have a fixed
 8 place of business, sufficient capital, the facilities,
 9 storehouse, receiving house or warehouse for the receiving
 10 of, storage, handling and moving of beer in large and
 11 jobbing quantities for distribution and sale in original
 12 packages to other licensed wholesalers or licensed
 13 retailers. Each wholesaler shall be entitled to only one
 14 (1) wholesale license, which license shall be issued for his
 15 principal place of business in Montana; a duplicate license
 16 may be issued for one (1) subwarehouse only in Montana for
 17 each wholesale licensee, which said duplicate license shall
 18 at all times be prominently displayed at said subwarehouse;
 19 ~~licenses already issued which are in excess of said~~
 20 ~~limitations and which are of issue on the date of the~~
 21 ~~passage and approval of this act, shall be renewable, but no~~
 22 ~~new wholesale beer licenses shall be issued until the number~~
 23 ~~of licenses shall be reduced to within the above limitation.~~
 24 All beer manufactured outside of the state of Montana
 25 and shipped into Montana shall be consigned to and shipped

1 to a licensed wholesaler, and by him unloaded into his
 2 warehouse in Montana or subwarehouse in Montana; said
 3 wholesaler shall distribute said beer from such warehouse or
 4 subwarehouse; said wholesaler shall keep records at his
 5 principal place of business of all beer including the name
 6 or kind received, on hand, sold and distributed; said
 7 records may at all times be inspected by any member or
 8 representative of the board department; any beer which has
 9 been shipped into Montana and has not been shipped to and
 10 distributed from a warehouse of a licensed wholesaler shall
 11 be seized by any peace officer or representative of the
 12 board department and may be confiscated in the manner as
 13 provided for the confiscation of intoxicating liquor."

14 Section 57. Section 4-319, R.C.M. 1947, is renumbered
 15 section 4-3-213, and is amended to read as follows:

16 "~~4-319~~ 4-3-213. Monthly report of wholesaler. Every
 17 wholesaler, licensed to do business in this state, as herein
 18 provided, shall on or before the fifteenth day of each
 19 month, make an exact return to the board department of the
 20 amount of beer manufactured in this state, sold and
 21 delivered by him, and also of the amount of beer
 22 manufactured in places outside of the state, sold and
 23 delivered by him, during the previous month, and of his
 24 inventory in the manner and form as shall be prescribed by
 25 the board department, and the board department shall have

1 the right at any time to make an examination of the said
2 wholesaler's books and of his premises, and otherwise check
3 the accuracy of such return or to check the alcoholic
4 content of beer which he may have on hand."

5 Section 58. Section 4-320, R.C.M. 1947, is renumbered
6 section 4-6-403, and is amended to read as follows:

7 "~~4-320 4-6-403~~. Penalty for brewer's and wholesalers'
8 failure to file statement payment of pay tax. With such
9 return, the said wholesaler shall pay to the board the
10 amount of tax upon all beer not manufactured in this state,
11 on the basis hereinafter provided, which shall have been
12 sold by him during such previous month. Any such tax owed
13 by a brewer or wholesaler under this code not paid within
14 the time herein provided for shall be delinquent and a
15 penalty of five per cent (5%) thereof shall be added thereto
16 and the whole thereof shall bear interest at the rate of one
17 per cent (1%) per month from the date of delinquency until
18 paid, and any brewer or wholesaler who fails, neglects or
19 refuses to make the return to the board department provided
20 for in ~~section~~ sections 4-319 4-3-203 or 4-3-213, or refuses
21 to allow such examination provided for in ~~section~~ sections
22 ~~4-319 4-3-203 or 4-3-213~~, or fails to make an accurate
23 return according to the manner prescribed, shall be deemed
24 guilty of having committed a misdemeanor and upon conviction
25 thereof shall be fined in an amount not exceeding one

1 thousand dollars (\$1,000.00)."

2 Section 59. Section 4-321, R.C.M. 1947, is renumbered
3 section 4-3-214, and is amended to read as follows:

4 "~~4-321 4-3-214~~. To whom wholesaler may sell. It shall
5 be lawful for any wholesaler to sell and deliver beer
6 purchased or acquired by him to a wholesaler, retailer, ~~club~~
7 or to a common carrier, holding and having a license under
8 this act."

9 Section 60. Section 4-325, R.C.M. 1947, is renumbered
10 section 4-3-217, and is amended to read as follows:

11 "~~4-325 4-3-217~~. Penalty for brewer's failure to make
12 returns—lien of taxes—enforcement—release. If any brewer
13 subject to the payment of the tax provided for in
14 ~~subdivision (3) [(2)] of section 4-317 4-1-405~~ or any
15 wholesaler subject to the payment of the tax provided for in
16 section ~~4-324 4-1-404~~, shall fail, neglect or refuse to make
17 any return required by ~~Montana Beer Act~~ this code, or shall
18 fail to make payment of such tax within the time herein
19 provided, the board department shall, forthwith after such
20 time has expired, proceed to inform itself as best it may
21 regarding the matters and things required to be set forth in
22 such return and from such information as it may be able to
23 obtain, to make a statement showing such matters and things
24 and determine and fix the amount of such tax due the state
25 from such delinquent brewer or wholesaler and shall add

1 thereto a penalty of five per cent (5%) thereof for the
 2 first failure, willful neglect or refusal; ten per cent
 3 (10%) for the second; fifteen per cent (15%) for the third;
 4 and twenty-five per cent (25%) for the fourth, and each
 5 subsequent failure, neglect or refusal, which shall be in
 6 addition to the five per cent (5%) penalty hereinbefore
 7 provided for nonpayment of such tax within the time
 8 hereinbefore provided. Said tax and the penalties added
 9 thereto shall bear interest at the rate of one per cent (1%)
 10 per month from the date such returns should have been made
 11 and said tax paid. The board department shall then proceed
 12 to collect such tax with penalties and interest. Upon
 13 request of the board department it shall be the duty of the
 14 attorney general to commence and prosecute to final
 15 determination in any court of competent jurisdiction an
 16 action to collect such tax. All taxes due from any brewer
 17 or wholesaler under the provisions of ~~Montana Beer Act~~ this
 18 code, together with all penalties and interest thereon,
 19 shall be a lien upon any and all property of such brewer or
 20 wholesaler upon the filing by the board department of a
 21 duplicate copy of the statement so made by the board
 22 department, or a certified copy of any return filed with
 23 ~~said board~~ the department, in the office of the county clerk
 24 of the county where such property is situated, which lien
 25 shall have precedence over any other claim, lien or demand

1 thereafter filed or recorded and may be enforced in the name
 2 of the state of Montana in the same manner as other liens
 3 are enforced by law. No action shall be maintained to
 4 enjoin the collection of such tax or any part thereof. When
 5 the amount due the state is paid in full and before the
 6 entry of foreclosure decree, the board department shall
 7 release the said lien by filing in the office of the county
 8 clerk wherein is filed the said lien a written release
 9 thereof. At any time prior to the payment of said taxes,
 10 penalty and interest, before the entry of foreclosure
 11 decree, the board department may release from the operation
 12 of said lien a part of said property to enable the brewer or
 13 wholesaler to mortgage, sell or otherwise dispose of the
 14 same in order to procure funds with which to pay said taxes,
 15 penalty and interest, provided there remains, in the
 16 judgment of the board department, sufficient property
 17 subject to said lien to ensure the payment of the whole of
 18 said unpaid taxes, penalty and interest."

19 Section 61. Section 4-326, B.C.M. 1947, is renumbered
 20 section 4-3-218, and is amended to read as follows:

21 "~~4-326~~ 4-3-218. Carriers' reports of beer transported.
 22 Every railroad and every motor carrier transporting beer
 23 manufactured out of this state from points without this
 24 state and delivering the same to points within this state
 25 shall, on or before the fifteenth day of each month, make an

1 exact return to the ~~board~~ department of the amount of such
2 beer so transported and delivered by such railroad or motor
3 carrier during the previous month, and shall state in such
4 return the name and address of the consignor, the name and
5 address of the consignee, the date of delivery, and the
6 amount delivered."

7 Section 62. Section 4-327, R.C.M. 1947, is renumbered
8 section 4-4-104, and is amended to read as follows:

9 "4-327 ~~4-4-104~~. Retailers' license—application and
10 issuance—display required—check of alcoholic content by
11 ~~board department~~. Any person desiring to possess and have
12 for sale beer, under the provisions of this ~~act~~ code, for
13 the purpose of selling it at retail, shall first apply to
14 the ~~board department~~ for a permit so to do and tender with
15 such application the license fee herein provided for. Upon
16 being satisfied from such application or otherwise that the
17 applicant is qualified as herein provided, the ~~board~~
18 department shall issue a license to such person, which
19 license shall at all times be prominently displayed in the
20 place of business of the applicant. If the ~~board department~~
21 shall find that the applicant is not qualified, no license
22 shall be granted and the license fee tendered shall be by
23 the ~~board department~~ returned. The ~~board department~~ shall
24 have the right and is hereby given authority to make, at any
25 time, an examination of the books of account of any such

1 retailer and of his premises and otherwise check his methods
2 of conducting business and the alcoholic contents of the
3 beer kept by him for sale. A person may not sell beer at
4 retail without a valid license issued under this code."

5 Section 63. Section 4-328, R.C.M. 1947, is renumbered
6 section 4-3-302, and is amended to read as follows:

7 "4-328 ~~4-3-302~~. Sale of beer by retailer—consumption
8 on premises. It shall be lawful for such retailer to sell
9 and serve beer either on draught or in ~~bottles~~ containers to
10 the public to be consumed on the premises of such retailer."

11 Section 64. Section 4-330, R.C.M. 1947, is renumbered
12 section 4-3-301, and is amended to read as follows:

13 "4-330 ~~4-3-301~~. Purchase of beer by retailer—persons
14 to whom beer may not be sold, delivered or given by brewers,
15 wholesalers or retailers. It shall be unlawful for ~~each~~ a
16 licensed retailer to purchase or acquire beer from anyone
17 except a brewer or wholesaler ~~or retailer~~ licensed under the
18 provisions of this ~~act~~ code.

19 It shall be unlawful for any brewer, wholesaler or
20 retailer, his or her employee or employees to sell, deliver
21 or give away, or cause or permit to be sold, delivered or
22 given away, any beer to:

23 1. Any person under the age of eighteen (18) years;

24 2. Any intoxicated person or any person actually,
25 apparently or obviously intoxicated+.

~~3. In habitual drunkard; or~~

~~4. In interdicted person.~~

~~any brewer, wholesaler or retailer violating any of the provisions of this section, shall upon conviction thereof be subject to the penalties provided for in section 4-305 of the Montana Beer Act, and in addition thereto the license of any such brewer, wholesaler or retailer shall, in the discretion of the board, be immediately revoked, or said license may be suspended for a period of not more than three (3) months. Any minor or other person who knowingly misrepresents his or her qualification for the purpose of obtaining beer from any licensee shall be equally guilty with said licensee and shall, upon conviction thereof, be subject to the penalty provided in section 4-305 of the Montana Beer Act."~~

Section 65. Section 4-332, M.C.M. 1947, is renumbered section 4-4-105, and is amended to read as follows:

"~~4-332~~ 4-4-105. Special permits to sell beer—application and issuance—fee. (1) Any association or corporation conducting a picnic, convention, fair, civic or community enterprise, or sporting event, shall in the discretion of the liquor division be entitled to a special permit to sell beer to the patrons of such event to be consumed within the enclosure wherein the event is held.

The application of any such association or corporation

shall be presented ten (10) days in advance and shall describe the location of such enclosure wherein such event is held, the nature of such event, the period when it is contemplated that the same will be held. Such application shall be accompanied by the amount of the permit fee hereinafter provided.

The permit issued to such association or corporation shall be a special permit, but shall not authorize the sale of beer except starting one (1) day in advance of the regular period when events are being held upon such grounds and during the period described in such application, and for one (1) day thereafter.

The permit fee shall be at the rate of fifteen dollars (\$15) per day for each day beer is sold, or to be sold at those events lasting two (2) or more days, but in no event less than the sum of thirty dollars (\$30), hereby fixed as the minimum fee for such permit.

(2) Any post of a nationally chartered veterans' organization or any lodge of a recognized national fraternal organization, not otherwise licensed under this ~~act~~ code, shall in the discretion of the ~~board~~ department, without notice or hearing as provided in section ~~4-407, 1~~ 4-4-302, be entitled to a special permit to sell beer at such post or lodge, to members and their guests only, to be consumed within the hall or building of such post or lodge.

