

1 *House* BILL NO. *681*  
 2 INTRODUCED BY *Montrose American Day*  
 3 BY REQUEST  
 4 A BILL FOR AN ACT ENTITLED: "AN ACT TO BE KNOWN AS THE  
 5 "MONTANA KITCHEN AND TABLE WINE ACT"; PROVIDING FOR  
 6 WHOLESALING OF KITCHEN AND TABLE WINE AND THE RETAIL SALE  
 7 THEREOF BY LICENSEES; PROVIDING A STATE TAX ON SUCH WINE;  
 8 REQUIRING REGISTRATION OF LABELS; AND REGULATING THE  
 9 IMPORTATION, DISTRIBUTION, AND SALE OF SUCH WINE."

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 11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:  
 12 Section 1. Statement of policy. It is the policy of  
 13 the state of Montana that the manufacture, transportation,  
 14 distribution, sale and possession of "kitchen and table  
 15 wine", which contains not more than fourteen percent (14%)  
 16 of alcohol by volume, shall be controlled and regulated by  
 17 this act. Wine containing more than fourteen percent (14%)  
 18 of alcohol by volume and which is defined as "liquor" by the  
 19 State Liquor Control Act of Montana shall be subject to the  
 20 regulations and controls provided by the State Liquor  
 21 Control Act of Montana (sections 4-101 through 4-171) and  
 22 the regulations and controls provided by the Montana Retail  
 23 Liquor License Act (sections 4-401 through 4-441), or as  
 24 those statutes may be amended or renumbered.

25 Section 2. Definitions. As used in this act:

- 1 (1) "Department" means the department of revenue.
- 2 (2) "Wine" means any alcoholic beverage containing not
- 3 more than fourteen percent (14%) alcohol by volume obtained
- 4 by the fermentation of the natural sugar content of fruits
- 5 or other agricultural products containing sugar whether or
- 6 not other ingredients are added.
- 7 (3) "Retail wine license" means the license issued
- 8 authorizing a person to sell wine at retail.
- 9 (4) "Wine distributor's license" means the license
- 10 issued to a person authorizing such person to distribute
- 11 wine to retailers within the state of Montana.
- 12 (5) "Retailer" or "retail licensee" means a person to
- 13 whom a retail wine license has been issued.
- 14 (6) "Distributor" means a person to whom a wine
- 15 distributor's license has been issued.
- 16 (7) "Person" includes an individual, firm,
- 17 copartnership, association, corporation or any group or
- 18 combination acting as a unit, and includes the plural as
- 19 well as the singular unless the intent to give a more
- 20 limited meaning is disclosed by the context in which it is
- 21 used.
- 22 (8) All other words and phrases used in this act and
- 23 the definitions of which are not herein given shall be given
- 24 their ordinary and commonly understood and accepted meaning.
- 25 Section 3. Permission to handle wine. (1) Wine as

1 defined in this act may be manufactured, imported into this  
 2 state, possessed, distributed and sold in this state in the  
 3 manner and under the conditions prescribed in this act and  
 4 not otherwise.

5 (2) Nothing contained in this act shall prohibit the  
 6 state of Montana from selling wine under the State Liquor  
 7 Control Act of Montana in any outlet of the state.

8 Section 4. Licenses to handle wine. Before any person  
 9 shall manufacture, import into this state, possess for  
 10 resale or distribute or sell wine within the state of  
 11 Montana, he shall apply to the department for a license to  
 12 so do. The application form shall be prescribed and  
 13 furnished by the department and require that the applicant  
 14 therein show that he possesses all of the qualifications and  
 15 none of the disqualifications of a licensee. If the  
 16 department is satisfied that the applicant possesses the  
 17 qualifications and none of the disqualifications for such  
 18 license, it shall issue a license for each classification  
 19 applied for, subject to the restrictions of and upon the  
 20 conditions specified in this act. The license or licenses  
 21 issued shall be at all times prominently displayed in the  
 22 place of business of the licensee. If the department  
 23 determines that the applicant is not properly qualified, it  
 24 shall refuse to issue a license and shall forthwith so  
 25 notify the applicant and shall return to the applicant with

1 such notification three-fourths (3/4) of the license fee  
 2 remitted with the application. A separate license shall be  
 3 required for each retail premise licensed for off-premises  
 4 consumption; provided, nothing herein shall prohibit a  
 5 retail licensee from possessing licenses for more than one  
 6 premise.