The application of such nationally chartered veterans' organization or lodge of a recognized national fraternal organization shall describe the location of the hall or building where the special permit shall be used and the date it will be used. Such application shall be accompanied by a permit fee of ~~five ten~~ dollars ~~(\$5.00)~~ (\$10).

The special permit issued shall be for a twenty-four (24) hour period ending at 2 a.m. only and the ~~board~~ department shall not issue more than twelve (12) such permits to any such post or lodge during a calendar year."

Section 66. Section 4-333, R.C.M. 1947, is renumbered section 4-4-201, and is amended to read as follows:

"~~4-333~~ 4-4-201. Issuance of retail beer licenses — limit on number of ~~off-premises~~ beer licenses — ~~lapse and cancellation~~ — wine license amendments — retail license fee. (1) Except as otherwise provided by law, a license to sell beer at retail, or beer and wine at retail pursuant to subsection (2), in accordance with the provisions of this act and the regulations of the department of revenue, may be issued to any person, firm or corporation who shall be approved ~~by a majority of the board~~ by the department as a fit and proper person, firm or corporation to sell beer; provided, that ~~the number of retail beer licenses that the board may issue shall be determined as follows:~~

(a) ~~The~~ the number of retail beer licenses that the ~~board~~ department may issue for premises situated within incorporated cities and incorporated towns and within a distance of five (5) miles from the corporate limits of such cities and towns shall be determined on the basis of population as shown by the most recent official United States census authorized by Congress, to wit:

In incorporated towns of five hundred (500) inhabitants or less and within a distance of five (5) miles from the corporate limits of such towns, ~~not more than two (2) retail beer licenses to be used in conjunction with retail liquor licenses and~~ not more than one (1) ~~additional~~ retail beer license which shall not be used in conjunction with a retail liquor license; in incorporated cities or incorporated towns of more than five hundred (500) inhabitants and not over two thousand (2000) inhabitants and within a distance of five (5) miles from the corporate limits of such cities or towns, ~~two (2) retail beer licenses for the first five hundred (500) inhabitants and one (1) retail beer license for each additional five hundred (500) inhabitants, which said retail beer licenses shall be used in conjunction with retail liquor licenses, and~~ one (1) ~~additional~~ beer license for each five hundred (500) inhabitants which said beer license shall not be used in conjunction with retail liquor licenses; in incorporated cities of over two thousand (2000)

1 inhabitants and within a distance of five (5) miles from the
 2 corporate limits of such cities, ~~five (5) retail beer~~
 3 ~~licenses for the first two thousand (2000) inhabitants and~~
 4 ~~one (1) retail beer license for each additional one thousand~~
 5 ~~(1000) inhabitants which said retail beer licenses shall be~~
 6 ~~used in conjunction with retail liquor licenses, and two (2)~~
 7 additional retail beer licenses for the first two thousand
 8 (2000) inhabitants or major fraction thereof and one (1)
 9 additional retail beer license for each additional two
 10 thousand (2000) inhabitants which shall not be used in
 11 conjunction with retail liquor licenses. The number of the
 12 inhabitants in such cities and towns, exclusive of the
 13 number of inhabitants residing within a distance of five (5)
 14 miles from the corporate limits thereof, shall govern the
 15 number of retail beer licenses that may be issued for use
 16 within such cities and towns and within a distance of five
 17 (5) miles from the corporate limits thereof; provided, that
 18 where two (2) or more incorporated municipalities are
 19 situated within a distance of five (5) miles from each
 20 other, the total number of retail beer licenses that may be
 21 issued for use in both of such municipalities and within a
 22 distance of five (5) miles from their respective corporate
 23 limits, shall be determined on the basis of the combined
 24 populations of both of such municipalities and shall not
 25 exceed the foregoing limitations. The said distance of five

1 (5) miles from the corporate limits of any incorporated city
 2 or incorporated town shall be measured in a straight line
 3 from the nearest entrance of the premises proposed for
 4 licensing to the nearest corporate boundary of such city or
 5 town. Retail beer licenses of issue on the date of the
 6 passage and approval of this act and which are in excess of
 7 the foregoing limitations shall be renewable, but no new
 8 licenses shall be issued in violation of such limitations;
 9 provided, that such limitations shall not prevent the
 10 issuance of a nontransferable and nonassignable retail beer
 11 license to any post of a nationally chartered veterans'
 12 organization or any lodge of a recognized national fraternal
 13 organization, if such veterans' or fraternal organization
 14 has been in existence for a period of five (5) years or more
 15 prior to January 1, 1949. No incorporated city or
 16 incorporated town may by ordinance restrict the number of
 17 licenses that the ~~board~~ department may issue; provided that
 18 no retail beer license may be issued by the ~~board~~ department
 19 for any premises situated within any zone of such city or
 20 town wherein the sale of beer is prohibited by ordinance, a
 21 certified copy of which has been filed with the ~~board~~
 22 department. The ~~board~~ department shall have discretion to
 23 deny the issuance of a retail beer license if it shall
 24 determine that the premises proposed for licensing are off
 25 regular police beats and cannot be properly policed by local

1 authorities.

2 (b) The number of retail beer licenses that the board
3 department may issue for use at premises situated outside of
4 any incorporated city or incorporated town and outside of
5 the area within a distance of five (5) miles from the
6 incorporated limits thereof, or for use at premises situated
7 within any unincorporated town shall be as determined by the
8 board department in the exercise of its sound discretion;
9 provided, that no retail beer license shall be issued for
10 any premises so situated unless the board department shall
11 determine that the issuance of such license is required by
12 public convenience and necessity.

13 ~~(2) A retail license to sell beer in the original~~
14 ~~packages for off premise consumption only may be issued to~~
15 ~~any person, firm or corporation who shall be approved by a~~
16 ~~majority of the board as a fit and proper person, firm or~~
17 ~~corporation to sell beer and whose premises proposed for~~
18 ~~licensing are operated as a bona fide grocery store or a~~
19 ~~drugstore licensed as a pharmacy. The number of such~~
20 ~~licenses that the board may issue shall not be limited by~~
21 ~~the provisions of subsection (1) of this section, but shall~~
22 ~~be determined by the board in the exercise of its sound~~
23 ~~discretion, and the board may in the exercise of its sound~~
24 ~~discretion grant or deny any application for any such~~
25 ~~license or suspend or revoke any such license for cause.~~

1 ~~The annual license fee for a license to sell beer at retail~~
2 ~~for off premises consumption shall be the same as for a~~
3 ~~retail beer license.~~

4 ~~(3) From and after February 1, 1949, any retail~~
5 ~~license issued pursuant to this act (including any retail~~
6 ~~license to sell beer for off premises consumption), not~~
7 ~~actually used in a going establishment for a period of~~
8 ~~ninety (90) days, shall automatically lapse. Upon~~
9 ~~determining the fact of nonuser for such period the board~~
10 ~~shall cancel such license of record and no portion of the~~
11 ~~fee paid therefor shall be refundable. The provisions of~~
12 ~~this subsection shall not apply to the license of any~~
13 ~~licensee whose premises are operated on a seasonal basis in~~
14 ~~connection with a bona fide dude ranch, resort, park hotel,~~
15 ~~tourist facility of like business, provided such licensee~~
16 ~~has secured written authority from the board to close his~~
17 ~~licensed premises for a specified period of greater than~~
18 ~~ninety (90) days' duration, and providing further that~~
19 ~~should the liquor control board determine that such lapse~~
20 ~~was reasonably beyond the control of the licensee, then the~~
21 ~~lapse provision set out above shall not apply.~~

22 ~~(4) (2) A person holding a license to sell beer for~~
23 ~~consumption on the premises at retail may apply to the~~
24 ~~department for an amendment to the license permitting the~~
25 ~~holder to sell wine as well as beer. The department~~

1 division may issue such amendment if it finds, on a
 2 satisfactory showing by the applicant, that the sale of wine
 3 for consumption on the premises would be supplementary to a
 4 restaurant or prepared food business. A person holding a
 5 beer-and-wine license may sell wine ~~subject to the~~
 6 ~~limitations imposed by this title on selling beer for~~
 7 ~~consumption on the premises.~~ He may buy wine only at retail
 8 from the department. Nonretention of the beer license, for
 9 whatever reason, shall mean automatic loss of the wine
 10 amendment license.

11 ~~(5)~~ (3) The annual license fee for a license to sell
 12 wine on the premises, when issued as an amendment to a beer
 13 only license shall be two hundred dollars (\$200).

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

1 license or suspend or revoke any such license for cause.
 2 The annual license fee for a license to sell beer at retail
 3 for off-premises consumption shall be the same as for a
 4 retail beer license."

5 Section 67. Section 4-338, R.C.M. 1947, is renumbered
 6 section 4-3-104, and is amended to read as follows:

7 ~~"4-338~~ 4-3-104. Purchase of beer must be from licensed
 8 brewer, wholesaler or retailer. It shall be unlawful for the
 9 operator of any ~~such railroad train, as a~~ common carrier, or
 10 its employees, to make sale of or dispose of any beer or
 11 malt liquors except such as shall have been lawfully
 12 acquired or purchased from a brewery, or wholesaler ~~or~~
 13 ~~retailer~~ duly licensed."

14 Section 68. Section 4-341, R.C.M. 1947, is renumbered
 15 section 4-4-401, and is amended to read as follows:

16 ~~"4-341~~ 4-4-401. Fees for licenses—expiration dates—
 17 regulation by cities and towns. Each licensee, under the
 18 provisions of this ~~act~~ code, shall pay an annual license fee
 19 as follows:

20 Each "brewer," wherever located, whose product is sold
 21 or offered for sale within the state, five hundred dollars
 22 ~~(\$500.00)~~ (\$500);

23 Each "wholesaler" four hundred dollars ~~(\$400.00)~~
 24 (\$400);

25 Each "retailer" two hundred dollars ~~(\$200.00)~~ (\$200);

Any unit of a nationally chartered veterans' organization fifty dollars ~~(\$50.00)~~ (\$50);

~~Each "vehicle" being a common carrier of passengers, or other persons operating buffet and dining cars for such common carrier, twenty-five dollars (\$25.00) (\$25).~~

All licenses issued in any year shall expire on the 30th day of June at midnight of such year. A transfer of any such license may be made on application to the Montana ~~liquor control board~~ department of revenue with the consent of the said ~~board~~ department provided that said transferee shall qualify under this ~~act~~ code. The cities and incorporated towns may enact ordinances defining certain areas in said cities or towns where beer may or may not be sold providing that said ordinance does not affect the limit of retail beer licenses which shall be issued by the Montana ~~liquor control board~~ department of revenue based upon the population of the city or town and said city or town shall file a certified copy of said ordinance with the Montana ~~liquor control board~~ department of revenue; ~~the cities and towns may also impose a fee on a licensee of the board~~ department ~~for selling beer at retail in the city or town~~ providing said fee shall be reasonable and not in excess of the amount imposed by the state limits set by section 4-4-406. This ~~act~~ code shall not be construed or interpreted so as to repeal, amend, modify, change, or alter

any provisions of the ~~Montana Beer Act~~ this code which require beer manufactured outside of the state of Montana and shipped into Montana to be consigned to and shipped to a licensed wholesaler and by him unloaded into his warehouse or subwarehouse in Montana."

Section 69. Section 4-342, R.C.M. 1947, is renumbered as section 4-4-402, and is amended to read as follows:

~~"4-342~~ 4-4-402. Denial of application for license or renewal — suspension or revocation — actions. The ~~board~~ department may (1) upon its own motion and shall (2) upon a written, verified complaint of any person, investigate the action and operation of any brewer, wholesaler or retailer licensed under the ~~Montana Beer Act~~ this code. If the ~~board~~ department, after investigation, shall have reasonable cause to believe that any such licensee has violated any of the provisions of this ~~act~~ code, or any rules, or regulations of the ~~board~~ department, it may, in its discretion, and in addition to the other penalties herein prescribed, ~~reprimand~~ a licensee, proceed to revoke the license of any such licensee, or it may suspend the same for a period of not to exceed three (3) months, or it may refuse to grant a renewal of said license upon the expiration thereof, ~~under the procedures herein provided. If the board shall, in its sound discretion, determine to invoke such procedures for the purpose of refusing to grant a license or refusing to~~

~~1 grant a renewal thereof to any applicant, or for revoking or~~
~~2 suspending any license previously granted, it shall give~~
~~3 applicant or licensee, as the case may be, fifteen (15)~~
~~4 days' notice in writing of its intended action, addressed~~
~~5 and forwarded by registered mail to the applicant or~~
~~6 licensee at the address given in the application for~~
~~7 license, or upon the existing license, as the case may be,~~
~~8 stating generally the basis and reasons for its intended~~
~~9 action and the proposed action. Within said fifteen (15)~~
~~10 day period said applicant or licensee may, in cases of~~
~~11 intention to refuse to grant a license, or intention to~~
~~12 refuse to grant a renewal thereof, institute proceedings in~~
~~13 the nature of a writ of review, or, in case of intention to~~
~~14 revoke or suspend a license, institute proceedings in~~
~~15 injunction, and in any event in the district court of the~~
~~16 county wherein the premises of applicant or licensee are~~
~~17 located for the purpose of having the intended action of the~~
~~18 board judicially reviewed and inquired into for (a) abuse of~~
~~19 discretion on the part of the board, (b) failure of the~~
~~20 board to observe, or its departure from, or disregard of the~~
~~21 applicable law governing the board in the particular~~
~~22 circumstances, or (c) for arbitrary or tyrannical action by~~
~~23 the board. The board shall in all cases certify to the~~
~~24 court its complete record in the matter and the issues shall~~
~~25 be heard on the merits by the court upon such record and~~

~~1 upon such further legal evidence as the parties may present.~~
~~2 If the court in any such proceedings determines that such~~
~~3 licensee has, in fact, violated any provisions of this act~~
~~4 or any regulations of the board, the court shall discuss~~
~~5 such proceedings, and the board shall proceed to such~~
~~6 administrative determination as to it seems proper in the~~
~~7 circumstances. Pending determination of such matter on the~~
~~8 merits the court may, based upon a showing of undue hardship~~
~~9 to a licensee and upon the posting of a proper bond in an~~
~~10 amount, and conditioned upon such terms as the court may~~
~~11 prescribe in the presence of the surrounding circumstances,~~
~~12 stay the effective date of the intended action of the board~~
~~13 for such time as to the court may seem proper. If no stay~~
~~14 order is issued by the court or any stay order once issued~~
~~15 has expired, the board shall issue its order of suspension~~
~~16 or of revocation of license or its order denying the license~~
~~17 applied for, or renewal thereof. If the court shall, on the~~
~~18 other hand, determine that good cause did not exist for the~~
~~19 intended action of the board, or that the board abused its~~
~~20 discretion, or otherwise acted unlawfully with respect to~~
~~21 its intended action, on any of the grounds herein stated,~~
~~22 the court shall issue its order and decree accordingly and~~
~~23 the board shall comply therewith. Either party to the~~
~~24 proceedings in the district court may appeal from its~~
~~25 decision to the supreme court of the state of Montana, by~~

~~following the procedures applicable to such appeals in civil actions, or impose a civil penalty not to exceed one thousand five hundred dollars (\$1500), subject to the opportunity for a hearing under the Montana Administrative Procedure Act."~~

Section 70. Section 4-344, R.C.M. 1947, is renumbered section 4-6-301, and is amended to read as follows:

~~"4-344 4-6-301.~~ Jurisdiction of courts. As to misdemeanor actions, The the district courts of this state shall have concurrent jurisdiction with justice of the peace courts in all prosecutions under this ~~act~~ code."

Section 71. Section 4-346, R.C.M. 1947, is renumbered section 4-6-402, and is amended to read as follows:

~~"4-346 4-6-402.~~ Action to enjoin nuisance — injunction — order of court — bond. An action to enjoin any nuisance defined in this ~~act~~ code may be brought in the name of the state of Montana by the attorney general of the state or by any county attorney. Such action shall be brought and tried as an action in equity and may be brought in any court having jurisdiction to hear and determine equity cases. If it is made to appear by affidavits or otherwise, to the satisfaction of the court, or judge in vacation, that such nuisance exists, a temporary writ of injunction shall forthwith issue restraining the defendant from conducting or permitting the continuance of such

nuisance until the conclusion of the trial. If a temporary injunction is prayed for, the court may issue an order restraining the defendant and all other persons from removing or in any way interfering with the fixtures or other things used in connection with the violation of this act constituting such nuisance. No bond shall be required in instituting such proceedings. It shall not be necessary for the court to find the property involved was being unlawfully used as aforesaid at the time of the hearing, but on finding that the material allegations of the petition are true, the court shall order that no liquor or beer shall be manufactured, sold, or bartered in such room, house, building, boat, vehicle, structure, or place, or any part thereof. And upon judgment of the court ordering such nuisance to be abated, the court may order that the room, house, building, structure, boat, vehicle, or place shall not be occupied or used for one (1) year thereafter; but the court may, in its discretion, permit it to be occupied or used if the owner, lessee, tenant, or occupant thereof shall give bond with sufficient surety, to be approved by the court making the order, in the penal and liquidated sum of not less than five hundred dollars ~~(\$500.00)~~ (\$500), nor more than one thousand dollars ~~(\$1,000.00)~~ (\$1,000), payable to the state of Montana, and conditioned that liquor or beer will not thereafter be manufactured, sold or bartered

1 therein or thereon, and that he will pay all fines, costs,
2 and damages that may be assessed for any violations of this
3 ~~act code~~ upon said property."

4 Section 72. Section 4-347, R.C.M. 1947, is renumbered
5 section 4-1-407, and is amended to read as follows:

6 "~~4-347 4-1-407~~. Revenue to be paid to state
7 treasurer—disposition of revenue. Except as provided in
8 section ~~4-347.1 4-1-408~~ of this ~~act code~~, all fees, charges,
9 taxes and revenues collected by or under authority of the
10 Montana liquor control ~~beers department, under the Montana~~
11 ~~beer act~~ shall be paid over to the state treasurer on or
12 before the tenth (10th) day of each and every month who
13 shall deposit said funds to the credit of the state general
14 fund."

15 Section 73. Section 4-347.1, R.C.M. 1947, is
16 renumbered section 4-1-408, and is amended to read as
17 follows:

18 "~~4-347.1 4-1-408~~. Revenue allocation. All revenue
19 received from taxes on beer under sections ~~4-347 4-1-404~~ and
20 ~~4-324 4-1-405~~, R.C.M. 1947, over and above one dollar and
21 fifty cents (\$1.50) per barrel of thirty-one (31) gallons
22 shall be deposited with the state treasurer to the credit of
23 the incorporated cities and towns beer tax account in the
24 earmarked revenue fund. The state treasurer shall, monthly,
25 distribute this amount of money to the incorporated cities

1 and towns in the direct proportion that the population of
2 each city and town bears to the total population of all
3 incorporated cities and towns as shown in the latest
4 official federal census. For cities and towns incorporated
5 after the latest official federal census, the census shall
6 be determined as of the date of incorporation as evidenced
7 by the certificate of the incorporating officials of that
8 city or town. If a city or town disincorporates, it shall
9 cease to receive any funds under this section and the amount
10 previously distributed to the city or town shall be
11 distributed to the remaining incorporated cities and towns.
12 All funds received by cities and towns under this section
13 shall be expended for state purposes such as law
14 enforcement, maintenance of the transportation system, and
15 public health."

16 Section 74. Section 4-349, R.C.M. 1947, is renumbered
17 section 4-3-219, and is amended to read as follows:

18 "~~4-349 4-3-219~~. Brewers and wholesalers not to supply
19 fixtures, etc., to retailers, except as specified—~~brewers~~
20 ~~not to be interested in retailer financially~~. (a) It shall
21 be unlawful for any brewer or wholesaler to lease, furnish,
22 give or pay for any premises, furniture, fixtures,
23 equipment, signs, or any other advertising matter or any
24 other property to any retail licensee, used or to be used in
25 the dispensation of beer in and about the interior or

exterior of the place of business of any licensed retailer or furnish, give or pay for any repairs, improvements, painting or decorating on or within such premises; provided, however, that it shall be lawful for a brewer or wholesaler to furnish, give or loan to a retail licensee:

1. Bottle openers, can openers and trays, with or without advertising matter thereon;

2. Advertising matter or novelties, of a value of not to exceed fifteen dollars ~~(\$15.00)~~ (\$15) in any calendar year, to any one (1) retailer for display use on the interior of said retailer's place of business; and

3. Not more than two (2) illuminated or electrical signs, each of not more than six hundred thirty (630) square inches in area, which signs may bear the name, brand name, trade name, trade-mark or other designation indicating the name of the manufacturer, and the place of manufacture, of beer, for display by the retail licensee on and within the interior of his place of business, or in the windows inside the place of business of the licensed retailer, and only if the particular brand of beer so advertised on such signs is actually available for sale on the licensee's premises, at the time of such display.

4. Maintenance or repair services on draft beer equipment to keep it sanitary and in good working condition.

~~(b) No brewer or wholesaler shall advance or loan~~

~~money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgage against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.~~

~~(c) No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this act. Any extension or acceptance~~

~~of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the board in its discretion."~~

Section 75. There is a new section to be numbered 4-3-220, R.C.M. 1947, which reads as follows:

4-3-220. Financial interest in retailers prohibited. No brewer or wholesaler shall advance or loan money to, or furnish money for, or pay for or on behalf of any retailer, for any license or tax which may be required to be paid for any retailer, and no brewer or wholesaler shall be financially interested, either directly or indirectly, in the conduct or operation of the business of a retailer, as herein defined. A brewer or wholesaler shall be deemed to have such a financial interest within the meaning of this section if (1) such brewer or wholesaler owns or holds any interest in, or a lien or mortgagee against the retailer or his premises; or (2) if such brewer or wholesaler is under any contract with a retailer concerning future purchases and/or sale of merchandise by one from, or to the other; (3) if any retailer holds an interest as a stockholder, or otherwise, in the business of the wholesaler.

Section 76. There is a new section to be numbered 4-3-221, R.C.M. 1947, which reads as follows:

4-3-221. Seven day credit limitation. No sale or delivery of beer shall be made to any retail licensee, except for cash paid within seven (7) days after the delivery thereof, and in no event shall any brewer or wholesaler extend more than seven (7) days' credit on account of such beer to a retail licensee, nor shall any retail licensee accept or receive delivery of such beer without agreement to pay in cash therefor within seven (7) days from delivery thereof. A correctly dated check which is honored upon presentment shall be considered as cash within the meaning of this code. Any extension or acceptance of credit in violation hereof shall be regarded and construed as rendering or receiving financial assistance, and the licenses of both brewers, wholesalers and retail licensees involved in violation hereof shall be suspended or revoked, as determined by the department in its discretion.

Section 77. Section 4-358, R.C.M. 1947, is renumbered section 4-3-222, and is amended to read as follows:

~~"4-358~~ 4-3-222. Limitations on advertising of beer. It shall be lawful to advertise beer containing not more than ~~four~~ seven per centum (4 7%) of alcohol by weight, as herein defined and regulated, subject to (a) the restrictions on brewers contained in section 4-349 4-3-219 of this ~~act~~ code, and subject to (b) the restrictions on retailers, to wit: No

1 retail licensee ~~under the Montana Beer Act~~ shall display, or
 2 permit to be displayed, on the exterior portion or surface
 3 of such retailer's place of business, or on the exterior
 4 portion or surface of any building of which said place of
 5 business is a part, or on any premises adjacent thereto,
 6 whether any of such premises be owned or leased by the
 7 retailer, any sign, poster or advertisement bearing the
 8 name, brand name, trade name, trade-mark or other
 9 designation indicating the manufacturer, brewer, wholesaler
 10 or place of manufacture, of any beer whatsoever."

11 Section 78. Section 4-401, R.C.M. 1947, is renumbered
 12 section 4-1-103, and is amended to read as follows:

13 "~~4-401 4-1-103.~~ Declaration of policy as to retail
 14 sale of liquor. It is hereby declared as the policy of the
 15 state that it is necessary to further regulate and control
 16 the sale and distribution within the state of alcoholic
 17 beverages, and to eliminate certain illegal traffic in
 18 liquor now existing, and to ensure the entire control of the
 19 sale of liquor in the Montana ~~liquor control board~~
 20 ~~department of revenue~~, it is advisable and necessary, in
 21 addition to the operation of the state liquor stores now
 22 provided by law, that the said ~~board~~ department be empowered
 23 and authorized to grant licenses to persons qualified under
 24 this act code, to sell liquor purchased by them at state
 25 liquor stores at retail posted price in accordance with this

1 act code and under rules and regulations promulgated by the
 2 said ~~board~~ department, and under its strict supervision and
 3 control, and to provide severe penalty for the sale of
 4 liquor except by and in state liquor stores and by persons
 5 licensed under this act code. The restrictions, regulations
 6 and provisions contained in this act code are enacted by the
 7 legislature for the protection, health, welfare and safety
 8 of the people of the state."