7 Section 5. Criteria for license issuance. No retail  
 8 wine license or wine distributor's license shall be issued  
 9 to an applicant who at the time of making the application:

10 (1) if an individual, is not an adult citizen of the  
 11 United States and has not resided within the state of  
 12 Montana for a period of one (1) year immediately prior to  
 13 making the application;

14 (2) if a partnership, does not include at least one  
 15 (1) member thereof who is an adult citizen of the United  
 16 States and who has resided within the state of Montana for a  
 17 period of at least one (1) year;

18 (3) if a corporation, has not qualified as required by  
 19 law to do business in the state of Montana;

20 (4) has had a wine distributor's license, or a retail  
 21 wine license revoked by the department within three (3)  
 22 years from the date of making such application;

23 (5) has been convicted of a violation of the laws of  
 24 this state or of the United States governing the sale of  
 25 alcoholic beverages, wine or beer within three (3) years

1 from the date of making such application;

2 (6) has been convicted of a felony or been granted a  
3 withheld judgment following an adjudication of guilt of a  
4 felony within five (5) years from the date of making such  
5 application;

6 (7) if an individual or partnership, either the  
7 individual or at least one (1) of the partners of a  
8 partnership is a minor.

9 (8) if the application is for a distributor's license,  
10 the department finds that the applicant does not possess a  
11 wholesale beer license issued by the department;

12 (9) if the application is for a retail wine license,  
13 the department finds that the applicant does not possess a  
14 retail beer license issued by the department.

15 Section 6. To whom distributor may sell wine. No  
16 distributor may sell any wine produced, manufactured,  
17 imported or bought by such distributor, for use within this  
18 state, except to the holder of a valid wholesale or retail  
19 wine license. No distributor shall permit wine to be  
20 consumed upon the premises of the distributor.

21 Section 7. Purchase of wine by tavern licensees. (1)  
22 The holder of a retail liquor license is authorized to  
23 purchase wine from persons holding valid wine distributor's  
24 licenses without purchasing a retail wine license for the  
25 purposes of resale on the premises stated in the retail

1 liquor license.

2 (2) The holder of a retail beer license, for  
3 consumption either on or off premises, is authorized to  
4 purchase wine from persons holding valid wine distributor's  
5 licenses for the purposes of resale after purchasing a  
6 retail wine license under the provisions of this act.

7 Section 8. Reports by distributors. Every distributor  
8 shall have and notify the department of a place of business  
9 within the state of Montana where such licensee will and  
10 shall keep a record of its imports into, and sales of wine  
11 within, the state, including the date, quantity, from whom  
12 purchased, the carrier or other person or means by whom or  
13 which transported and the name and address of the purchaser,  
14 and shall so keep such record of each such sale or import  
15 for a period of eighteen (18) months thereafter. Such  
16 licensee shall, on or before the fifteenth day of each  
17 month, make a return, under oath, to the department of the  
18 amount of wine sold in and imported by him into the state of  
19 Montana for the preceding calendar month which shall be upon  
20 forms furnished by the department. The department may  
21 require such additional information to be included in such  
22 returns as shall assist it in determining whether or not  
23 such licensee is complying with this act and whether or not  
24 all taxes and fees provided for by this act are being fully  
25 paid. The department may at any time and shall not less

1 than once in each calendar year make an examination of each  
 2 distributor's books, records and premises, and such other  
 3 matters as may assist it in verifying the accuracy of such  
 4 returns, and retain in its office for not less than two (2)  
 5 years a report thereof. An application for and acceptance  
 6 of a license by a distributor or retailer shall consent to  
 7 and be authority for entry by the department or its  
 8 authorized agents upon any premises related to the  
 9 licensee's business, or wherein are or should be kept, any  
 10 of the licensee's books, records, supplies or other property  
 11 related to said business, and to make the inventory, check  
 12 and investigations aforesaid with relation to said licensee  
 13 or any other licensee.

14 Section 9. Licensees -- fees. Each winery or its  
 15 representative if a foreign winery, wherever located, whose  
 16 products are sold or offered for sale in this state shall  
 17 pay to the state of Montana an annual license fee of one  
 18 thousand dollars (\$1,000).

19 (2) Each distributor shall pay to the state of Montana  
 20 an annual license fee of five hundred dollars (\$500) for  
 21 each separate warehouse used for the purpose of or in  
 22 connection with the sale or distribution of wine within this  
 23 state.

24 (3) Each retailer shall pay to the state of Montana an  
 25 annual license fee of two hundred dollars (\$200) for each

1 premises for which a license is issued for the retail sale  
 2 of wine.

3 (4) No retail wine license issued by the department  
 4 shall authorize the licensee to sell wine at retail unless  
 5 such person possesses a county and city license as may be  
 6 required by the governing board thereof.