9 Section 79. Section 4-403, R.C.M. 1947, is renumbered
 10 section 4-4-202, and is amended to read as follows:

11 "~~4-403 4-4-202. Issuance of retail liquor licenses~~
 12 ~~limit on number of licenses retail wine licenses lapse and~~
 13 ~~cancellation. All beverage license quota.~~ (1) Except as
 14 otherwise provided by law, a license to sell liquor, beer
 15 and wine at retail, an all-beverages license, in accordance
 16 with the provisions of this act code and the regulations of
 17 the Montana ~~liquor control board~~ department of revenue, may
 18 be issued to any person who shall be approved by a ~~majority~~
 19 ~~of the board~~ the department as a fit and proper person to
 20 sell liquor such beverages; provided, that ~~the number of~~
 21 ~~retail liquor licenses which the board may issue shall be~~
 22 ~~determined as follows:~~

23 (a) ~~The~~ the number of ~~retail liquor~~ all-beverage
 24 licenses that the ~~board~~ department may issue for premises
 25 situated within incorporated cities and incorporated towns

1 and within a distance of five (5) miles from the corporate
 2 limits of such cities and towns shall be determined on the
 3 basis of population as shown by the most recent official
 4 United States census authorized by Congress, to wit: In
 5 incorporated towns of five hundred (500) inhabitants or less
 6 and within a distance of five (5) miles from the corporate
 7 limits of such towns, not more than two (2) retail ~~liquor~~
 8 licenses; in incorporated cities or incorporated towns of
 9 more than five hundred (500) inhabitants and not over three
 10 thousand (3000) inhabitants and within a distance of five
 11 (5) miles from the corporate limits of such cities and
 12 towns, three (3) retail ~~liquor~~ licenses for the first one
 13 thousand (1000) inhabitants and one (1) retail ~~liquor~~
 14 license for each additional one thousand (1000) inhabitants;
 15 in incorporated cities of over three thousand (3000)
 16 inhabitants and within a distance of five (5) miles from the
 17 corporate limits thereof, five (5) retail ~~liquor~~ licenses
 18 for the first three thousand (3000) inhabitants and one (1)
 19 retail ~~liquor~~ license for each additional one thousand five
 20 hundred (1500) inhabitants. The number of the inhabitants
 21 in such cities and towns, ~~and in addition~~ exclusive of the
 22 number of inhabitants residing within a distance of five (5)
 23 miles from the corporate limits thereof, shall govern the
 24 number of retail ~~liquor~~ licenses that may be issued for use
 25 within such cities and towns and within a distance of five

1 (5) miles from the corporate limits thereof; provided,
 2 however, that where two (2) or more incorporated
 3 municipalities are situated within a distance of five (5)
 4 miles from each other, the total number of retail ~~liquor~~
 5 licenses that may be issued for use in both of such
 6 municipalities and within a distance of five (5) miles from
 7 their respective corporate limits, shall be determined on
 8 the basis of the combined population of both of such
 9 municipalities and shall not exceed the foregoing
 10 limitations. Notwithstanding the preceding sentence, the
 11 total population for determining the quota of a city may
 12 include, with the city's population, the population residing
 13 outside, but within five (5) miles of the city limits in a
 14 case where the number of persons residing outside but within
 15 five (5) miles of the city exceeds the number of persons
 16 residing within the city. Such a determination may be made
 17 only upon a special census taken by the department or its
 18 agent at the expense of the applicant for a license under
 19 this section. The said distance of five (5) miles from the
 20 corporate limits of any incorporated city or incorporated
 21 town shall be measured in a straight line from the nearest
 22 entrance of the premises proposed for licensing to the
 23 nearest corporate boundary of such city or town. Retail
 24 ~~liquor all-beverages~~ licenses of issue on the date of the
 25 passage and approval of this ~~act~~ code and which are in

1 excess of the foregoing limitations shall be renewable, but
 2 no new licenses shall be issued in violation of such
 3 limitations; provided that such limitations shall not
 4 prevent the issuance of a nontransferable and nonassignable
 5 (as to ownership only) retail ~~liquor~~ license to any post of
 6 a nationally chartered veterans' organization or any lodge
 7 of a recognized national fraternal organization, if such
 8 veterans' or fraternal organization has been in existence
 9 for a period of five (5) years or more prior to January 1,
 10 1949. No incorporated city or incorporated town may by
 11 ordinance restrict the number of licenses that the ~~board~~
 12 department may issue; provided that no retail license may be
 13 issued by the ~~board~~ department for any premises situated
 14 within any zone of a city or town wherein the sale of liquor
 15 is prohibited by ordinance, a certified copy of which has
 16 been filed with the ~~board~~ department. The ~~board~~ department
 17 shall have discretion to deny the issuance of a retail
 18 license if it shall determine that the premises proposed for
 19 licensing are off regular police beats and cannot be
 20 properly policed by local authorities.

21 (b) ~~The~~ the number of retail ~~liquor~~ all-beverages
 22 licenses that the ~~board~~ department may issue for use at
 23 premises situated outside of any incorporated city or
 24 incorporated town and outside of the area within a distance
 25 of five (5) miles from the corporate limits thereof, shall

1 be not more than one (1) license for each seven hundred
 2 fifty (750) population of the county, after excluding the
 3 population of incorporated cities and incorporated towns in
 4 such county and ~~the population residing within a distance of~~
 5 ~~five (5) miles from the corporate limits thereof.~~

6 ~~(2) From and after February 1, 1949, any retail license~~
 7 ~~issued pursuant to this act not actually used in a going~~
 8 ~~establishment for a period of ninety (90) days, shall~~
 9 ~~automatically lapse. Upon determining the fact of nonuser~~
 10 ~~for such period the board shall cancel such license of~~
 11 ~~record and no portion of the fee paid therefor shall be~~
 12 ~~refundable. The provisions of this subsection shall not~~
 13 ~~apply to the license of any licensee whose premises are~~
 14 ~~operated on a seasonal basis in connection with a bona fide~~
 15 ~~dude ranch, park hotel, tourist facility or like business,~~
 16 ~~provided such licensee has secured written authority from~~
 17 ~~the board to close his licensed premises for a specified~~
 18 ~~period of greater than ninety (90) days' duration, and~~
 19 ~~providing further that should the liquor control board~~
 20 ~~determine that such lapse was reasonably beyond the control~~
 21 ~~of the licensee, then the lapse provision set out above~~
 22 ~~shall not apply.~~

23 ~~(3) Resort licenses. It is the intent and purpose of~~
 24 ~~this act to encourage the growth of quality recreational~~
 25 ~~resort facilities in undeveloped areas of the state and to~~

~~provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the board under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the board may issue resort retail liquor licenses in a resort area.~~

~~For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the board as hereinafter provided.~~

~~The board shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and regulations to be promulgated within one hundred eighty (180) days after the passage and approval of this act. In addition to the other requirements of this act, a resort area for the purposes of qualification for the issuance of resort retail liquor license must have a current actual valuation of resort or recreational facilities, including land and improvements thereon, of not less than five hundred thousand dollars (\$500,000), at least half of which valuation must be for a structure or structures within the resort area, and must be under the sole ownership or control of one person or entity at the time of the filing of the~~

~~resort area plat referred to in the next paragraph. The word control shall mean lands held under lease, option, or permit. Before first adopting such rules and regulations in regard to resort liquor licenses, the board shall publish a notice of the hearing to be held on said rules and regulations in a regularly published newspaper in the cities of Billings, Bozeman, Butte, Great Falls, Helena, Miles City, Kalispell and Missoula, Montana, said publication to be published in said newspapers at least once a week for four consecutive weeks, the last of said publications being at least ten (10) but not more than thirty (30) days prior to the date set for said hearing, which shall be held in Helena, Montana, at a time and place designated by the board.~~

~~The resort area must be determined by the resort developer or landowner by a plat setting forth the resort boundaries designating the ownership of the lands within the resort area which plat must be verified by the resort developer or landowner, and filed with the board prior to the filing of any applications by individuals for licenses within the resort area. Such plat must show the location and general design of the buildings, and other improvements to be built in said area in which resort retail liquor licenses are to, or may, be located. A master plan for the development of the said area may be filed by the resort~~

~~developer in satisfaction of this section.~~

~~Upon each filing the board shall forthwith schedule a public hearing to be held in Helena, Montana, to determine whether the facility proposed by the resort developer or landowner is a resort area within the meaning of the rules and regulations of the board. At least thirty (30) days prior to the date of the hearing, the board shall publish notice thereof with a description of the location of the proposed resort area in a newspaper published in the county or counties in which the resort is located, once a week for four (4) consecutive weeks. Each resort developer or landowner shall, at the time of filing his application, pay to the board an amount sufficient to cover the costs of said publication. Persons may present statements to the board at the hearing in person or in writing in opposition or support of the plat. Within thirty (30) days of the hearing the board shall accept or reject the plat. If rejected the board must state its reasons and set forth the conditions, if any, under which the plat will be accepted and the decision of the board may be reviewed pursuant to the review procedure set forth in section 4-425 herein.~~

~~Once filed with the board, the boundaries of a resort may not be changed without full hearing as above provided and the prior approval of the board, which approval shall be according to public convenience and necessity.~~

~~When the board has accepted a plat and a given resort area has been determined, applications may then be filed with the board by persons for the issuance of resort retail liquor licenses within the said resort area. Each applicant must submit plans showing the location, appearance and floor plan of the premises for which application for a license is made.~~

~~If an applicant otherwise qualifies for a resort license but the premises to be licensed are still in construction, or are otherwise incomplete at the time of such application, the board shall issue a letter stating that the license will be issued at such time as the qualifications for a licensed premises have been met, setting forth such time limitations and requirements as the board may establish.~~

~~In addition to the restrictions on sale or transfer of a license as provided in section 4-410 herein, no resort retail liquor license may be sold or transferred for operation at a location outside of the boundaries of the resort area.~~

~~The annual fee for resort retail liquor licenses within a given resort area shall be two thousand dollars (\$2,000) for each such license.~~

~~A resort retail liquor license shall not be subject to the quota limitations set forth in section 4-402 (1) (a).~~

~~above and a resort retail liquor license shall be issued by the board on the basis that the board has determined that such license is justified by public convenience and necessity, following a hearing as provided in section 4-407.1.~~

~~If any clause, sentence, paragraph, section, or any part of this act shall be declared and adjudged to be invalid and/or unconstitutional, such invalidity or unconstitutionality shall not affect, impair, invalidate or nullify the remainder of this act."~~

Section 80. There is a new section to be numbered 4-4-203, R.C.M. 1947, which reads as follows:

4-4-203. Lapse of license for nonuse. From and after February 1, 1949, any retail license issued pursuant to this code (including any retail license to sell beer for off-premises consumption), not actually used in a going establishment for a period of ninety (90) days, shall automatically lapse. Upon determining the fact of nonuser for such period the department shall cancel such license of record and no portion of the fee paid therefor shall be refundable. The provisions of this subsection shall not apply to the license of any licensee whose premises are operated on a seasonal basis in connection with a bona fide dude ranch, resort, park hotel, tourist facility or like business, provided such licensee has secured written

authority from the department to close, has licensed premises for a specified period of greater than ninety (90) days' duration, and providing further that should the department determine that such lapse was reasonably beyond the control of the licensee, then the lapse provision set out above shall not apply.

Section 81. There is a new section to be numbered 4-4-204, R.C.M. 1947, which reads as follows:

4-4-204. Resort licenses. It is the intent and purpose of this section to encourage the growth of quality recreational resort facilities in undeveloped areas of the state and to provide for the orderly growth of existing recreational sites by the establishment of resort areas within which retail liquor licenses may be issued by the department under the terms and as more particularly prescribed below. In addition to the licenses as otherwise set forth in this act, the department may issue resort retail liquor licenses in a resort area.

For the purposes of this section, a resort area is defined as a recreational facility meeting the qualifications determined by the department as hereinafter provided.

The department shall determine that the area for which licenses are to be issued is a resort area, such determination to be made under and pursuant to rules and

1 regulations to be first promulgated on or before December
2 31, 1975. In addition to the other requirements of this
3 code, a resort area for the purposes of qualification for
4 the issuance of resort retail liquor license must have a
5 current actual valuation of resort or recreational
6 facilities, including land and improvements thereon, of not
7 less than five hundred thousand dollars (\$500,000), at least
8 half of which valuation must be for a structure or
9 structures within the resort area, and must be under the
10 sole ownership or control of one person or entity at the
11 time of the filing of the resort area plat referred to in
12 the next paragraph. The word control shall mean lands held
13 under lease, option, or permit. Before first adopting such
14 rules and regulations in regard to resort liquor licenses,
15 the department shall publish a notice of the hearing to be
16 held on said rules and regulations in a regularly published
17 newspaper in the cities of Billings, Bozeman, Butte, Great
18 Falls, Helena, Miles City, Kalispell and Missoula, Montana,
19 said publication to be published in said newspapers at least
20 once a week for four consecutive weeks, the last of said
21 publications being at least ten (10) but not more than
22 thirty (30) days prior to the date set for said hearing,
23 which shall be held in Helena, Montana, at a time and place
24 designated by the department.

25 The resort area must be determined by the resort

1 developer or landowner by a plat setting forth the resort
2 boundaries designating the ownership of the lands within the
3 resort area which plat must be verified by the resort
4 developer or landowner, and filed with the department prior
5 to the filing of any applications by individuals for
6 licenses within the resort area. Such plat must show the
7 location and general design of the buildings, and other
8 improvements to be built in said area in which resort retail
9 liquor licenses are to, or may, be located. A master plan
10 for the development of the said area may be filed by the
11 resort developer in satisfaction of this section.

12 Upon such filing the department shall forthwith
13 schedule a public hearing to be held in Helena, Montana, to
14 determine whether the facility proposed by the resort
15 developer or landowner is a resort area within the meaning
16 of the rules and regulations of the department. At least
17 thirty (30) days prior to the date of the hearing, the
18 department shall publish notice thereof with a description
19 of the location of the proposed resort area in a newspaper
20 published in the county or counties in which the resort is
21 located, once a week for four (4) consecutive weeks. Each
22 resort developer or landowner shall, at the time of filing
23 his application, pay to the department an amount sufficient
24 to cover the costs of said publication. Persons may present
25 statements to the department at the hearing in person or in

1 writing in opposition or support of the plat. Within thirty
2 (30) days of the hearing the department shall accept or
3 reject the plat. If rejected the department must state its
4 reasons and set forth the conditions, if any, under which
5 the plat will be accepted and the decision of the department
6 may be reviewed pursuant to the review procedure set forth
7 in section 4-4-402.

8 Once filed with the department, the boundaries of a
9 resort may not be changed without full hearing as above
10 provided and the prior approval of the department, which
11 approval shall be according to public convenience and
12 necessity.

13 When the department has accepted a plat and a given
14 resort area has been determined, applications may then be
15 filed with the department by persons for the issuance of
16 resort retail liquor licenses within the said resort area.
17 Each applicant must submit plans showing the location,
18 appearance and floor plan of the premises for which
19 application for a license is made.

20 If an applicant otherwise qualifies for a resort
21 license but the premises to be licensed are still in
22 construction, or are otherwise incomplete and the time of
23 such application, the department shall issue a letter
24 stating that the license will be issued at such time as the
25 qualifications for a licensed premises have been met,

1 setting forth such time limitations and requirements as the
2 department may establish.

3 In addition to the restrictions on sale or transfer of
4 a license as provided in section 4-4-206 herein, no resort
5 retail liquor license may be sold or transferred for
6 operation at a location outside of the boundaries of the
7 resort area.

8 The annual fee for resort retail liquor licenses within
9 a given resort area shall be two thousand dollars (\$2,000)
10 for each such license.

11 A resort retail liquor license shall not be subject to
12 the quota limitations set forth in section 4-4-202 above and
13 a resort retail liquor license shall be issued by the
14 department on the basis that the department has determined
15 that such license is justified by public convenience and
16 necessity, following a hearing as provided in section
17 4-4-302.

18 Section 82. Section 4-406, H.C.M. 1947, is renumbered
19 section 4-4-404, and is amended to read as follows:

20 "~~4-406~~ 4-4-404. Fee for and expiration of licenses.
21 Effective July 1, 1944, and at the same date of each year
22 thereafter, the Montana ~~liquor control board~~ department of
23 revenue shall issue licenses for the retail sale of ~~beer~~
24 ~~and/or alcoholic beverages~~ liquor on an annual basis, and at
25 such fees as are prescribed by law, and such licenses shall

1 expire at midnight of June 30th of the succeeding year.
 2 ~~Provided that when the applicant shall have had a beer~~
 3 ~~license or beer and liquor licenses for 1943, he shall pay~~
 4 ~~the fees required for such license or licenses for the first~~
 5 ~~half of 1944 before he shall be qualified to be issued such~~
 6 ~~license or licenses for the year commencing June 30, 1944.~~
 7 The department shall notify each applicant for an original
 8 license or renewal that he should inform himself of
 9 applicable provisions of federal law which may require a
 10 permit from a federal agency."

11 Section 83. Section 4-407, R.C.M. 1947, is renumbered
 12 section 4-4-301, and is amended to read as follows:

13 "4-407 4-4-301. Application for license—penalty for
 14 false statements. Prior to the issuance of a license as
 15 herein provided, the applicant shall file with the Montana
 16 liquor control board department of revenue an application in
 17 writing, signed by the applicant, and containing such
 18 information and statements relative to the applicant and the
 19 premises where the liquor alcoholic beverage is to be sold,
 20 as may be required by the Montana liquor board department.

21 The application shall be verified by the affidavit of
 22 the person making the same before a person authorized to
 23 administer oaths. If any false statement is made in any
 24 part of said application, the applicant, or applicants,
 25 shall be deemed guilty of a misdemeanor and upon conviction

1 thereof the license, if issued, shall be revoked and the
 2 applicant, or applicants, subjected to the penalties
 3 provided by law."

4 Section 84. Section 4-407.1, R.C.M. 1947, is
 5 renumbered section 4-4-302, and is amended to read as
 6 follows:

7 "4-407.1 4-4-302. Notice of application—publication—
 8 protest. When an application has been filed with the Montana
 9 liquor control board department of revenue for a license to
 10 sell liquor alcoholic beverages at retail, or to transfer
 11 such license, the board department shall promptly publish in
 12 a newspaper of general circulation in the city, town or
 13 county from whence such application shall come, a notice
 14 that such applicant has made application for such license,
 15 and that protests against the issuance of a license to the
 16 applicant will be heard at a time and place stated in the
 17 notice, which shall be at a special or regular meeting of
 18 the Montana liquor control board in the city of Helena,
 19 Montana. Notice of application for a new license shall be
 20 published once a week for four (4) consecutive weeks.
 21 Notice of application for transfer of a license shall be
 22 published once a week for two (2) consecutive weeks. Notice
 23 may be substantially in the following form:

24 NOTICE OF APPLICATION FOR RETAIL LIQUOR

25 ALL BEVERAGE LICENSE

Notice is hereby given that on the day of, 19.., one (name of applicant) filed an application for a retail ~~liquor~~ all beverage license with the Montana ~~liquor control board~~ department of revenue, to be used at (describe location of premises where license is to be sold), and protests, if any there be, against the issuance of such license will be heard at the hour of ---M, on the day of, 19.., at the office of the Montana ~~liquor control board~~ department of revenue, in Helena, Montana.

Dated

Signed

ADMINISTRATOR

No license shall be issued until on or after the date set in the notice for hearing protests. Nor shall a license under this ~~act~~ code be issued if the said Montana ~~liquor control board~~ department of revenue shall find from the evidence at said hearing that the welfare of the people residing in the vicinity of the place for which such license is desired will be adversely and seriously affected, or that the purposes of the ~~Montana Retail Liquor License Act~~ this code will not be carried out by the issuance of such license. Each applicant shall, at the time of filing his application, pay to the Montana ~~liquor control board~~ department of revenue, an amount sufficient to cover the costs of publishing said notice."

Section 85. Section 4-408, R.C.M. 1947, is renumbered section 4-4-303, and is amended to read as follows:

~~"4-408~~ 4-4-303. Investigation of application. Upon receipt of ~~an~~ a completed application for a license under this ~~act~~ code, accompanied by the necessary license fee and bond, the ~~board~~ department of revenue shall within thirty (30) days thereafter, cause to be made a thorough investigation of all matters pertaining thereto, and shall determine whether such applicant is qualified to receive a license and his premises are suitable for the carrying on of the business, and whether the requirements of this ~~act~~ code and the rules and regulations promulgated by the ~~board~~ department are met and complied with."

Section 86. Section 4-408.1, R.C.M. 1947, is renumbered section 4-4-304, and is amended to read as follows:

~~"4-408.1~~ 4-4-304. Fingerprints required of licensees. All applicants for a Montana retail ~~liquor~~ all beverage or beer license, including corporate officers ~~and managers~~, may be required by the department of revenue, when applying for said license to have their fingerprints taken for use in determining the eligibility of the applicant for such license."

Section 87. Section 4-409.1, R.C.M. 1947, is renumbered section 4-4-106, and is amended to read as

1 follows:

2 ~~"4-409.1 4-4-106.~~ Special permits to sell ~~liquor~~
3 ~~alcoholic beverages~~—application and issuance—fee. Any post
4 of a nationally chartered veterans' organization or any
5 lodge of a recognized national fraternal organization, not
6 otherwise licensed under this act, shall in the discretion
7 of the ~~board department of revenue,~~ without notice or
8 hearing as provided in section ~~4-407.1 4-4-302,~~ be entitled
9 to a special permit to sell ~~liquor~~ all alcoholic beverages
10 at such post or lodge, to members and their guests only, to
11 be consumed within the hall or building of such post or
12 lodge.

13 The application of such nationally chartered veterans'
14 organization or lodge of a recognized national fraternal
15 organization, shall describe the location of the hall or
16 building where the special permit shall be used and the date
17 it will be used. Such application shall be accompanied by a
18 permit fee of ~~ten~~ Twenty dollars ~~(\$10.00) (\$10) (\$20).~~

19 The special permit issued shall be for a twenty-four
20 (24) hour period ending at 2 a.m. only and the ~~board~~
21 ~~department~~ shall not issue more than twelve (12) such
22 permits to any such post or lodge during a calendar year.
23 ~~Such post or lodge must have either a retail license or~~
24 ~~special permit to sell beer before being entitled to a~~
25 ~~special permit to sell liquor."~~

1 Section 88. Section 4-410, R.C.M. 1947, is renumbered
2 section 4-4-206, and is amended to read as follows:

3 ~~"4-410 4-4-206.~~ Contents of license — posting —
4 privilege — transfer — expiration. (1) Every license
5 issued under this ~~act~~ code shall set forth the name of the
6 person to whom issued, the location by street and number, or
7 other appropriate specific description of location if no
8 street address exists, of the premises where the business is
9 to be carried on under said license, and such other
10 information as the ~~board department~~ shall deem necessary.
11 If the licensee is a partnership or if more than one person
12 has any interest in the business operated under the license,
13 the names of all persons in the partnership or interested in
14 the business must appear on the license. Every license must
15 be posted in a conspicuous place on the premises wherein the
16 business authorized under the license is conducted and such
17 license shall be exhibited upon request to any authorized
18 representative of the ~~board department~~ or to any peace
19 officer of the state of Montana.

20 (2) Any license issued under the provisions of this
21 ~~act~~ code shall be considered a privilege personal to the
22 licensee named in the license and shall be good until the
23 expiration of the license, unless sooner revoked or
24 suspended. A license may be transferred to the executor or
25 administrator of the estate of any deceased licensee when

1 such estate consists in whole or in part of the business of
 2 selling liquor under a license and in such event the license
 3 may descend or be disposed of with the business to which it
 4 is applicable under appropriate probate proceedings.

5 (3) In the event of a major loss or damage to licensed
 6 premises by unforeseen natural causes, or in case of
 7 expiration of lease of the licensed premises, or in the
 8 event of eviction or increase of rent by the landlord, in
 9 case of rented, licensed premises, or in case of proposed
 10 removal of license to premises as substantially suited for
 11 the retail liquor business as the premises vacated, the
 12 licensee may apply to the board department for a transfer of
 13 the license to a different premises, the board department
 14 may in its discretion permit a transfer in such cases if it
 15 appears to the board department that such a transfer is
 16 required to do justice to the licensee applying for the
 17 transfer. The board department shall in no event, nor for
 18 any cause, permit a transfer to a different premises where
 19 the sanitary, health and service facilities are less
 20 satisfactory than such facilities which exist or had existed
 21 at the premises from which the transfer is proposed to be
 22 made.