7 (5) Every winery licensed hereunder shall register  
 8 with the department on forms provided by the department each  
 9 label which is to be used on any wine to be imported into  
 10 this state. No wine shall be imported into, possessed for  
 11 sale or sold within this state unless each container thereof  
 12 bears a label or labels identical in every respect, except  
 13 for a coded manufacturing data, if any, to a label or labels  
 14 registered for that wine with the department. Applications  
 15 for registration shall set forth, in addition to any other  
 16 information required by the department, the name and address  
 17 of the winery, a description of the container to which the  
 18 label is affixed and the formula number of the wine used by  
 19 the importer for federal reporting purposes. The fee for  
 20 each label registration shall be one hundred dollars (\$100)  
 21 per year, payable at the time the winery licensee above  
 22 required is paid and, in case of introduction of new labels  
 23 during any license year, the fee of one hundred dollars  
 24 (\$100) for each such label shall be paid before any wine  
 25 identified by such labels is imported into the state.

1 Section 10. Expiration of licenses. All licenses  
 2 issued pursuant to this act shall expire at 12 midnight on  
 3 the 30th day of each year following the date of issuance of  
 4 the license. Renewal of such licenses shall be on forms  
 5 prescribed and furnished by the department. The renewal  
 6 forms shall be submitted, together with the required license  
 7 fees, and an affidavit verifying that the information  
 8 contained in the original application is unchanged, or if  
 9 there are material changes, indicating such changes.

10 Section 11. License transfers. (1) No wine  
 11 distributor's license or retail wine license shall be  
 12 transferred to another person, including an executor,  
 13 administrator, or trustee in bankruptcy of the estate of the  
 14 licensee, unless the transferee shall first have obtained  
 15 the approval of the department to such transfer upon  
 16 application containing substantially the same information  
 17 required of an applicant for a wine distributor's license or  
 18 a retail wine license as the case may be. If the transferee  
 19 possesses all of the qualifications and none of the  
 20 disqualifications for such license, the department shall  
 21 approve the transfer, which shall be attached and made a  
 22 part of the license. The fee for each transfer of a wine  
 23 distributor's license or a retail wine license shall be  
 24 twenty dollars (\$20), which fee shall accompany the  
 25 application for transfer.

1 (2) Application to transfer a wine distributor's  
 2 license or retail wine license from one location to another  
 3 shall be made to the department on forms prescribed and  
 4 furnished by the department. The department shall approve  
 5 any such transfer upon submission of the application and  
 6 receipt by the department of a transfer fee of twenty  
 7 dollars (\$20).

8 Section 12. Excise tax on sale of wine.

9 (1) (a) There is imposed an excise tax of thirty-four  
 10 percent (34%) of the value of all wine imported into this  
 11 state for the purpose of resale, and upon all wines sold,  
 12 transported, stored, delivered, received or produced to use  
 13 within the state under this act. The value of the wine is  
 14 computed by multiplying the invoice price of the wine by one  
 15 point eight one (1.81). The excise tax shall be remitted to  
 16 the state department of revenue by the winery or its  
 17 representative at the time the invoice is prepared.

18 (b) The department of revenue shall deposit twelve  
 19 percent (12%) of the revenue collected in a separate account  
 20 and shall apportion the funds in this account to the  
 21 treasurers of the counties according to the amount of liquor  
 22 sold by state liquor stores to purchasers in each county.  
 23 The department shall pay quarterly to each county treasurer  
 24 the portion of the revenue due each county.

25 (c) The county treasurer of each county shall

1 apportion the revenue among the county and the incorporated  
2 cities and towns within the county in the manner set forth  
3 in section 4-240.

4 (d) The remaining eighty-eight percent (88%) of the  
5 revenue collected from the excise tax shall be retained in a  
6 separate account by the department and shall be deposited  
7 with the state treasurer, to the credit of the general fund,  
8 no later than the tenth day of each month.

9 (2) Every sale of wine manufactured in this state to a  
10 distributor or retailer or to a consumer in this state shall  
11 constitute a sale of wine for resale or consumption in this  
12 state and such manufacturer shall be liable for the payment  
13 of taxes thereon.

14 (3) When wine shall be destroyed by breakage or has  
15 spoiled or otherwise become unfit for beverage purposes  
16 after payment of taxes thereon, and prior to delivery to a  
17 retailer by a distributor, such distributor upon  
18 satisfactory proof of destruction or spoilage shall be  
19 entitled to a refund of taxes paid thereon.

20 Section 13. Penalty for delinquent taxes. If any taxes  
21 on wine shall not be paid by the person liable therefor when  
22 due, a penalty of ten percent (10%) of the taxes payable  
23 shall be assessed against and paid by such person, together  
24 with interest at the rate of one percent (1%) per month or  
25 major fraction thereof computed on both said tax and

1 penalty. For purposes of this section, if the fifteenth day  
2 of any month shall fall upon Saturday, Sunday or a holiday,  
3 the due date for the report and the payment of taxes  
4 required by this act shall be the first business day  
5 thereafter. Waiver of penalty and interest may be allowed  
6 by the department of revenue when delay and receipt of any  
7 monthly report or in receipt of any payment of taxes due  
8 therefor shall be found by the department to be justifiable  
9 and without fault on the part of the person liable therefor.

10 Section 14. Reports with tax payments. Each person  
11 liable for the payment of taxes on wine as provided for in  
12 section 13 of this act shall, on or before the fifteenth day  
13 of each month, file a written report with the department of  
14 revenue showing all sales of wine for resale or consumption  
15 in this state made by such person during the calendar month  
16 immediately preceding. Taxes payable with respect to such  
17 sale shall be paid by the person liable therefor at the time  
18 such report is filed.

19 Section 15. Adoption of rules for payment of taxes.  
20 The department of revenue is authorized to adopt rules to  
21 assure payment of taxes on wine, including but not limited  
22 to, rules prescribing the form and content of monthly  
23 reports required; requiring the persons liable for payment  
24 of taxes on wine to show on such monthly reports information  
25 concerning their inventories, purchases, sales and shipments

1 of wine; requiring monthly informational reports from  
 2 distributors concerning their inventories, purchases and  
 3 sales and shipments of wine; requiring reports from  
 4 carriers, both public and private, concerning deliveries of  
 5 wine made in this state by such carriers, and shipments of  
 6 wine made by such carriers out of this state; requiring  
 7 distributors and persons liable for payment of taxes on wine  
 8 to maintain complete and accurate books, records and  
 9 accounts on transactions involving wine; and establishing  
 10 grounds upon which delay in filing reports and paying taxes  
 11 imposed upon wine shall be considered justifiable and  
 12 without fault on the part of the person liable therefor.

13 Section 16. Sales on cash basis only. No sale or  
 14 delivery of wine shall be made to any retail licensee except  
 15 for cash paid at the time of or prior to delivery thereof,  
 16 and in no event shall any distributor extend any credit on  
 17 account of such wine to a retail licensee, nor shall any  
 18 retail licensee accept or receive delivery of such wine  
 19 except when payment therefor is made in cash at the time of  
 20 or prior to delivery thereof. The acceptance of a  
 21 first-party check from a retail licensee by a distributor  
 22 shall not be deemed an extension of or acceptance of credit  
 23 if the first-party check is dated with the date of or prior  
 24 to delivery of the wine.

25 Section 17. Sales by case only. No distributor shall

1 sell or deliver wine to a retail licensee of a quantity less  
 2 than a case lot. For purposes of this section a "case lot"  
 3 means that quantity of containers of equal size containing  
 4 wine which are equal to the smallest unit or quantity of  
 5 containers of wine received by a distributor. No  
 6 distributor shall purchase, receive or sell any wine except  
 7 in the original container as prepared for the market by the  
 8 manufacturer. No distributor shall, without permission of  
 9 the department, adopt or use any individual container for  
 10 wine which will contain in excess of one (1) gallon of wine.

11 Section 18. Labels restricted -- restrictions on  
 12 distribution prohibited. No label on a wine container shall  
 13 be used or placed thereon which indicates that a retail  
 14 licensee is the producer or the bottler thereof or which  
 15 contains the name of a retail licensee in any manner. No  
 16 distributor shall restrict the sale of wine for which the  
 17 distributor has filed a price schedule in accordance with  
 18 the provisions of this act to one retail licensee or to  
 19 retail premises under common ownership or associated  
 20 together in, by or through a buying organization or agency  
 21 which represents a common identity to the public; nor shall  
 22 such distributor refuse to sell or distribute wine to a  
 23 retail licensee on terms and conditions different from those  
 24 terms and conditions upon which said distributor sells or  
 25 distributes wine to other retail licensees.