23 (4) Upon a bona fide sale of the business operated
 24 under any license the license may be transferred to a
 25 qualified purchaser. No transfer of any license as to

1 person or location shall be effective unless and until
 2 approved by the board department and any licensee or
 3 transferee or proposed transferee who operates or attempts
 4 to operate under any supposedly transferred license prior to
 5 the approval of such transfer by the board department,
 6 endorsed upon the license in writing, shall be considered as
 7 operating without a license and the license affected may be
 8 revoked or suspended by the board department. ~~HOWEVER, THE~~
 9 ~~DEPARTMENT MAY, WITHIN ITS DISCRETION PERMIT A QUALIFIED~~
 10 ~~PURCHASER TO OPERATE THE BUSINESS TO BE TRANSFERRED PENDING~~
 11 ~~FINAL APPROVAL, PROVIDING THE APPLICATION FOR TRANSFER HAS~~
 12 ~~BEEN FILED WITH THE DEPARTMENT. The board shall not in any~~
 13 ~~event permit the transfer of any license beyond the quota~~
 14 ~~area within which such license was originally issued, any~~
 15 ~~such license which is not within a quota area may not be~~
 16 ~~transferred to any premises within a quota area.~~

17 (a) A license may be transferred to a new ownership
 18 and to a location outside the quota area for which it was
 19 originally issued only when the following criteria are met:

20 (i) the total number of all-beverages licenses in the
 21 original quota area exceeded the quota for that area by at
 22 least twenty-five percent (25%) in the most recent census;
 23 and

24 (ii) the total number of all-beverages licenses in the
 25 quota area to which the license would be transferred did not

1 exceed that area's quota by more than twenty-five percent
 2 (25%) in the most recent census; and

3 (iii) the department finds, after a public hearing,
 4 that the public convenience and necessity would be served by
 5 such a transfer.

6 (b) A license transferred between quota areas under
 7 this section may not be MORTGAGED OR pledged as security, or
 8 AND MAY NOT be transferred TO ANOTHER PERSON, except for a
 9 transfer by inheritance upon the death of the licensee. If
 10 the licensee is a corporation or a business entity other
 11 than a natural person, ownership interests in the licensee
 12 may not be pledged as security or transferred except by
 13 inheritance if the value of such ownership interests exceed
 14 the fair market value of the real property and inventory
 15 owned by the licensee. A LICENSE TRANSFERRED BETWEEN QUOTA
 16 AREAS UNDER THIS SECTION MAY BE HELD ONLY BY NATURAL
 17 PERSONS. FOR THE PURPOSE OF THIS SECTION, NATURAL PERSONS
 18 SHALL NOT INCLUDE LIMITED PARTNERSHIPS OR OTHER BUSINESS
 19 ENTITIES OF ANY KIND IN WHICH EACH NATURAL PERSON IS NOT A
 20 FULL PARTICIPANT IN THE OWNERSHIP AND OPERATION OF THE
 21 BUSINESS AUTHORIZED BY THE LICENSE.

22 Except as above provided, no license shall be
 23 transferred or sold, nor shall it be used for any place of
 24 business not described in the license, provided however,
 25 that such license may be subject to mortgage and other valid

1 liens, in which event the name of the mortgagee, upon
 2 application to and approval of the ~~board~~ department, must be
 3 endorsed on the license. All licenses shall expire at
 4 midnight of June thirtieth of each year."

5 Section 89. Section 4-411, R.C.M. 1947, is renumbered
 6 section 4-4-207 and is amended to read as follows:

7 ~~"4-411 4-4-207. Limit one license to person — beer~~
 8 ~~license, when required — business in name of licensee. No~~
 9 ~~person shall be granted more than one all-beverages license~~
 10 ~~in any year. No person, club, or fraternal organization~~
 11 ~~shall be entitled to a license under this act unless such~~
 12 ~~person, club, or fraternal organization shall have a beer~~
 13 ~~license issued under the laws of Montana. No business may be~~
 14 ~~carried on under any license issued under this chapter~~
 15 ~~except in the name of the licensee."~~

16 Section 90. Section 4-412, R.C.M. 1947, is renumbered
 17 section 4-4-108, and is amended to read as follows:

18 ~~"4-412 4-4-108. Persons disqualified for licensee~~
 19 ~~license as privilege — criteria for decision on~~
 20 ~~application. No license shall be issued by the board to:~~

21 ~~1. A person who has been convicted of being the keeper~~
 22 ~~or is keeping a house of ill fame.~~

23 ~~2. A person who has been convicted of pandering or~~
 24 ~~other crime or misdemeanor opposed to decency and morality,~~
 25 ~~under the laws of the federal government or any state of the~~

United States.

~~2. A person whose license issued under this act has been revoked for cause.~~

~~4. A person who at the time of application for renewal of any license issued hereunder would not be eligible for such license upon a first application.~~

~~5. A person who is not qualified or whose premises do not conform to the provisions of this act, or with the rules and regulations promulgated by the board.~~

~~6. A person who is not a citizen of the United States and who has not been a resident of the state of Montana for at least one (1) year immediately preceding the filing of the application for license.~~

~~7. A person who is not the owner and operator of the business.~~

A license under this code is a privilege which the state may grant to an applicant and is not a right to which any applicant is entitled. The department must find, in every case where it makes an order for the issuance of a new license or for the approval of the transfer of a license, that:

(1) the applicant is financially capable, with no ownership interest of his own or of any member of his immediate family NEITHER THE APPLICANT NOR ANY MEMBER OF HIS IMMEDIATE FAMILY HAS AN OWNERSHIP INTEREST in any other

establishment licensed under this chapter for all-beverages sales, and without financing from or any affiliation to a manufacturer, bottler, or distributor of beer, wine or liquor;

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

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

Section 91. Section 4-413, B.C.M. 1947, is renumbered section 4-3-306, and is amended to read as follows:

"4-413 4-3-306. Persons to whom liquor alcoholic beverage may not be sold or given. (1) No licensee or his or her employee or employees, nor any other person, shall sell, deliver, or give away or cause or permit to be sold, delivered or given away any liquor, beer or wine alcoholic beverage to:

1- (a) Any person under the age of eighteen (18) years.

2- (b) Any intoxicated person or any person actually, apparently or obviously intoxicated.

3. A habitual drunkard.

4. An interdicted person.

1 5- ~~(2)~~ Any minor, or other person who knowingly
2 misrepresents his or her qualifications for the purpose of
3 obtaining ~~liquor, beer or wine~~ an alcoholic beverage from
4 such licensee shall be equally guilty with said licensee and
5 shall, upon conviction thereof, be subject to the penalty
6 provided in section 4-436 ~~24-5-610~~ provided, however, that
7 nothing herein contained shall be construed as authorizing
8 or permitting the sale of ~~liquor, beer or wine~~ an alcoholic
9 beverage to any person in violation of any federal law."

10 Section 92. Section 4-415, R.C.M. 1947, is renumbered
11 section 4-4-107, and is amended to read as follows:

12 "~~4-415 4-4-107. Restrictions on proximity of premises~~
13 ~~to churches and schools. Proximity to churches and schools~~
14 ~~restricted. No license shall be granted for any premises~~
15 ~~which shall be on the same street or avenue and within six~~
16 ~~hundred feet of a building occupied exclusively as a church,~~
17 ~~synagogue or other place of worship, or school, except a~~
18 ~~commercially operated school; the measurements to be taken~~
19 ~~in a straight line from the center of the nearest entrance~~
20 ~~of such school, church, synagogue or other place of worship~~
21 ~~to the center of the nearest entrance of the premises to be~~
22 ~~licensed; except, however, that no license shall be denied~~
23 ~~because such restriction may apply to any premises so~~
24 ~~located which are maintained as a bona fide hotel,~~
25 ~~restaurant, railway car, club or fraternal organization or~~

1 ~~society except similar places of business established and in~~
2 ~~actual operation for one year prior to the passage and~~
3 ~~approval of this act. A retail licensee may not extend or~~
4 ~~relocate his premises within six hundred (600) feet of and~~
5 ~~on the same street as a building used exclusively as a~~
6 ~~church, synagogue, or other place of worship, or as a school~~
7 ~~other than a commercially operated or post-secondary school.~~
8 ~~This distance shall be measured in a straight line from the~~
9 ~~center of the nearest entrance of the place of worship or~~
10 ~~school to the nearest entrance of the licensee's premises.~~
11 ~~This section is a limitation upon the department's licensing~~
12 ~~authority. However, the department may renew a license for~~
13 ~~any establishment located in violation of this section if~~
14 ~~the establishment was either located on the site before the~~
15 ~~place of worship or school opened, or located in a bona fide~~
16 ~~hotel, restaurant, or fraternal organization building at the~~
17 ~~site since January 1, 1937."~~

18 Section 93. Section 4-416, R.C.M. 1947, is renumbered
19 section 4-2-204, and is amended to read as follows:

20 "~~4-416 4-2-204. Board Department~~ to sell to licensees
21 — posted price. The ~~board department~~ is hereby authorized
22 to sell through its stores all kinds of liquor, wine and
23 cordials kept in stock to licensees licensed under this act
24 code at the posted price thereof in the store in which said
25 liquor is sold. All sales shall be upon a cash basis. The

1 posted price as used herein shall mean the retail price of
2 such liquor as fixed and determined by the ~~Montana liquor~~
3 ~~control board department of revenue~~ and in addition thereto
4 an excise tax as in this act provided."

5 Section 94. Section 4-417, R.C.M. 1947, is renumbered
6 section 4-1-403, and is amended to read as follows:

7 "4-417 ~~4-1-403~~. Excise liquor tax—collection. The
8 ~~Montana liquor control board department of revenue~~ is hereby
9 authorized and directed to charge, receive and collect at
10 the time of the sale and delivery of any liquor as
11 authorized under any provision of the laws of the state of
12 Montana an excise tax at the rate of sixteen per centum
13 (16%) of the retail selling price on all liquor so sold and
14 delivered. The Montana ~~liquor control board department of~~
15 ~~revenue~~ shall retain the amount of such excise tax received
16 in a separate account and shall deposit with the state
17 treasurer, to the credit of the general fund, such sums so
18 collected and received not later than the tenth (10th) day
19 of each and every month."

20 Section 95. Section 4-418, R.C.M. 1947, is renumbered
21 section 4-2-205, and is amended to read as follows:

22 "4-418 ~~4-2-205~~. Duplicate invoices of sales required.
23 The state liquor store shall upon each and every sale of
24 liquor to any licensee, issue a duplicate invoice of the
25 liquor purchased as provided by ~~said board~~ the department, a

1 copy of which shall be delivered to the licensee and one
2 copy retained at such store. The invoice shall show the
3 date of purchase, name of employee making the sale, the
4 quantity of each kind of liquor purchased, the price paid
5 therefor, the name of the licensee and the number of the
6 license, with such other information as may be required by
7 the ~~board department~~. The licensee shall keep and retain
8 his duplicate invoice of all purchases made by him from the
9 state liquor store, which shall at all times be subject to
10 inspection by the duly authorized officers, agents and
11 employees of the ~~board department~~."

12 Section 96. Section 4-419, R.C.M. 1947, is renumbered
13 section 4-6-102, and is amended to read as follows:

14 "4-419 ~~4-6-102~~. Sale of liquor not purchased from
15 state store forbidden — penalty. It shall be unlawful for
16 any licensee to sell or keep for sale and/or have on his
17 premises for any purpose whatever, any liquor except that
18 purchased from the state liquor store, and any licensee
19 found in possession of, or selling and keeping for sale, any
20 liquor which was not purchased from a state liquor store,
21 shall, upon conviction, be fined not less than five hundred
22 dollars ~~(\$500.00)~~ (\$500) nor more than fifteen hundred
23 dollars ~~(\$1500.00)~~ (\$1500), or by imprisonment for not less
24 than three (3) months nor more than one (1) year, or both
25 such fine and imprisonment, and if the ~~board department~~

shall be satisfied that any such liquor was knowingly sold or kept for sale within the licensed premises by such licensee, or by his agents, servants or employees, it shall be mandatory that said ~~board department~~ immediately revoke the license of said licensee."

Section 97. Section 4-420, R.C.M. 1947, is renumbered section 4-4-407, and is amended to read as follows:

"~~4-420 4-4-407~~. Penalty for sale of alcoholic ~~liquor~~ beverage without license. Any person, who has not been issued a license under this ~~act code~~, who shall sell or keep for sale any alcoholic ~~liquor~~ beverage, shall be guilty of a felony and upon conviction thereof shall be fined not less than one thousand dollars ~~(\$1000.00)~~ (\$1000) nor more than five thousand dollars ~~(\$5,000.00)~~ (\$5,000), or be imprisoned in the state prison for not less than one (1) nor more than five (5) years, or both such fine and imprisonment."

Section 98. Section 4-421, R.C.M. 1947, is renumbered section 4-3-307, and is amended to read as follows:

"~~4-421 4-3-307~~. Sale of Liquor at less than posted price forbidden. It shall be unlawful for any licensee under the provisions of this ~~act code~~ to resell any liquor purchased by such licensee from a state liquor store or the state of Montana for a sum less than the posted price established by the said store and paid by the licensee therefor."