1 Section 19. Certain financial interests of  
2 distributors prohibited. A distributor may not:

3 (1) directly or indirectly, or through an affiliate,  
4 subsidiary, officer, director, agent or employee, have any  
5 financial interest in any retail licensee's business; or

6 (2) own or control any real property upon which a  
7 retail licensee conducts his business; provided, however,  
8 that this section shall not be deemed to prohibit the  
9 ownership or control of real property upon which a retail  
10 licensee has conducted his business continuously for more  
11 than one (1) year prior to the effective date of this act;  
12 and during which time the distributor owned or controlled  
13 the real property; or

14 (3) directly or indirectly aid or assist any retail  
15 licensee by giving such retail licensee, or any employee  
16 thereof, any discounts, premiums or rebates in connection  
17 with any sale of wine, or by furnishing, giving, renting,  
18 lending or selling any equipment, signs, supplies, services  
19 or other things of value, except as expressly permitted by  
20 this act; or

21 (4) enter into any lease or other agreement with any  
22 retail licensee to control the product or products sold by  
23 such retail licensee, or to provide for any rental or other  
24 charge to be paid to or by the retail licensee for a product  
25 display or advertising display space; provided, however,

1 that at the request of or with the consent of a retail  
2 licensee, a distributor, as an incident to merchandising in  
3 the ordinary course of business, and if available to all  
4 licensed retail licensees without discrimination, may  
5 perform such services for a retail licensee as are permitted  
6 by section 4-349, or as that section may be renumbered, for  
7 assistance by brewers and wholesalers to the extent that  
8 such provisions are applicable to the sale and distribution  
9 of wine and subject further to such regulations and rules as  
10 may be adopted by the board with reference thereto.

11 Section 20. Price schedules -- filing. Each  
12 distributor shall file with the department a written  
13 schedule of prices to be charged by him for wine to be sold  
14 within this state for resale therein. The schedule of  
15 prices shall be uniform for retail licensee buyers within  
16 this state and shall set forth the following:

17 (1) all brands and types of products offered for sale;  
18 and

19 (2) the delivered sale price thereof.

20 The schedule of prices so filed may be changed or  
21 modified from time to time by filing with the board a new  
22 schedule of prices not less than thirty (30) days prior to  
23 the effective date thereof. The schedule of prices so filed  
24 may not be withdrawn prior to its effective date, and upon  
25 becoming effective shall remain in effect for a minimum



1 period of thirty (30) days. Upon the filing of the original  
 2 schedule of prices and after the effective date of any  
 3 schedule of prices amendatory thereto, all prices therein  
 4 stated shall be strictly adhered to.

5 Section 21. Adoption of rules for administration of  
 6 act. The department may make rules for carrying out the  
 7 provisions of this act and for the orderly and efficient  
 8 administration hereof. The rules shall be consistent with  
 9 the provisions of this act and, as to the making, packaging,  
 10 labeling and advertising of wine, shall be uniform with the  
 11 laws and regulations of the United States department of the  
 12 treasury and of its bureaus.

13 Section 22. Suspension, revocation, or nonrenewal of  
 14 licenses and permits. The department may suspend, revoke or  
 15 refuse to renew a retail wine license or wine distributor's  
 16 license issued under the terms of this act for any violation  
 17 of or failure to comply with the provisions of this act or  
 18 rules issued by the department under this act. The  
 19 department may suspend, revoke or refuse to renew an  
 20 employee permit issued under this act for failure of such  
 21 employee to comply with the provisions of this act or the  
 22 rules promulgated by the department.

23 Section 23. Taverns -- on and off premise sales of  
 24 wine. Retail licensees holding valid licenses for the retail  
 25 sale and consumption on their premises of liquor or beer

1 pursuant to chapter 4, Title 5, and chapter 3, Title 4, or  
 2 as those statutes may be renumbered, may sell wine for  
 3 consumption on or off the licensed premises. Retail  
 4 licensees who do not possess such valid licenses for the  
 5 retail sale and consumption on their premises of liquor or  
 6 beer shall not permit consumption of wine on the licensed  
 7 premises and may sell the wine only in its original unbroken  
 8 container. Wine sold for consumption on the retail  
 9 licensees' premises may be sold only during hours that  
 10 liquor or beer by the drink can be sold pursuant to the laws  
 11 of this state. Wine sold by retail licensees for  
 12 consumption off the premises of the retailer may be sold  
 13 only during the hours that beer may be sold pursuant to the  
 14 laws of this state. Wine sold by retail licensees for  
 15 consumption off the premises must be displayed in and  
 16 distributed from one designated area in the store. This  
 17 area shall be under the direct supervision of the retailer  
 18 or his agent at all times.

19 Section 24. Penalty. Any person who violates any of  
 20 the provisions of this act or fails to comply with any of  
 21 the terms and conditions of this act shall be guilty of a  
 22 misdemeanor.

23 Section 25. It is the intent of the legislature that  
 24 if a part of this act is invalid, all valid parts that are  
 25 severable from the invalid part remain in effect. If a part

1 of this act is invalid in one or more of its applications,  
2 the part remains in effect in all valid applications that  
3 are severable from the invalid application.

-End-