Section 99. Section 4-422, R.C.M. 1947, is renumbered section 4-1-305, and is amended to read as follows:

"~~4-422 4-1-305~~. Employees of ~~board liquor division~~ not to deal in liquor. No member or employee of the ~~board liquor division of the department~~, including those engaged in the sale of liquor at the various state liquor stores, shall be directly or indirectly engaged in dealing in liquor whether as owner, part owner, member of a syndicate, shareholder or otherwise, whether for his own benefit or in a fiduciary capacity for others."

Section 100. Section 4-423, R.C.M. 1947, is renumbered section 4-6-206, and is amended to read as follows:

"~~4-423 4-6-206~~. Officers may seize illicit ~~liquor~~ alcoholic beverages — forfeiture. Any sheriff, police officer, or ~~inspector investigator~~ appointed under this ~~act code~~, who shall find any alcoholic ~~beverages~~ beverage ~~liquor or moonshine which is~~ kept or held by any person for sale or other disposition in violation of this ~~act code~~, may forthwith seize and remove the same, and keep the same as evidence, and upon conviction of a person for violation of the provisions hereof, the ~~said liquor~~ alcoholic beverage and all packages containing the same shall be forfeited to the state of Montana, and in addition the person so violating the law shall be subject to the penalties herein

1 prescribed."

2 Section 101. Section 4-428, R.C.M. 1947, is
3 renumbered section 4-6-204, and is amended to read as
4 follows:

5 "~~4-428 4-6-204~~. Officers may examine premises. The
6 ~~board~~ department of revenue or any duly authorized
7 representative thereof, or the sheriff of any county, shall
8 have the right at any time to make an examination of the
9 premises of ~~each~~ a retail licensee as to whether the law of
10 Montana and the rules and regulations of the ~~said board~~
11 department are being complied with, and shall also have a
12 right to inspect cars or aircraft of any ~~railway~~ common
13 carrier system licensed under ~~act~~ this code."

14 Section 102. Section 4-429, R.C.M. 1947, is
15 renumbered section 4-4-405, and is amended to read as
16 follows:

17 "~~4-429 4-4-405~~. Renewal of suspended licenses. After
18 suspension or revocation of a license the ~~board~~ department
19 shall have the power to renew the same if in its discretion
20 a proper showing therefor has been made."

21 Section 103. Section 4-430, R.C.M. 1947, is
22 renumbered section 4-4-406, and is amended to read as
23 follows:

24 "~~4-430 4-4-406~~. City and county licenses—fees. The
25 city council of any incorporated town or city, or the county

1 commissioners outside of any incorporated town or city, may
2 provide for the issuance of licenses to persons to whom a
3 retail license has been issued under the provisions of this
4 ~~act~~ code, and may fix license fees thereof, not to exceed a
5 sum equal to fifty per cent (50%) of the license fee
6 collected by the ~~board~~ department from such licensee under
7 this ~~act~~ code."

8 Section 104. Section 4-439, R.C.M. 1947, is
9 renumbered section 4-6-404, and is amended to read as
10 follows:

11 "~~4-439 4-6-404~~. Penalty for violating act—revocation
12 of license. Any person violating any of the provisions of
13 this ~~act~~ code, shall upon conviction thereof, be deemed
14 guilty of a misdemeanor and punishable by such fine or
15 imprisonment, or both, as provided ~~by law in section~~
16 95-2206.3, R.C.M. 1947, except as is herein otherwise
17 provided. If any ~~each~~ retail licensee is convicted of any
18 offense under this ~~act~~ code his license shall be immediately
19 revoked, or in the discretion of the ~~board~~ department
20 ~~suspended temporarily for a time to be determined by the~~
21 ~~board such other sanction imposed as may be authorized under~~
22 section 4-4-402. Further, if any person under the age of
23 eighteen (18) is convicted of an offense under this ~~act~~ code
24 he shall be subject to a one hundred dollar (\$100) fine or
25 thirty (30) days in confinement. It shall be further

1 mandatory under the provisions of this ~~act~~ code that all
 2 ~~such~~ licensees display in a prominent place in his premises
 3 a placard as issued by the ~~board~~ department stating fully
 4 the consequences for violations by persons under the age of
 5 eighteen (18) years of the provisions of this ~~act~~ code.

6 Any person who invites a person under the age of
 7 eighteen (18) years into a public place where ~~liquor~~ an
 8 alcoholic beverage is sold and treats, gives or purchases
 9 ~~liquor~~ an alcoholic beverage for such person, or permits
 10 such person in a public place where ~~liquor~~ an alcoholic
 11 beverage is sold to treat, give or purchase liquor for him,
 12 or holds out such person to be over the age of eighteen (18)
 13 years to the owner of the ~~liquor~~ establishment, or his or
 14 her employee or employees, shall be guilty of a
 15 misdemeanor."

16 Section 105. Section 4-440, R.C.M. 1947, is
 17 renumbered section 4-1-106, and is amended to read as
 18 follows:

19 "~~4-440 4-1-106~~. Saving clause—scope of ~~act~~ code. If
 20 any clause, sentence, paragraph, section or any part of this
 21 ~~act~~ code shall be declared and adjudged to be invalid and/or
 22 unconstitutional, such invalidity or unconstitutionality
 23 shall not affect, impair, invalidate or nullify the
 24 remainder of this ~~act~~ code. This ~~act~~ code shall apply to
 25 the Montana ~~liquor control board~~ department of revenue as

1 now composed and existing, and to any board or commission or
 2 other entity which may hereafter succeed the ~~above said~~
 3 ~~board~~ department."

4 Section 106. Section 4-507, R.C.M. 1947, is
 5 renumbered section 4-5-102, and is amended to read as
 6 follows:

7 "~~4-507 4-5-102~~. Duties of the county clerk and
 8 recorder. Upon making application to the county clerk and
 9 recorder for an identification card, the applicant must
 10 apply in person before the county clerk and recorder, who
 11 shall ascertain and receive from the applicant:

- 12 1. The true and full name of the applicant;
- 13 2. The date of birth of the applicant, provided,
- 14 however, it shall be within the discretion of the officer to
- 15 require proof of the date of birth with a certified copy of
- 16 his or her birth certificate;
- 17 3. Place of birth of the applicant;
- 18 4. The height and weight of the applicant;
- 19 5. The color of eyes and hair of the applicant; and
- 20 6. ~~A~~ Two, one and one-quarter inch (1 1/4") by one and
- 21 one-half inch (1 1/2") photograph of the applicant which
- 22 shall bear a true resemblance to the applicant. It shall be
- 23 within the discretion of the clerk and recorder to refuse a
- 24 photograph which does not present a true resemblance of the
- 25 applicant. The second photograph is to be filed with the

1 state."

2 Section 107. Section 4-508, R.C.M. 1947, is
3 renumbered section 4-5-103, and is amended to read as
4 follows:

5 ~~"4-508 4-5-103.~~ County clerk and recorder to forward
6 application to the Montana ~~liquor control board~~ department
7 of revenue for issuance of identification card. The county
8 clerk and recorder shall forward the application, properly
9 filled in and authenticated, to the Montana ~~liquor control~~
10 ~~board~~ department of revenue, and that ~~board~~ department shall
11 prepare an identification card upon a laminating machine.
12 The identification card shall set forth all the information
13 contained in the application, together with the photograph,
14 and shall be signed by the ~~chairman of~~ director of the
15 Montana ~~liquor control board~~ department of revenue or his
16 designee."

17 Section 108. Section 4-509, R.C.M. 1947, is
18 renumbered section 4-5-104, and is amended to read as
19 follows:

20 ~~"4-509 4-5-104.~~ Montana ~~liquor control board~~
21 department of revenue to furnish application forms to
22 county clerk and recorders. It shall be the duty of the
23 Montana ~~liquor control board~~ department of revenue to
24 prepare suitable application blanks and cause the same to be
25 distributed to the various county clerk and recorders."

1 Section 109. Section 4-510, R.C.M. 1947, is
2 renumbered section 4-5-105, and is amended to read as
3 follows:

4 ~~"4-510 4-5-105.~~ Fee to be charged. The county clerk
5 and recorders shall charge and collect a fee of one dollar
6 ~~(\$1) and fifty cents (\$1.50)~~ from the applicant at the time
7 the application is prepared. ~~This fee~~ One dollar (\$1)
8 thereof shall be transmitted to the Montana ~~liquor control~~
9 ~~board~~ department of revenue along with the application and
10 shall be used to defray the cost of administering and
11 executing the provisions of this act code. Any surplus
12 shall revert to the general fund of the state of Montana.
13 The remaining fifty cents (\$0.50) shall be paid into the
14 general fund of the county to defray the county's costs in
15 administering this program."

16 Section 110. There is a new section to be numbered
17 4-1-107, R.C.M. 1947, which reads as follows:

18 4-1-107. Definitions. As used in this code:

19 (1) "AGENCY AGREEMENT" MEANS AN AGREEMENT BETWEEN THE
20 DEPARTMENT AND A PERSON APPOINTED TO SELL LIQUOR AS A
21 COMMISSION MERCHANT, RATHER THAN AS AN EMPLOYEE.

22 ~~(1)-(2)~~ (2) "Alcohol" means ethyl alcohol, also called
23 ethanol or the hydrated oxide of ethyl.

24 ~~(2)-(3)~~ (3) "Alcoholic beverage" means a compound
25 produced and sold for human consumption as a drink that

1 contains more than one-half of one percent (0.5%) of alcohol
2 by volume.

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

5 ~~(4)~~ (5) "Brewer" means a person who produces malt
6 beverages.

7 ~~(5)~~ (6) "Department" means the Montana Department of
8 revenue.

9 ~~(6)~~ (7) "Immediate family" means a spouse, dependent
10 children, or dependent parents.

11 ~~(7)~~ (8) "Industrial use" means a use described as
12 industrial use by the Federal Alcohol Administration Act and
13 the federal rules and regulations of 27 CFR.

14 ~~(8)~~ (9) "Liquor" means an alcoholic beverage except
15 beer.

16 ~~(9)~~ (10) "Malt beverage" means an alcoholic beverage
17 made by the fermentation of an infusion or decoction, or a
18 combination of both, in potable brewing water, of malted
19 barley with or without hops or their parts, or their
20 products, and with or without other malted cereals and with
21 or without the addition of unmalted or prepared cereals,
22 other carbohydrates or products prepared therefrom, and with
23 or without other wholesome products suitable for human food
24 consumption.

25 ~~(10)~~ (11) "Package" means a container or receptacle

1 used for holding an alcoholic beverage.

2 ~~(11)~~ (12) "Proof gallon" means a U. S. gallon of liquor
3 at sixty degrees on the Fahrenheit scale that contains fifty
4 percent (50%) of alcohol by volume.

5 ~~(12)~~ (13) "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 ~~(13)~~ (14) "Residence" means a building, part of a
9 building, or tent where a person resides, but does not
10 include any part of a building that is not actually and
11 exclusively used as a private residence.

12 ~~(14)~~ (15) "Rules and regulations" means rules and
13 regulations published by the department pursuant to this
14 act.

15 ~~(15)~~ (16) "State liquor facility" means a facility
16 owned or under control of the department for the purpose of
17 receiving, storing, transporting, or selling alcoholic
18 beverages.

19 ~~(16)~~ (17) "State liquor store" means a retail store
20 operated by the department in accordance with this code for
21 the purpose of selling distilled spirits and wines.

22 ~~(17)~~ (18) "Storage depot" means a building or structure
23 owned or operated by a brewer at any point in the state of
24 Montana, off and away from the premise of a brewery, and
25 which structure is equipped with refrigeration or cooling

apparatus for the storage of beer, and from which a brewer may sell or distribute beer as permitted by this code.

~~(18)~~-(19) "warehouse" means a building or structure owned or operated by a licensed wholesaler for the receiving, storage and distribution of beer as permitted by this code.

~~(19)~~-(20) "wine" means an alcoholic beverage made from the normal alcoholic fermentation of the juice of sound, ripe, fruit or other agricultural products without addition or abstraction, except as may occur in the usual cellar treatment of clarifying and aging and that contains not less than seven percent (7%) nor more than twenty-four percent (24%) of alcohol by volume. Wine may be ameliorated to correct natural deficiencies, sweetened and fortified in accordance with applicable federal regulations and the customs and practices of the industry. Other alcoholic beverages not defined as above but made in the manner of wine, labeled and sold as wine in accordance with federal regulations are also wine.

Section 111. There is a new section to be numbered 4-1-204, R.C.M. 1947, which reads as follows:

4-1-204. Health professions exemption. A physician, dentist, veterinarian or pharmacist, acting within the scope of his professional responsibility and license to practice, who prescribes, prepares, or administers alcohol or

substances containing alcohol, and sells or charges a fee, does not violate the prohibitions of this title.

Section 112. There is a new section to be numbered 4-1-206, R.C.M. 1947, which reads as follows:

4-1-206. Local option. The electors of a county may, by approving an initiative as provided under Title 37, chapter 3, R.C.M. 1947, prohibit the sale and consumption of liquor, or of all alcoholic beverages, within the county. If such initiative is presented to the board of county commissioners, the board may not approve it but shall submit the proposal to the people under section 37-301.

Section 113. There is a new section to be numbered 4-1-405, R.C.M. 1947, which reads as follows:

4-1-405. In addition to the annual license tax imposed by section 4-4-401, a tax of three dollars (\$3) per barrel of thirty-one (31) gallons is hereby levied and imposed on each and every barrel of beer sold by any duly licensed brewer who manufactures beer in the state of Montana, which said barrelage tax shall be due at the end of each month and shall be payable with the brewer's monthly return or statement required to be made to the department under the provisions of section 4-3-203.

Section 114. There is a new section to be numbered 4-4-109, R.C.M. 1947, which reads as follows:

4-4-109. Passenger carrier licenses. Common carriers

serving Montana may serve beer and liquor to passengers in aircraft over or railroad cars in the state of Montana, upon the issuance by the department of revenue of a retail beer and liquor license for that purpose. Such licenses shall be issued on an annual basis to common carriers making application therefor, and shall be effective from July 1 of the current year to July 1 of the following year. They shall be issued upon payment by the applicant of an annual license fee in the sum of three hundred dollars (\$300); provided, that licenses shall be issued for the remainder of the fiscal year commencing July 1, 1968, upon payment of a license fee in the sum of one hundred fifty dollars (\$150).

Section 115. There is a new section to be numbered 4-4-110, R.C.M. 1947, which reads as follows:

4-4-110. Payment of liquor taxes by passenger carriers. Every airline or railroad operating in the state of Montana and selling liquor purchased outside this state for consumption within this state shall pay to the Montana department of revenue the excise taxes and state markup which would be applicable to such liquor if purchased from the state liquor store.

The amount of such excise taxes and state markup payable shall be determined by multiplying the following factors:

(a) the average liquor used per departure;

(b) the number of departures from Montana on which liquor is served;

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

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

From said product, the carrier shall subtract the amount of excise taxes and state markup on purchases of liquor made within this state.

Section 116. There is a new section to be numbered 4-4-111, R.C.M. 1947, which reads as follows:

4-4-111. Other accounting methods — forms. (1) The method provided in section 4-4-110 shall be presumed to determine fairly and correctly the liquor purchased outside this state and sold for consumption with this state. Any carrier aggrieved by the application of such method may petition the department for use of some other method. Thereupon, if the department finds that the application of such method will be unjust to the carrier, it may allow the use of the method so petitioned for by the airline or may use such other method as will fairly reflect the liquor purchased outside this state and served for consumption within this state.

(2) The department shall prescribe report forms which shall be used by the carriers in reporting their sales and computing their liability for excise taxes and markup.

Report forms shall be filed and payment of excise taxes and state markup shall be made on a quarterly basis. The filing of report forms and payment of excise taxes and state markup shall be made not later than the last day of the month immediately following the close of each quarterly period.

~~Section 117. There is a new section to be numbered 4-6-202, R.C.M. 1947, which reads as follows:~~

~~4-6-202. Arrest, entry of complaint, and lawful search and seizure authorized. The department shall enforce the provisions of this code, and may appoint certain of its investigators as peace officers for the purpose of enforcing this code. The powers of such persons under Title 95, R.C.M. 1947, are limited to violations of a provision of this code. Within these limits, a peace officer may arrest any person violating this code AND FOR THIS PURPOSE AN INVESTIGATOR SHALL HAVE THE AUTHORITY TO ARREST ANY PERSON VIOLATING THIS CODE, may enter complaint before any court of competent jurisdiction, and may lawfully search for and seize for use as evidence any unlawful or unlawfully possessed liquor, beer, liquors or stamps AS IF SUCH INVESTIGATOR WERE A PEACE OFFICER, PROVIDED HE SHALL NOT BE AUTHORIZED TO CARRY A WEAPON SIMPLY BECAUSE OF THIS AUTHORITY. THE INVESTIGATORS, GIVEN THE ABOVE AUTHORITY, SHALL BE TRAINED TO MEET THE REQUIREMENTS OF THE POLICE OFFICERS STANDARDS OF TRAINING.~~

Section 117. There is a new section to be numbered 4-3-308, R.C.M. 1947, which reads as follows:

4-3-308. Refilling of liquor bottles prohibited. No person who sells, or offers for sale, liquor, nor the agent or employee of such person, may—

(1) place in any liquor bottle any liquor whatsoever other than those contained in such bottle at the time of stamping by the federal government; or

(2) possess any liquor bottle in which any liquor has been placed in violation of subsection (1); or

(3) by the addition of any substance whatsoever to any liquor bottle, in any manner alter or increase any portion of the original contents contained in such bottle at the time of stamping by the federal government; or

(4) possess any liquor bottle, any portion of the contents of which has been altered or increased in violation of subsection (3); except that this section does not prohibit any reuse of liquor bottles which is permitted under laws or regulations of the federal government.

Section 118. Section 41-2004, R.C.M. 1947, is amended to read as follows:

"41-2004. Definition of terms. For the purposes of this act the words and phrases used herein have the following meaning:

(1) "Person" includes any establishment, firm,

partnership, corporation, person or association of persons.

(2) "Restaurant" means a public eating house where food is prepared and served for human consumption on the premises.

(3) "Lessee" means one to whom a lease is made.

(4) "Bar" or "tavern" means a house where liquor or beer are sold to be drunk on the premises.

(5) "Liquor" means ~~and includes any alcoholic, spirituous, vinous, fermented, malt or other liquor, which contains more than one per centum (1%) of alcohol by weight, but shall not mean or include beer as that term is defined in the Montana Beer Act by subsection (b) of section 4-302, Revised Codes of Montana, 1947 beverage so defined in the~~ Alcoholic Beverages Code.

(6) "Beer" means any beverage ~~obtained by alcoholic fermentation of an infusion or decoction of barley, malt and hops, or of any similar products, in drinkable water, containing not more than four per centum (4%) alcohol by weight so defined in the~~ Alcoholic Beverages Code.

(7) "Employee" means a person who works for wages or salary in the service of an employer.

(8) "Business" means a commercial enterprise of any kind involving the buying and selling of goods."

SECTION 119. SECTION 4-404, R.C.M. 1947, IS RENUMBERED 4-4-003, AND IS AMENDED TO READ AS FOLLOWS:

~~"4-404-4-4-003.~~ License fee for retail sale of liquor within and without cities and towns of designated populations—census of population. Each licensee licensed under ~~the provisions of this act~~ the quotas of section 4-4-202 shall pay an annual license fee as follows:

(a) Except as hereinafter provided, for each license outside of incorporated cities and incorporated towns, or in incorporated cities and incorporated towns with a population of less than two thousand (2,000), ~~two four~~ four hundred ~~(\$200.00)~~ dollars (\$400) per annum;

(b) Except as hereinafter provided, for each license in incorporated cities with a population of more than two thousand (2,000) and less than five thousand (5,000), three hundred (\$300.00) dollars per annum; or within a distance of five (5) miles thereof, measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~three five~~ four hundred ~~(\$300.00)~~ dollars (\$500) per annum;

(c) Except as hereinafter provided, for each license in incorporated cities with a population of more than five thousand (5,000) and less than ten thousand (10,000), or within a distance of five (5) miles thereof, ~~measured~~ measured in a straight line from the nearest entrance of the premises to be licensed to the nearest boundary of such city, ~~four six~~ four hundred fifty ~~(\$450.00)~~ dollars (\$650) per

1 annu;

2 (d) For each license in incorporated cities with a
3 population of ten thousand (10,000) or more, or within a
4 distance of five (5) miles thereof, measured in a straight
5 line from the nearest entrance of the premises to be
6 licensed to the nearest boundary of such city, ~~six~~ eight
7 hundred dollars ~~(\$600)~~ (\$800) per annum;

8 (e) For each railway system in the state of Montana,
9 three hundred (\$300.00) dollars per annum;

10 (f) The distance of five (5) miles from the corporate
11 limits of any incorporated cities and incorporated towns
12 shall be measured in a straight line from the nearest
13 entrance of the premises to be licensed to the nearest
14 boundary of such city or town; and where the premises of the
15 applicant to be licensed are situated within five (5) miles
16 of the corporate boundaries of two (2) or more incorporated
17 cities or incorporated towns of different populations the
18 license chargeable by the larger incorporated city or
19 incorporated town shall apply and be paid by the applicant;
20 provided, however, that when the premises of the applicant
21 to be licensed are situated within an incorporated town or
22 incorporated city and any portion of said incorporated town
23 or incorporated city be without said five (5) mile limit
24 then the license fee chargeable by the smaller incorporated
25 town or incorporated city shall apply and be paid by said

1 applicant.

2 An applicant for the issuance of an original license to
3 be located in areas described in subsection (d) of this
4 section shall pay a one-time original license fee of twenty
5 thousand dollars (\$20,000) for any such license issued. The
6 said one-time license fee of twenty thousand dollars
7 (\$20,000) shall not apply to any transfer or renewal of a
8 license duly issued prior to July 1, 1974. All licenses,
9 however, shall be subject to the annual renewal fee of ~~six~~
10 eight hundred dollars ~~(\$600)~~ (\$800).

11 The license fees herein provided for are exclusive of
12 and in addition to other license fees chargeable in the
13 state of Montana for the sale of liquor, beer and malt
14 beverages.

15 The census taken under the direction of Congress of the
16 United States in the year nineteen hundred and thirty, and
17 every ten years thereafter, shall be the basis upon which
18 the respective populations of said municipalities shall be
19 determined, unless a direct enumeration of the inhabitants
20 thereof be made by the state or municipal corporation, in
21 which case such later direct enumeration shall constitute
22 such basis, provided, however, that no census hereafter
23 taken shall be such basis until it shall have been published
24 under the authority under which the same shall be taken, and
25 then its effect shall from the date of such publication be

1 prospective only and provided, further, that none of the
2 provisions of this act shall be deemed to operate
3 retroactively."

4 Section 120. The following sections of the Revised
5 Codes of Montana 1947 are renumbered as follows: 4-114.1 is
6 renumbered 4-2-202; 4-114.2 is renumbered 4-2-203; 4-119 is
7 renumbered 4-2-102; 4-151 is renumbered 4-3-101; 4-169 is
8 renumbered 4-3-105; 4-170 is renumbered 4-3-103; 4-172 is
9 renumbered 4-6-105; 4-206 is renumbered 4-6-107; 4-207 is
10 renumbered 4-6-108; 4-241 is renumbered 4-1-402; 4-315 is
11 renumbered 4-3-205; 4-317.2 is renumbered 4-3-207; 4-317.3
12 is renumbered 4-3-208; 4-317.4 is renumbered 4-3-209;
13 4-317.5 is renumbered 4-3-210; 4-317.6 is renumbered
14 4-3-211; 4-322 is renumbered 4-3-215; 4-323 is renumbered
15 4-3-216; 4-324 is renumbered 4-1-404; 4-329 is renumbered
16 4-3-303; 4-403.1 is renumbered 4-4-205; ~~4-404 is renumbered~~
17 ~~4-4-403~~; 4-408.2 is renumbered 4-4-305; 4-506 is renumbered
18 4-5-101; 4-512 is renumbered 4-5-106.

19 Section 121. Sections 4-102, 4-104, 4-105, 4-106,
20 4-110, 4-111, 4-115, 4-118, 4-134, 4-135, 4-136, 4-137,
21 4-138, 4-142, 4-143, 4-144, 4-145, 4-146, 4-147, 4-148,
22 4-149, 4-159, 4-163, 4-167, 4-173, 4-201, 4-202, 4-203,
23 4-204, 4-205, 4-221, 4-222, 4-223, 4-227, 4-228, 4-230,
24 4-232, 4-234, 4-235, 4-236, 4-237, 4-239, 4-302, 4-305,
25 4-306, 4-307, 4-312, 4-314, 4-317.8, 4-337, 4-339, 4-345,

1 4-350, 4-351, 4-352, 4-353, 4-354, 4-355, 4-356, 4-402,
2 4-405, ~~4-409~~, ~~4-414~~, 4-424, 4-425, 4-431, 4-432, 4-433,
3 ~~4-434~~, 4-435, 4-436, 4-437, 4-438, 4-441, 4-501, 4-502,
4 4-503, 4-504, 4-505, 4-513, and 4-514, M.C.S. 1947, are
5 repealed.

-End-